



ASSOCIATIONS TRANSITION PACK 3

All incorporated associations are required to review and where necessary update their rules (often known as the constitution) to ensure the document complies with the *Associations Incorporation Act 2015* (the Act).

Associations have until 1 July 2019 to comply, but we recommend the review process starts now.

Information Pack 3 is a step by step guide on how to review and update the rules to meet the new requirements.

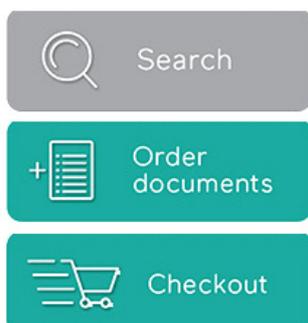
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About the rules

Every incorporated association has its own set of rules which defines the group's objects and purposes and outlines how its affairs will be managed.

If an association has misplaced its rules, a copy of the current version can be purchased from the Department of Commerce – Consumer Protection Division (Consumer Protection) using **AssociationsOnline**. Simply:



1. search for the association name;
2. select the documents you wish to purchase; and
3. complete the online check out.

What to include in the rules

The Act has introduced new requirements about what is to be included in the rules. Until an association completes this process it can continue to use its existing rules.

To meet the requirements of the Act an association must ensure that its rules:

- include all of the matters required by Schedule 1 of the Act;
- are generally consistent with the Act (for example profits cannot be distributed to members, an Annual General Meeting must be held every year and a member is entitled to inspect the register of members); and
- meet the needs of the individual association by clearly explaining how the organisation will be run.

IMPORTANT: If an association does not take steps to update the rules by 1 July 2019 and/or there are Schedule 1 items missing, at the end of this transition period the relevant parts of the model rules relating to the Schedule 1 requirement will apply.

The Schedule 1 requirements

Schedule 1 of the Act has 19 matters that an association needs to provide for in its rules. Under the *Associations Incorporation Act 1987 (Repealed)* associations that were incorporated prior to July 1988 did not need to address the Schedule 1 items. However, the current Act does not allow these exceptions and Schedule 1 now applies to everyone.

It is important to understand that while Schedule 1 lists the matters to be included, it is up to the association to decide the specific rule that it will adopt. For example Schedule 1 requires an association to include information about who will be responsible for the management of the association (referred to in this pack as the **committee**) but the association decides:

- what the management body will be called, e.g. committee of management, board, council etc. and whether the office bearers will have any special titles such as chairperson, president, secretary, registrar, treasurer, finance officer etc.;

- how many people make up the managing body;
- whether a person will need to meet any specific criteria before they are eligible to be part of the managing body; and
- the process for electing or appointing people to be part of the managing body.

More detailed information about the individual Schedule 1 matters is available in **What's in the rules: Explaining Schedule 1**.



Updating the rules

Step 1: Review the rules

It is suggested that the first step is to complete an assessment of the existing rules using the **Schedule 1 checklist** at the end of this pack. This provides the committee with an understanding of the alterations that will be required in order to comply.

During this step you may wish to make notes about any matters that don't make sense or need updating to better reflect the association's current processes. This information will be useful later when deciding what option to use to update the rules.

References to the Act

If the rules refer to specific sections of the previous *Associations Incorporation Act 1987*, these references will also need to be updated to reflect the current Act. Some of the most commonly referred to sections include:

Topic	1987 Act reference	2015 Act reference
Change of rules (constitution)	s17	s30
Change of name	s18	s31
Change of objects	s19	s33
Conflicts of interest	s21	s42
	s22	s43
Annual General Meeting	s23	s50
Special resolutions	s24	s51
Financial records	s25	s66
Financial statements and report	s26	Tier 1 s68 & 70
		Tier 2 s71 & 73
		Tier 3 s74 & 76
Register of members	s27	s53
Rules of association be available to members	s28	s35
Record of office holders	s29	s58
Distribution of surplus property	s33	s24



Step 2: Updating the rules

After reviewing the existing rules in Step 1, the association will have a better understanding of those Schedule 1 matters that are already provided for, what is missing and what other changes are needed to better meet the needs of the association.

