

Changes to an organisation's constitution or rules

Legal information for Victorian community organisations

This fact sheet covers:

- ▶ what is a constitution?
 - ▶ why would we need to change our constitution?
 - ▶ our organisation has 'rules' or 'articles'– is this the same as a constitution?
 - ▶ what is the legal process for making changes to our constitution?
 - ▶ how do we lodge and get approval of changes to the new or amended constitution?
 - ▶ what issues should we look out for before we change our constitution?
-

This fact sheet assists Victorian not-for-profit community organisations to understand some of the issues that arise when making changes to their constitution or rules. It includes information about changing the constitution for an incorporated association, a company limited by guarantee (CLGs) and a co-operative.

What is a constitution?

Every not-for-profit organisation needs to have a constitution or rules. This is the document that contains the rules of the organisation, describes its basic structure and processes, and 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 other 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

Why would we need to change our constitution?

It's important that the constitution accurately reflects how your organisation is governed. It's no use having a constitution that no one looks at or follows or that few can understand. An organisation's constitution should be reviewed at least once every three years, and if required, amended. As such, it may be time for you to change your constitution to bring it up to date.

You may also need to change your constitution to implement a new structure, meet requirements of a new licence or funding arrangement, to alter the way in which the organisation operates or to reflect any changes in the law.

Our organisation has 'rules' or 'articles' - is this the same as a constitution?

The terminology for governing documents varies depending on whether your organisation is an incorporated association, a CLG or a co-operative (discussed further below). Nonetheless, the terms can generally be used interchangeably.

You can usually tell from an organisation's name whether it's an incorporated association, a CLG 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.'). Most CLGs have 'Limited' or 'Ltd' at the end of their names (although some have an exemption from this requirement). All co-operatives must have 'Co-operative', 'Cooperative' or 'Co-op' in their names, and 'Limited' or 'Ltd' at the end.



Tip

To confirm the type of an organisation, you can search its name on the [Australian Business Number website](#) or the [Australian Securities and Investments Commission \(ASIC\) website](#) (for companies) or the [Consumer Affairs Victoria \(CAV\) website](#) (for incorporated associations and co-operatives).

Incorporated associations

An incorporated association registered under the *Associations Incorporation Reform Act 2012 (Vic)* (**2012 Act**) is required to have rules that include a statement of purpose (ie. what the association was set up to do) as well as a number of other matters listed in Schedule 1 of the 2012 Act. These include rights of members, procedures for applying for and ending membership, procedures for holding meetings of members, sources of funds and record-keeping.

There is a set of model rules (contained in regulations) which an incorporated association can use as its own rules. All incorporated associations which were using the old model rules (before the 2012 Act came into force) were automatically transferred to the new model rules on 26 November 2013. Associations which were incorporated before the 2012 Act and were using their own rules can continue to do so, but if the rules don't address any of the matters listed in Schedule 1, the model rule that deals with that matter will automatically apply.

While organisations previously submitted their purposes separately to their rules, under the 2012 Act the rules and purposes now form one document (so if your organisation was registered under the old system, your purposes are now considered part of your rules).

Companies Limited by Guarantee (CLGs)

A CLG registered under the federal *Corporations Act 2001* will have either a single constitution (for newer organisations) or two separate documents – a 'memorandum of association' and 'articles of association' (for older organisations that have not updated their constitution). The aims of a CLG are expressed through the 'objects' contained in its constitution or memorandum of association.

Co-operatives

A co-operative must have a set of 'rules' that make up its constitution. The rules must address all the matters contained in Schedule 1 to the Co-operatives National Law, found in the Appendix to the Co-operatives *National Law Application Act 2013 (Vic)*.

A co-operative must have at least one 'primary activity' which is the basic purpose or aim for which the co-operative exists. The rules of a co-operative may set out its objects, although this is not compulsory, and a cooperative can legally act beyond or contrary to the objects set out in its rules.

There are model rules that a co-operative can use as its own rules. For a non-distributing co-operative (the type of co-operative structure that is a suitable structure for a not-for-profit organisation), the model rules are found at Schedules 6 and 7 of the Co-operatives National Regulations.

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

Whether your organisation is an incorporated association, a CLG or a co-operative, it can only change its constitution by passing a 'special resolution' of members. The only exception to this is for a co-operative, where the directors may amend the constitution – but only if the alteration does no more than give effect to a requirement of the *Co-operatives National Law Application Act 2013 (Vic)*.

