

About the constitution

Incorporated associations

What is the constitution?

The constitution of an incorporated association is a contract between the association and its members, who agree to adhere to the provisions outlined in the constitution.

Every incorporated association must have a constitution. This can be the Model constitution or the association's own constitution, which is recorded in the public register of incorporated associations, maintained by Fair Trading.

What matters must be included in the constitution?

The constitution must address each of the matters referred to in Schedule 1 of the *Associations Incorporation Act 2009* (the Act), as follows:

- **Membership qualifications** The requirements, if any, to become a member.
- **Register of members** The register of the association's members.
- **Fees, subscriptions etc.** Any entrance fees, subscriptions and other amounts, if any, to be paid by the members.
- **Members liabilities** A member's liability, if any, towards the debts and liabilities of the association.
- **Disciplining of members** The procedure, if any, for disciplining members, including an appeals process.
- **Internal disputes** The procedure for the resolution of disputes between members and between members and the association.
- **Committee** The composition, functions and processes of the committee, including:
 - the election or appointment of the committee members
 - the terms of office of the committee members
 - the maximum number of consecutive terms of office of any office-bearers on the committee
 - the circumstances in which a committee member has to vacate office
- the filling of casual vacancies on the committee, and
- the quorum and procedures to be followed at committee meetings.
- **Calling of general meetings** The procedure of holding and calling a general meeting and the intervals between meetings.
- **Notice of general meetings** The process for notifying members of a general meeting and notices of motion.
- **Procedure at general meetings** The quorum, procedure and requirements for conducting a general meeting, and whether members are entitled to vote by proxy.
- **Postal or electronic ballots** The types of resolutions that may be voted on by a postal or electronic ballot.
- **Sources of funds** The sources of the associations income.
- **Management of funds** How the association's funds are to be managed and the procedure for drawing and signing cheques on behalf of the association.
- **Custody of books etc.** Who is responsible for the association's books, documents and securities.
- **Inspection of books etc.** The procedures for the inspection of books and documents by members.
- **Financial year** The association's financial year.
- **Winding up** The winding up of the association.

A representative of the association must certify that the constitution complies with the requirements of the Act, including the above matters.

What is the Model constitution?

NSW Fair Trading developed the Model constitution to cover all matters outlined in Schedule 1 of the Act, as well as a number of additional matters. New and existing associations may:

- adopt the Model constitution
- adopt a modified version of the Model constitution as their own constitution.

Each association must consider whether the Model constitution is suitable because once adopted, it is binding to both the association and members.

If an association's constitution fails to address a matter outlined in Schedule 1, the Model constitution applies for that matter and will form part of the association's constitution. However, this does not apply to change the financial year end of an association registered prior to 1 July 2010, where the constitution does not address the financial year end.

The Model constitution may be updated from time-to-time. The updates will apply to the constitution of any association:

- that has adopted the Model constitution, or
- where the updated clause is taken, by default, to be a part of the association's constitution because the association has failed to address a Schedule 1 matter.

How is the constitution changed?

An association may change its constitution by passing a special resolution. The change must be consistent with the Act and the rest of the constitution.

The association must apply for registration of the changes within 28 days of the special resolution being passed and the application must:

- be in the **approved form** *Application to register change of objects or constitution* (form A6)
- include details of the proposed change
- include a copy of the special resolution as passed
- include payment of the prescribed fee.

A change to the constitution is valid once it is registered with NSW Fair Trading.

An application may be refused if it:

- does not comply with the Act

- is not in the approved form
- is lodged more than 28 days after passing the special resolution.

While not required by the Act, Fair Trading recommends, where appropriate, an association consider passing a special resolution to adopt a new constitution consolidating the desired changes.

An association representative must certify that the constitution complies with the Act.

For more information on special resolutions, visit the Resolutions page on the Fair Trading website

What if there is a breach of the constitution?

An individual may take action against a member or the association if a breach has occurred. They can do this either by using the internal dispute resolution process outlined in the association's constitution, or by seeking external advice.

In most cases, Fair Trading does not have the authority under the Act to investigate or to intervene in a dispute relating to a breach of the constitution..

For more information visit the Resolving disputes page on the Fair Trading website.

Need more information?

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