

Changes to the NSW Associations Incorporation legislation: What you should know

Organisations incorporated under NSW legislation need to be aware of changes to the [Associations Incorporation Act 2009 \(NSW\)](#) ('The Act') and the introduction of a new [Associations Incorporation Regulation 2016 \(NSW\)](#) ('The Regulation') that came into effect on 1 September 2016.

The majority of the changes or amendments are not major but all NSW organisations currently incorporated under this legislation need to be aware of them and ensure they are compliant.

Background

The amendments to the *Associations Incorporation Act 2009 (NSW)* first appeared as the *Associations Incorporation Amendment (Review) Act 2016 (NSW)*. These were subsequently incorporated into the *Associations Incorporation Act 2009 (NSW)*. The *Associations Incorporation Amendment (Review) Act 2016 (NSW)* was automatically repealed once the amendments took effect on 1 September 2016.

The *Associations Incorporation Regulation 2016 (NSW)* replaced the *Associations Incorporation Regulation 2010 (NSW)* on 1 September 2016. The 2016 iteration of the Regulation includes some amendments and several new provisions that reflect the changes to the Act.

Summary of key changes

The following applies to organisations that are already incorporated under NSW Associations legislation. For information on how to become an association in NSW, see Fair Trading's [About associations](#) webpage and Not-for-profit Law Information Hub's [Getting started](#). (NB: select NSW under the Jurisdiction tab)

Official address

The official address of the association must still be in New South Wales, however it must also be an address where the public officer can be found (ie resides, is employed or carries on a business, etc) and where documents can be served on the association by post.

It cannot be a post office box.

Duty of committee members

Prior to the 2016 amendments, the Act specifically noted that committee members must disclose conflicts of interest and not use their position or any information they have obtained whilst committee members, dishonestly. It also stated that a committee member cannot allow their association to trade whilst insolvent.

In addition to this, all committee members are required to carry out their duties, as far as possible, with due care and diligence, and for the benefit of the association.

Personal liability of committee members

The Act now provides committee members protection from personal liability where ever it can be shown they are acting in good faith whilst carrying out their role.

Consecutive terms of office

There is now a requirement to add a clause in your constitution stating the maximum number of consecutive terms of office an office bearer can sit on the committee. However, while it is a requirement to mention it, there is no requirement to set a maximum number of consecutive terms (eg the number may be zero). It is acceptable to state there is no maximum number of terms as per the Associations Incorporation Regulation 2016 (NSW), [Schedule 1 Model constitution](#) Cl 14 (5).

Voting

Voting at a general meeting of the association is no longer restricted to being conducted in person or by post, it can be conducted electronically. However if you wish to use either postal or electronic voting it must be addressed in your constitution. The model constitution (the *Associations Incorporation Regulation 2016* (NSW), [Schedule 1 Model constitution](#) Cl 38 & 39) allows you the one method most suitable for your association.

However, [Schedule 3 Conduct of postal or electronic ballots](#) of the Regulation does not allow for a combination of postal or electronic voting for either an ordinary or special resolution. Nor does it allow for a combination of voting at a general meeting with either postal or electronic voting.

Voluntary cancellation (Winding up an organisation)

When winding up an association and applying for voluntary cancellation you are required to complete a statutory declaration that supports the statement that the association has no outstanding debts. It now only requires the signature of one committee member, previously it required two.

Financial Records and Minutes

Associations are now able to retain their financial records in either written or electronic form. If stored electronically, they must be able to be converted into hard copy.

Financial records must be kept for at least 5 years.

However, organisations classified as charities by the Australian Charities and Not-for-profits Commission (ACNC) must retain all records (not just financial) for 7 years. They must also be English or in a form easily translated into English. (For more information see the [ACNC Record-keeping checklist](#))

Fees

The fee schedule has been changed. [Association fees](#) are now available on the Fair Trading website. Changes include the fees for lodging the annual financial return have been reduced for Tier 2 (gross receipts less than \$250,000) associations and increased for Tier 1 (larger) associations.

Model constitution

The model constitution has been changed and updated. Some of the clauses have been amended and others are new.