It's important that the statutory (legal) requirements for a special resolution are complied with, otherwise the resolution won't 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 additional requirements in your own constitution. 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.

Incorporated associations and CLGs

The following are the statutory requirements for a valid special resolution for both incorporated associations and CLGs:

- a special resolution can only be passed by members at an annual general meeting or special general meeting. In addition, some associations may be able to pass special resolutions by postal or electronic ballot (ie. without a meeting) if the association's constitution permits. A CLG can't do this and must hold a meeting. A special resolution can't be passed by the organisation's governing body at a committee or board meeting (because a special resolution can only be passed by the members)
- at least 21 days notice of the general meeting must be given to all members (and, for companies, to their auditor and to any directors who are not also 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. Preferably, use words 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'

However, provided the notice makes it clear that the proposed resolution is a special resolution, this requirement will be met

- 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 purposes of assessing whether a quorum (ie. the minimum number of attendees for decisions to be made) is present at a meeting, and
- the special resolution must also meet any requirements specified in the constitution of your incorporated association or company. For example, it may require a higher majority than the 75% prescribed by statute



Proxies

A proxy is a person you authorise to vote on your behalf if you can't attend a meeting yourself. 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 (for example, at least 48 hours before the relevant meeting). Proxy voting can't be excluded by CLGs, but 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 association member nominates to attend and exercise that company's or association's voting rights at a meeting of members.



Co-operatives

For co-operatives, the statutory requirements are similar to those set out above, except that:

- the Registrar of Co-operatives requires that certain types of proposed amendments must be submitted to the Registrar before a special resolution is passed. Approval is required for the rules relating to:
 - active membership
 - converting a non-distributing co-operative to a distributing co-operative
 - the primary activity of the co-operative
 - winding up of the co-operative, and
 - the issue or sale of shares or co-operative capital units

If the Registrar has not contacted you with approval, refusal, amendment, or extension, then the proposed change is taken to be approved after 28 days. Once the Registrar has given approval, or the time period has elapsed, the co-operative can then vote on the special resolution. The [notice form](#) is available on the CAV website

- for proposed rule changes that don't require pre-approval, the co-operative must hold a meeting for a special resolution according to the rules of that co-operative and legislative requirements
- members must be given at least 21 days' notice of the intention to propose a special resolution. Co-operatives may apply to CAV to have this time extended or shortened (a fee applies). The notice must also specify the reasons for the proposed special resolution, and the effect of it being passed
- at a general meeting, the special resolution only requires a 66% majority of those present and voting (including by proxy), though a higher threshold may be imposed by existing co-operative rules
- special resolutions may also be passed by a two-thirds majority of those members voting in a postal ballot but only if this is permitted under the rules of the particular co-operative, and
- as noted above, the rules of a co-operative may also be altered by a resolution passed by the co-operative's board, but only if the alteration does no more than give effect to a requirement of the *Co-operatives National Law Application Act 2013* (Vic). The board must then notify its members in writing as soon as practicable after such an amendment takes effect

Registered charities

For a CLG which is registered as a charity with the Australian Charities & Not-for-profits Commission (**ACNC**), changes to its constitution are required to be notified to the ACNC through the [online Charity Portal](#) available on their website. Changes to the constitution are not required to be notified to the Australian Securities and Investment Commission (**ASIC**) where the CLG is a registered charity.

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. The notice should be clear and provide adequate explanation, so that when a member scans the notice, they can understand clearly whether the matters to be addressed are ones that concern them. Accordingly, a member can decide whether to attend the meeting to which the notice relates.

Where changes to a constitution or 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's not essential to provide members with a full copy of the proposed new constitution if the proposed changes have been made 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 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 a 'new' constitution 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 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.

How do we lodge changes to the new or amended constitution?

Incorporated associations

For incorporated associations, the secretary or approved delegate must notify CAV of the changes to the new or amended constitution within 28 days of passing the special resolution, by lodging a copy of the special resolution stating the changes through [myCAV](#). Once lodged (and the relevant fee is paid), the changes will take effect.

If an incorporated association has a query about a particular change or rule, it can contact CAV for advice.