Options for updating the rules

There are several ways an association can update its rules to meet the requirements of the Act:

1. amend the existing rules so the document contains all of the matters required by Schedule 1 and is otherwise consistent with the Act;
2. replace the existing rules with the prescribed model rules; or
3. use the prescribed model rules as a starting point and customise the content to reflect the activities and structure of the association.

Each association will need to decide for itself which option will be the most appropriate but this will probably depend on whether the current rules allow the association to function effectively and pursue its objects.

For example if an association was satisfied that the rules meet their current needs a broad review would be unnecessary and only changes to make the rules consistent with the Act would be needed. However if the rules don't meet the association's current needs and are overdue for a review or the committee is unsure how to tackle the task of updating the document, adopting the prescribed model rules might be a good option. Alternatively the committee may seek its own independent legal advice about the updates required to ensure the rules reflect the association's activities and purposes.

The prescribed model rules

The prescribed **model rules**, which will simply be referred to as the model rules, are a standard set of rules that have been developed for use by associations. These rules meet all the requirements of the Act and provide a suitable governance framework for an incorporated association to adopt. If an association chooses to use the model rules the only details that will need to be decided are:

- the name of the association;
- the objects of the association;
- the quorums for general meetings and committee meetings; and
- the association's financial year.

A word version of the model rules is available for download from Consumer Protection's website.



REMEMBER

If an association makes any changes to the model rules no matter how minor then it is considered to be using its own rules.

About the guidance notes

The website version of the model rules also includes summary information about the obligations under the Act and other explanatory material. These summaries are presented in grey boxes as “Guidance Notes” and “Act Requirements” and are intended to help associations.

This information does not form part of the model rules as prescribed in the Associations Incorporation Regulations 2016 and so **the grey boxes can be removed by an association if it wishes**; however it is recommended that all associations adopting the model rules keep the information on the first page about the name, objects, quorums and financial year as this provides a record of what has been lodged with Consumer Protection (and is not included anywhere else in the model rules document).

Exemptions from Schedule 1 requirements

If the association does not intend to include provision in its rules for a particular Schedule 1 matter it will need to formally **apply to the Commissioner for Consumer Protection for an exemption**, when it submits the change of rules for lodgement. Obtaining an exemption will prevent the model rules applying by default. Please note that the Commissioner will only grant an exemption if satisfied:

- that the special circumstances of the association justify the exemption;
- that the exemption will not affect the objects or purposes of the association; and
- that the application of the provision to the association would cause undue hardship to its members.



Step 3: Discuss and vote on the proposed changes

For the updated rules to have legal effect it is necessary for the changes to be passed by the association and lodged with Consumer Protection. There are two ways the changes may be passed depending on the extent of the proposed amendments:

1. resolution by the committee of management; or
2. special resolution to alter the rules.

If there is any uncertainty as to which method should be used, it is recommended that the proposal be put to members and passed by special resolution at a general meeting.

1. Resolution by the committee of management

Between 1 July 2016 and 30 June 2019 the management committee of the association may be able to change the rules, without a special resolution of members being passed at general meeting. **This option is only available if the changes are to make the rules consistent with the new Act requirements.**

For example:

Type of change	Can change be made by the committee?	Reasons
Adding a new clause showing the association's financial year	Yes	Schedule 1 require the financial year to be included in the rules.
Updating section numbers of the Act referred to in the rules	Yes	The rules are required to be generally consistent with the requirements of the Act.
Adopting the new prescribed model rules	No – Special resolution only	Replacing the existing rules with a completely different document is more than updating the rules to be consistent with the Act.
Changing the name or objects	No – Special resolution only	This is not a change required to make rules consistent with new law.
Changing an existing quorum already provided for in the rules	No – Special resolution only	The rules already met the schedule 1 requirement so this is not a change required to make rules consistent with new law.
Reducing the percentage of members who need to sign a request for a general meeting to be called from 50% to 20%	Yes	Schedule 1 requires this number to be expressed as a percentage and cannot be greater than 20%. The existing clause did not meet these requirements.

