

Changes to an incorporated association's rules

Legal information for Tasmanian 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 issues should we look out for before we change our rules?
 - ▶ how do we lodge and get approval of changes to the rules?
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This fact sheet assists Tasmanian (TAS) 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.').



Related resource

This fact sheet is for incorporated associations in Tasmania. You can check online if your organisation is registered with [TAS Consumer, Building and Consumer Affairs](#).



Caution

For information on updating the constitution of other types of organisations, see Not-for-profit Law's [constitution webpage](#).



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 are 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 and how they resign or are removed
- 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 1964* (Tas) (**the Act**) is required by the Act to have rules. The *Associations Incorporation (Model Rules) Regulations 2017* (**the Regulations**) contains a template set of rules that may be adopted by an association and will apply to an association unless these are inconsistent with or excluded by any rules drafted by the association. An association doesn't have to use the model rules.



Related resource

The model rules for incorporated associations are set out in [Schedule 1 to the *Associations Incorporation \(Model Rules\) Regulations 2017*](#). You can read more about how to vary or modify the model rules in [section 16 of the *Associations Incorporation Act 1964*](#).

Why would we need to change our rules?

It's important that your rules accurately reflect how your organisation is governed and are up-to-date with any changes to the law. It's 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's 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 need to comply with any additional 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. 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 can't be passed at a committee or board meeting, or by a resolution without meeting
- notice of the general meeting must be given to all members in accordance with the association's rules
- the notice must state the text of the proposed special resolution and provide adequate explanation (see 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 who are present at the meeting, vote in favour. To be eligible to vote on a special resolution a voter must be 'present in person'. As such, no proxy votes are allowed for the passing of a special resolution. Abstentions are included when calculating whether the votes in favour make up at least 75% of the members eligible to vote and present at the meeting.

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

A notice of a special resolution must advise 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.

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.

In setting out the terms of the proposed special resolution, it's important that sufficient detail is provided to members. Where the proposed special resolution is to make changes to 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's 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's 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 separate the controversial changes out into separate resolutions.

However, as it is usual for rules of an organisation to interrelate, be careful if you are separating out changes. Changing some rules and not others can result in a conflicting and sometimes unworkable constitution. If you are putting one resolution to your members to adopt a new constitution, you still need to set out what the changes are and the effect of the changes.

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

Statutory requirements

Organisations should check that the rules as amended comply with the Act. An incorporated association must lodge its rules with Consumer, Building and Occupational Services (**CBOS**). If the rules of your organisation are not consistent with, or do not exclude or modify the model rules, the model rules will apply to your organisation to the extent possible as well as the rules that are lodged. If your organisation doesn't want model rules to be deemed to apply, your rules should explicitly address this issue.



Tip

It's a good idea to prepare a list or table, cross-referencing each of the items in the model rules (found in Schedule 1 of the Regulations) with your organisation's new or amended rules.

Write the rule numbers of your organisation's rules against each of the corresponding matters in the model rules. That way you can see if any of the model rules have not been expressly referred to in your own rules, and you can decide whether you want them to apply to your organisation.

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's a good idea to seek legal advice.



Related Not-for-profit Law resource

For more information on members' rights see Not-for-profit Law's [Members webpage](#).



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 with various charity tax concessions such as a Deductible Gift Recipient (**DGR**) status 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 or winding up clause should be approached with care. If unsure, seek legal advice.



Related Not-for-profit Law resource

For more information on DGR and TCC, see Not-for-profit Law's [Tax page](#).

Registered charities

If your organisation is also registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**), any changes to the charitable purposes in its constitution must be approved by the ACNC before a special resolution is passed. These types of changes should be approached with care as they may impact your organisation's charity sub-type, which may then impact the organisation's tax status. If unsure, seek legal advice.

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 the CBOS. To do this, a form must be lodged with the CBOS within one month of the vote. The form will specify how many copies of the special resolution are needed by the CBOS, as well as the associated fees, signatories and any other requirements.

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

If any change to the rules is made which affects the financial liability of members, notice of the change must also be given in a newspaper which circulates the state. The notice must include a copy of the special resolution.



Related resource

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

Registered 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 publicly 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 of \$250,000 or less), the time limit is 60 days
- For medium charities (having annual revenue of more than \$250,000, 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 or 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

Not-for-profit Law resources

▶ [Getting started](#)

This webpage sets out the things you need to consider when deciding whether to start a not-for-profit organisation, including links to helpful resources

▶ [Running the Organisation](#)

This webpage has information on governance, meetings and record keeping

▶ [People Involved](#)

This webpage has information on members, clients, employees and volunteers

Legislation

▶ [Associations Incorporation Act 1964 \(Tas\)](#)

This legislation regulates incorporated associations in Tasmania.

▶ [Associations Incorporation \(Model Rules\) Regulations 2017 \(Tas\)](#)

Consumer Building and Occupational Services (CBOS) resources

▶ [Database of Tasmanian incorporated associations](#)

This is a CBOS database where you can search to find Tasmanian incorporated associations and cooperatives

▶ [CBOS incorporated associations information](#)

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

Australian Charities and Not-for-profits Commission (ACNC) resources

▶ [Updating your charity's details](#)

This section of the ACNC's website has information on how to update a charity's details, including making amendments to its constitution

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