Co-operatives

For co-operatives, where pre-approval is required, CAV will review and approve changes before a vote. The changes will not take effect until CAV is notified of the successful vote.

If the co-operative's proposed rule changes don't require prior approval, the process outlined above must be followed and, within 28 days of the special resolution being passed, the co-operative must complete and lodge the [required form](#) with CAV. CAV will tell the co-operative whether the proposed rule amendments have been approved.

Companies limited by guarantee

For companies, a special resolution to change the constitution takes immediate effect, unless otherwise set out in the resolution (for example, from 'x date' the constitution will change to ...). However, a copy of the special resolution and the changes to the constitution must be lodged with ASIC within 14 days of the vote.

Note – a company limited by guarantee that is a registered charity only needs to notify the ACNC of changes to its Constitution. The CLG is not required to lodge the new constitution with either ASIC or ACNC.

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 notifying CAV if your organisation is an incorporated association or a co-operative. 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 amended 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 constitution (that is, the constitution with all amendments made) are provided to committee members or directors so that they can familiarise themselves with it. Copies of the constitution must also be provided to any member who requests one. Any member is legally entitled to a copy of the constitution (although for companies and co-operatives the member may be charged a small fee).

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

Schedule requirements

For incorporated associations, check that the rules as amended provide for each of the 23 matters specified in the Schedule to the *Associations Incorporation Reform Act 2012* (Vic).

For co-operatives, check that the rules address all of the matters specified in Schedule 1 to the Co-operatives National Law, found in the Appendix to the *Co-operatives National Law Application Act 2013* (Vic).



Tip

It's a good idea to prepare a list or table, cross-referencing each of the items in the Schedule with the rules of the constitution as they will be once the amendments are lodged. 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 constitution 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 about members' rights, see [Not-for-profit Law's resources on members](#)

Transitional arrangements

Be careful when changing your constitution (especially if you replace the whole constitution) that the members under the old constitution remain members under the new constitution. 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 constitution, the office holders of the governing body (for example, the management committee or board) under the old constitution continue in office under the new constitution. 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 constitution, with effect from a given date. If unsure, seek legal advice.

Tax status

If your organisation has been endorsed by the Australian Taxation Office for charity tax concessions such as 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 constitution will not jeopardise your tax status.

In particular, any changes to the purposes of an incorporated association, the objects of a CLG or the activities of a co-operative, and to the winding up provisions of these organisations should be approached with care. If unsure, seek legal advice.



Related resource

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

Registered charities

If your organisation is registered as a charity with the ACNC, any changes to its objects or purposes should be approached with caution as this 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 don't conflict with anything in the relevant funding agreement or terms and conditions of the grant. Also, once any changes have been made, you may be required by the funding documents to send a copy of the new constitution to the funding body. In any event, it's best practice to keep that body informed of any material changes in the governance of your organisation.

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 and features the popular Secretary's Guide.

▶ [People Involved](#)

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

Consumer Affairs Victoria (CAV) resources

▶ [Database of Victorian incorporated associations](#)

CAV's database you can search to find Victorian incorporated associations and co-operatives.

▶ [CAV's incorporated associations information](#)

This section of CAV's website has information about incorporated associations. Click on the update details link for more information about updating your organisation's rules.

▶ [myCAV](#)

The online system for incorporated associations system that lets incorporated associations manage their obligations, such as updating contact details and their constitution and lodging annual statements, all in one place.

Co-operatives

▶ [CAV's co-operatives information](#)

This section of CAV's website has information about co-operatives. Click on the forms and publications link for the forms for informing CAV about proposed changes to your co-operative's constitution.

▶ [Database of Victorian co-operatives](#)

The CAV database you can search to find Victorian incorporated associations and co-operatives.

Australian Securities and Investments Commission (ASIC) resources

▶ [ASIC database for companies](#)

The ASIC database you can search to find all types of companies in Australia.

▶ [ASIC special resolutions information](#)

This link provides information about special resolutions for companies limited by guarantee, and includes a link to the [form \(205\)](#) which needs to be submitted to ASIC to notify of changes to constitution.



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.

Legislation

- ▶ [Associations Incorporation Reform Act 2012 \(Vic\)](#)

- ▶ [Co-operatives National Law Application Act 2013 \(Vic\)](#)

- ▶ [Corporations Act 2001\(Cth\)](#)