- Communication. In most cases, any clause that previously required communication to be in writing can now be done by email or other electronic means. Specifically this includes:
 - Applying for membership

- Signing off the minutes by the chair
- Requesting special general meetings
- Record keeping. In most cases clauses that required records to be stored in hard copy can now be stored electronically. Specifically this includes:
 - Lodgement of membership applications
 - Register of members, however if stored electronically it must be able to be available for inspection by members in hard copy at the main premises or the official address
 - Minutes
 - Financial records.
- Participation. Technology can now be used to facilitate certain activities specifically:
 - Committee meetings and general meetings of membership can be held in more than one place using whatever technology the committee deems appropriate (eg teleconferencing, Skype, etc). Committee members using this technology have the same rights as those present, including voting.
 - Voting on any issue or proposal including both general and special resolutions at general meetings
- The committee can now draw up their own membership application form. They are no longer required to use the form attached to the 2010 *Associations Incorporation Regulation (NSW)*.
- The association's secretary is responsible for maintaining the register of members.
- There is no maximum number of consecutive terms a member can hold office.
- Where the committee does not have the numbers to form a quorum, the remaining committee may appoint members of the association to form a quorum and be considered to be acting validly.
- There can be no pecuniary gain for individual members, and use of its assets and funds must reflect the Association's objectives, ie its purpose must be not-for-profit.
- The winding up clause states that any assets including funds that remain after an association has met its debts and liabilities, and the costs of winding up are to be transferred to another not-for-profit organisation with similar objects.
- The association's records must be held in NSW at the association's main premises in the custody of the public officer or a member of the association that the committee deems appropriate.
- The committee can refuse a member access to inspect the association's books if the committee believes it would compromise their confidentiality. Examples are employee records, commercial or legal matters or anything that goes against the interests of the association.
- There is a final clause which only applies to associations who registered immediately before 1 July 2010, whose constitution does not deal with the financial year and has not been amended since 1 July 2010. Its purpose is to ensure that affected associations are able to retain their current financial year. (There is a replacement clause for Clause 47 of the model constitution but it is not in the model constitution, it is in [clause 19 of the Regulation](#))

Note: All the other provisions in the model constitution apply to these associations.

Associations that have adopted the model constitution as their constitution

If your association has adopted the [model constitution](#) (Schedule 1 of the Regulation) without modification as your constitution, any amendments to the Act that are required to be adopted in your association's constitution have automatically been addressed in the model constitution and apply to your association.

This occurs without

- a special resolution to change your constitution, or
- registering the changes to the constitution with Fair Trading NSW, or
- any other action.

All the clauses, new and old, in the [model constitution](#) of the *Associations Incorporation Regulation 2016* automatically took effect from 1 September 2016 and as of that date, apply to your association.

Associations that have developed and adopted their own constitution

If your association has not adopted the [model constitution](#) (Schedule 1 of the Regulation) there are three new matters that must be addressed in your association's constitution:

- The maximum number of consecutive terms of office for any office bearer on the committee
- Whether ballots can be postal or electronic
- The winding up of an association

If your association's constitution does not address any of the 17 items listed in [Schedule 1 Matters to be addressed in association's constitution](#) of the Act, then the relevant provision listed in the [model constitution](#) will automatically apply.

Your constitution can include additional matters that are not necessarily addressed within the Act however they must be consistent with the Act.

Associations that update their constitution before 1 September 2017 will not be required to pay a fee to register their changes.

Resources

NSW Legislation

- [Associations Incorporation Act 2009 \(NSW\)](#)
- [Associations Incorporation Regulation 2016 \(NSW\)](#)

Fair Trading NSW

- [Summary of changes](#) for information on the main changes to the model constitution.
- [Association fees](#) for the fee schedule for incorporated associations in NSW

NB: The above websites were accessible on 7 September 2016. If the links do not work search on the title of the document or go to the organisation's website.

Disclaimer: While all efforts have been taken to provide accurate information in this fact sheet, this document's contents are general in nature and do not constitute legal advice. Readers should seek legal or other professional advice relevant to their circumstances before acting or relying on any of the Content.