Committee resolution checklist

CALLING THE COMMITTEE MEETING

- Send notice of the meeting to all committee members in accordance with the time and manner required under the existing rules.
- Include details of the resolution to be proposed at the meeting and a copy of the proposed rule changes.

AT THE MEETING

- Make sure that there is a quorum present before proceeding to vote on the proposed rules.
- The decision to accept the new rules must be passed by a majority of the committee members.

LODGING THE CHANGES

- The committee must lodge the change of rules with Consumer Protection within 28 days of the meeting or late lodgment fees will apply.
- The application must include:
 - a complete copy of the updated rules;
 - the completed checklist identifying the location of all of the Schedule 1 items in the rules;
 - the prescribed fee; and
 - if submitting a manual application include the following forms:
 - **Notice of committee's resolution to change rules;** and
 - **Certificate and statement of a management committee member.**

See **Step 4** for more detailed information about how to lodge the changes.

AFTER THE CHANGES HAVE BEEN ACCEPTED

- A written notification for members advising that the rules have been changed must be included with the notice issued for the next Annual General Meeting. Remember that all members are entitled to receive notice of the Annual General Meeting.

2. Special resolution to alter the rules

If the association has undertaken a broader review and update of its rules or has decided to adopt the model rules the changes will need to be passed by a special resolution of the members at a general meeting (unless there are restrictions in the rules the special resolution can be passed at the annual general meeting or a special/extraordinary general meeting).

Checklist for passing a special resolution

NOTICE FOR THE GENERAL MEETING

- Must be in writing.
- Must be sent to **all** members, irrespective of their membership class or voting rights.
- Must be sent in accordance with the timeframe and manner set out by the rules.
- Must state that a “special resolution” is going to be proposed.
- Must set out the exact wording of the proposed special resolution.

If these requirements are not met the special resolution will have no effect.

AT THE MEETING

- Make sure that there is a quorum present before proceeding to vote on the proposed rules.
- Only a member who has the right to vote under the existing rules may participate in a vote on a proposed special resolution.
- Proxies or postal voting should only be used if it is already allowed in the rules.
- The special resolution is passed if it is agreed to be at least 75% of the members who vote at the meeting (not 75% of the total membership).

LODGING THE CHANGES

- The committee must lodge the change of rules with Consumer Protection within one month of the meeting (late lodgments incur additional fees). The application must include:
 - a complete copy of the updated rules or a statement that the model rules are being adopted;
 - the completed checklist identifying the location of all of the Schedule 1 items if using own rules;
 - the prescribed fee; and
 - if submitting a manual application include the following forms:
 - **Notice of special resolution to change rules;** and
 - **Certificate and statement of a management committee member.**

See **Step 4** for more detailed information about how to lodge the changes.

- Once Consumer Protection confirms that the document has been accepted the association can start using the new rules.



Step 4: How to effectively lodge the changes

Any change of rules must be lodged within **one month** of being passed in order to have legal effect. Late applications may be accepted but additional fees apply.

How to lodge the changes

AssociationsOnline is Consumer Protection's preferred method for communicating with associations. The benefit to associations in using this method is that it is available anytime, lodgements can be tracked and a 20% discount on fees is given when lodging online.

If an association does not wish to use the online portal, manual forms can be downloaded from the **website** and submitted by post.

Adopting the model rules

If the association has chosen to adopt the model rules the changes can be lodged with AssociationsOnline by completing the following steps:

	<p>Log in with your user name and password. See the enrolment help guide for assistance.</p>
	<p>You must be linked to your association to submit an application. See the managing my association's details for assistance.</p>
	<p>Click Lodge application and scroll down to your linked association.</p> <p>Select Change of rules by special resolution from the application type drop down list and click "Go".</p>
	<p>When asked which rules the association is operating under select Prescribed Model Rules.</p>
	<p>Provide details of the:</p> <ul style="list-style-type: none"> • the name of the association; • the objects of the association; • the quorums for general meetings and committee meetings; and • the association's financial year.
	<p>Fill in the rest of the form, clicking next to move through the screens.</p>
	<p>When you finish click "Submit".</p>

Associations adopting the prescribed model rules do not need to submit a copy of the rules with the application but will need to retain a copy of the rules for their future use. The association should also fill in the box on page 1 of this copy to confirm the information that has been submitted to Consumer Protection.

