

Changes to associations legislation

The new *Associations Incorporation Act 2009* and *Associations Incorporation Regulation 2010* commenced on 1 July 2010.

The reforms will help more than 35,000 associations across the state operate more effectively and make it easier to manage their affairs.

NSW Fair Trading will conduct an information and education campaign to make sure people involved in associations clearly understand the changes.

What will change?

Most of the changes are designed to modernise the law, reduce red tape and allow more flexibility for associations. There will also be stronger protection of association finances. Most of the day-to-day procedures and operations of associations will not be directly impacted. The new laws have been carefully designed to make the transition as smooth as possible for associations.

The most important changes are outlined below.

Modernising the laws and reducing red tape

Objects

The new Act includes an objects section which states that the purpose of the Act is to establish a scheme for the registration of associations that are constituted for the purpose of engaging in small-scale, non-profit and non-commercial activities.

Changes to association constitution

An association's 'rules' will now be called its 'constitution'. An association's rules will comply with the new Act until changed. A 'model constitution' is set out in the Regulation.

The 'model constitution' is not compulsory and does not automatically apply to existing associations. Associations may choose to adopt their own constitution and include clauses to suit their association's needs. Associations will need to ensure all aspects of their new constitution

comply with the new law. Fair Trading will provide some optional clauses. This is a good opportunity for associations to review their current rules to ensure they are appropriate.

An association adopting its own constitution must address the matters set out in Schedule 1 of the Act. Schedule 1 includes a provision for postal ballots and for the association's financial year to be set out in the constitution. If a constitution does not provide for a particular matter as required by Schedule 1, then the relevant provision in the model constitution will apply.

Association's constitution will automatically comply with the new requirements

To ensure there is no unnecessary work for associations, the current 'rules' of an existing association will be taken to comply with the requirements of the new Act until the association chooses to lodge changes. When the association lodges changes they will need to ensure all other aspects of their constitution comply with the new requirements.

More flexibility for meetings and resolutions

An association's constitution may provide for a postal ballot to pass any kind of resolution or permit meetings at more than one venue using technology that allows members in different places to participate. This will make it easier for meetings to be organised and for more members to be involved.

A new provision requires that if minutes of a meeting are in a language other than in English, a copy wholly in the English language must be kept with the document.

Associations no longer need to hold an annual general meeting in each calendar year, but must still hold one within 6 months of the end of the financial year. Associations need to set out their financial year in their constitution, which can be up to a maximum of 18 months.

More choices for official address

The official address can be the association's premises, the public officer's residence, or place of business or employment, but must still be in New South Wales. The public officer's address currently on the public register will continue to be the official address of the association until notice of another address is lodged with Fair Trading.

Common seal and authorised signatories

Associations will no longer need to use a common seal to execute documents. Instead, they can have documents signed by two of their authorised signatories. The public officer will be an authorised signatory by virtue of the office. The committee may appoint (and can revoke) other authorised signatories from among the members of the committee who are resident in Australia.

Supporting stability and accountability

The new Act will introduce reforms to provide more accountability for larger associations, clarify the duties of committee members and make it easier for associations to comply with the legislation.

Two tiered financial reporting

Larger or 'Tier 1' associations with gross annual receipts of more than \$250,000, or current assets exceeding \$500,000, will need to have their annual accounts audited and lodge a copy with NSW Fair Trading, unless exempted.

Smaller or 'Tier 2' associations will still only need to lodge an annual summary of their financial affairs.

Statutory duties of committee members and obligations of office bearers

Committee members and office bearers must disclose any potential conflict of interest; must not use their position or information for a dishonest purpose; and must hand over any documents of the association within 14

days after ceasing to hold office. This makes it easier for new committee members to carry out their duties.

Australian residency

At least three committee members must reside in Australia and the public officer must be a resident of New South Wales.

Penalty notice system

Certain offences may be dealt with by a 'penalty notice', a type of fine issued as an alternative option to having a matter dealt with in court. No penalty notices will be issued in the first six months after the new Act commences.

Need more information?

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