

# Changes to an incorporated association's rules

Legal information for incorporated associations in Queensland



## 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 incorporated associations in Queensland 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, 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 the Queensland Office of Fair Trading.

### RELATED RESOURCES

You can check online if your organisation is registered with the Queensland Office of Fair Trading [here](#).

### CAUTION

This fact sheet is for Queensland incorporated associations. For information on updating the constitution of other types of organisations, see the [Constitution page](#) of the Information Hub.



# What are rules?

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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 objects 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 1981* (QLD) (**the Act**) is required to have rules that include a statement of objects, and address specified matters. Incorporated associations' rules must address all the matters required. These matters are set out in Schedule 3 to the *Associations Incorporation Regulation 1999* (QLD) (**the regulation**). If your organisation's rules do not comply with the legal requirements, they will not be accepted by the regulator, Queensland Office of Fair Trading.

## FURTHER READING

You can read Schedule 3 of the *Associations Incorporation Regulation 1999* (QLD) on the [QLD government's website](#) (pdf).



# Why would we need to change our rules?

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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.

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
- written 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 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 (eg. at least 48 hours prior to the relevant meeting). Proxy voting may be allowed by providing for proxy voting in the rules of the 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 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 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?

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### Statutory minimum requirements for rules

When amending their rules, or creating a new set of rules, organisations should check that their rules provide for each of the matters specified in Schedule 3 to the *Associations Incorporation Regulation 1999* (Qld) (**the Regulation**). An incorporated association must lodge its rules with the chief executive at the Queensland Office of Fair Trading. If the rules of your organisation do not address all of the Schedule 3 requirements, the chief executive will reject the amendments to the rules.

#### TIP

It's a good idea to prepare a list or table, cross-referencing each of the items in Schedule 3 of the Regulation 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.

### 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, your organisation should 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), you should check that the proposed changes to your organisation's rules 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?

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For incorporated associations, a special resolution to change the rules of the association will only take effect once it has been approved and registered by the Chief Executive. To do this, a form must be lodged with the Chief Executive within 3 months of the vote. The form will specify how many copies of the special resolution are needed by the Chief Executive, as well as the associated fees, signatories and any other requirements.

The chief executive will review the changes after the vote, and will check that all of the matters required by the *Associations Incorporation Act 1981* (Qld) have been addressed. The Chief Executive will then decide whether to approve or reject the changes.

### RELATED RESOURCES

See the [Qld Government 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 Australian Charities and Not-for-profits Commission (**ACNC**), you must also notify the ACNC of any changes made to your 'governing document,' which means changes to your rules. 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 incorporated associations 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. There may be other people or organisations that you need to provide copies of rules to under agreements, such as a particular funder.

# 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 1981 \(Qld\)](#)

- ▶ [Associations Incorporation Regulation 1999 \(Qld\)](#)

## Queensland Government resources

- ▶ [Database of Queensland incorporated associations](#)

This is a Queensland Government database where you can search to find Queensland incorporated associations.

- ▶ [Queensland Government's incorporated associations information](#)

This section of the Queensland Government's website has information about incorporated associations.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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