Guidance Note – Information provided to the Commissioner under section 29(5) – This information is part of the rules of your association and must be attached to the copy of the rules provided to members.

The information provided to the Commissioner should be inserted here:

A. The name of the Association is:

B. The objects of the Association are:

.....

.....

C. Any..... members personally present (being members entitled to vote under these rules at a general meeting) will constitute a quorum for the conduct of business at a general meeting.

D. Anycommittee members constitute a quorum for the conduct of the business of a committee meeting.

E. The association’s financial year will be the period of 12 months commencing onand ending on..... of each year.

Adopting own rules

If the association has chosen to adopt its own set of rules (this includes modifying the model rules) the changes can be lodged with AssociationsOnline by completing the following steps:



Log in with your user name and password. If you are new to the system see the **enrolment help guide** for assistance.

You must be linked to your association to submit an application. See the **managing my association's details** for assistance.

Click **Lodge application** and scroll down to your linked association.

Select either **Change of rules by special resolution** or **Change of rules by committee’s resolution** from the application type drop down list and click **“Go”**.

When asked which rules the association is operating under select **Own Rules**.

The association will also need to complete a table that identifies where each of the Schedule 1 items has been addressed in the rules.

If the association knows that it has not included provision for a schedule 1 item but intends to correct this in the future it should put a dash (-) in the relevant box or include a note such as “no clause”.

Please do not write “exemption” in a box unless the association will be making an application to be exempted from including the Schedule 1 matter in its rules (See **Step 2** for more information about exemptions).

A complete copy of the new rules will need to be uploaded and attached to the application.

It is not necessary to track or identify the changes that have been made to the rules and any watermarks or headings such as “DRAFT” should be removed.

Fill in the rest of the form, clicking **next** to move through the screens.

When you finish click **"Submit"**.



Finishing up

The association will be notified in writing when the updated rules have been accepted for lodgement by Consumer Protection. This marks the end of the change of rules process and the association can begin using the new rules.

Complying with the Act:

Key responsibilities for incorporated associations

In addition to pursuing its objects or purposes, providing activities for members and following the rules, associations must meet their obligations under the Act. Generally it is up to the committee, as the managing body of the organisation, to ensure that an association meets these requirements.

The following is a list of the committee's key responsibilities under the Act:

1. Send notice of all general meetings to all members in accordance with the rules.
2. Hold the Annual General Meeting every year within six (6) months after the end of the financial year or apply to Consumer Protection for extra time.
3. Keep true and correct records of all financial transactions.
4. Present accounts to the members at every Annual General Meeting in accordance with the requirements of the association's reporting tier.
5. Keep an up to date register of members, record of office holders and copy of the rules and make these records available for members to inspect if they request.
6. Give every new member a copy of the rules when they join the association.
7. Ensure all committee members disclose and manage any material personal interests in matters considered by the association.
8. Fulfil their duties as members of the committee and officers.
9. Update the address details with Consumer Protection any time there is a change and submit an information statement within six (6) months after the end of each financial year.
10. Lodge any change of rules, objects or name with Consumer Protection within a month of being passed by special resolution at a general meeting.

The association may wish to complete an **Associations Self Check**, which provides a summary of the main obligations under the Act. This check will help the committee identify any areas of the association's management that need to be addressed to ensure the association runs effectively, in accordance with the Act.

Keep in touch

All associations are required to provide Consumer Protection with details of their address and address for service of notices (these may be the same address). If there is any change to these addresses the Association must provide Consumer Protection with the updated information within 28 days of the change occurring.

The address details can be lodged in **AssociationsOnline** by the primary or authorised user. If you need help please refer to the **Managing my association's details** help guide.

Associations information statements

Associations are required to submit an information statement to Consumer Protection every year. This statement confirms to the Commissioner for Consumer Protection that the association is still active, eligible to be incorporated and has held its Annual General Meeting.

Information statements must be lodged within six months after the end of an association's financial year. As associations can choose their own financial year the due date for submitting the statement may differ between associations.

The statement can be lodged using **AssociationsOnline** by either the primary or authorised user linked to the association's account.

Online resources

Consumer Protection has a number of publications and checklists available on the website to help associations understand and meet their obligations under the Act.

- The **INC Guide** is an essential reference for all incorporated associations and provides good governance information about a wide range of topics including the requirements of the Act and other laws that may be relevant to an association such as insurance, occupational health and safety and taxation.

The INC Guide is available to browse online at www.commerce.wa.gov.au/inc.

- **Transition Packs 1 and 2:** provide introductory information about the Act and the AssociationsOnline system.
- **Help guides for AssociationOnline:** Step by step guides for using Consumer Protection's online portal for incorporated associations.
- Fact sheets for committee members and officers about the **eligibility requirements** under the Act, **duties** and **managing conflicts of interest**.

Stay informed

Consumer Protection has a free online newsletter that it uses to share information about the Act, announce the release of new publications and resources and remind associations and industry stakeholders about upcoming deadlines.

Visit the website to subscribe to the newsletter or read past issues.

Rules checklist:

Schedule 1 requirements

NOT FOR PROFIT CLAUSE	Association's rule number
<p>The rules must include a provision in, or substantially in, the following terms:</p> <p>The property and income of the association must be applied solely towards the promotion of the objects or purposes of the association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member of the association, except in good faith in the promotion of those objects or purposes.</p>	

SCHEDULE 1 REQUIREMENTS

Matter	Association's rule number
1. The name of the incorporated association.	
2. The objects or purposes of the incorporated association.	
3. The qualifications (if any) for membership of the incorporated association and provision for when membership commences and when it ceases.	
4. The register of members of the incorporated association.	
5. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.	
6. The name, constitution, membership and powers of the management committee or other body having the management of the incorporated association (in this clause referred to as the committee) and provision for the following:	
a. The election or appointment of members of the committee.	
b. The terms of office of members of the committee.	
c. The grounds on which, or reasons for which, the office of a member of the committee shall become vacant.	

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Matter	Association's rule number
d. The filling of casual vacancies occurring on the committee.	
e. The quorum and procedure at meetings of the committee.	
Quorum:	
Procedure:	
f. The making and keeping of records of the proceedings at meetings of the committee.	
g. The circumstances (if any) in which payment may be made to a member of the committee out of the funds of the association. <i>Note: Any rules that provide for payment to a committee member from the Association's funds must state that this can only occur if the payment is authorised by a resolution of the association.</i>	
7. The quorum and procedure at general meetings of members of the incorporated association.	
Quorum:	
Procedure:	
8. The notification of members or classes of members of general meetings of the incorporated association and their rights to attend and vote at those meetings. <i>Note: The rules made must provide for all members of the incorporated association to be entitled to receive notice of and to attend any general meeting of the association.</i>	
9. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.	
10. The number of members, expressed as a percentage of membership, who may at any time require that a general meeting of the incorporated association can be convened. <i>Note: This percentage cannot be greater than 20%.</i>	

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Matter	Association's rule number
11. The manner in which the funds of the association are controlled.	
12. The day in each year on which the financial year of the incorporated association commences.	
13. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.	
14. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.	
15. Provisions for the custody and use of the common seal of the incorporated associations, if it has one.	
16. The custody of books and securities of the incorporated association.	
17. The inspection by members of the incorporated association of records and documents of the incorporated association.	
18. A procedure for dealing with any dispute under or relating to the rules: a) between members; or b) between members and the incorporated association.	
19. The manner in which surplus property of the incorporated association must be distributed or dealt with if the association is wound up or its incorporation cancelled. <i>Note: An association's surplus property can only be distributed to:</i> <ul style="list-style-type: none"> • <i>an incorporated association;</i> • <i>a company limited by guarantee registered under the Corporations Act 2001;</i> • <i>an organisation that holds a current licence under the Charitable Collections Act 1946;</i> • <i>an organisation that is a member or former member of the association and whose rules prevent the distribution of property to its members; or</i> • <i>a non-distributing co-operative registered under the Co-operatives Act 2009.</i> 	



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