

Changes to the associations incorporation laws

Changes to the association laws start on 1 September 2016, including amendments made to the *Associations Incorporation Act 2009* (the Act) and a new Regulation. The following information highlights the key changes.

Registration of an association and change of an association's name

An association is no longer required to reserve a name prior to making an application to register an association, or an application to change an association's name. A two level fee structure applies for lodging an application to register an association or to change an association's name, depending on whether the name has been previously reserved.

The total fees payable for a separate application to reserve a name and an application to register an association or change an association's name is higher to reflect the additional work involved in separately processing an application to reserve a proposed name.

Official address of an association

The official address of an association must be **in NSW**. It must be an address **where the public officer can generally be found** and where **documents can be served on the association by post**. Each time the public officer changes or the official address changes, the public officer is required to notify Fair Trading of the association's current official address.

The official address cannot be a post office box.

Constitution

Associations will still be able to either adopt the model constitution or develop their own constitution.

Every association's constitution must address each of the matters listed in Schedule 1 of the Act. The constitution can address the matters in Schedule 1 of the Act in a way that best serves the association. The

constitution can include additional matters. However, it must be consistent with the Act.

From 1 September 2016 there are **three** new matters that every constitution must address:

1. the maximum number of consecutive terms of office of any office-bearers on the committee (if specified)
2. ballots can be postal or electronic (the electronic voting method is new)
3. the winding-up of the association.

Any association wishing to update its constitution as a result of the amendments to the legislation will not be required to pay a fee to register the change until 1 September 2017.

Model constitution

The model constitution has been amended to include provisions addressing the above matters and also updates a number of other provisions. Associations can refer to the Summary of changes to the model constitution for further information about the main changes to the model constitution.

Changes to the model constitution coming into effect on 1 September 2016 will automatically apply to all associations that have already adopted the model constitution.

Additionally, if an association's constitution fails to address a matter listed in Schedule 1 of the Act, then the provision in the model constitution relating to that matter will automatically apply to that association's constitution.

However, this does not change the financial year end of an association registered before 1 July 2010:

- that has not amended its constitution since 1 July 2010 and
- whose constitution does not specify a financial year end.

Electronic ballots and postal ballots

An association will be able to put a resolution to its members in a postal ballot or in an electronic ballot, where this is permitted by an association's constitution. A postal ballot or an electronic ballot is to be conducted in accordance with Schedule 3 of the Regulation.

The Regulation does not permit a combination of postal and electronic voting to pass an ordinary resolution or special resolution under the Act. Similarly, it does not permit a combination of postal voting and voting at a general meeting, or electronic voting and voting at a general meeting.

Duties of committee members

Due care and diligence duty of committee members

At common law, there are duties on committee members. The Act currently deals with a committee member's duty to disclose conflicts of interest and the duty to not dishonestly use their position or information obtained as a committee member.

The Act currently includes a requirement that a committee member must not allow an association to trade whilst insolvent.

From 1 September 2016, the Act will also provide for the duty of each committee member to carry out their functions for the benefit of the association, so far as practicable, and with due care and diligence.

Personal liability of committee members limited if acting in good faith

From 1 September 2016, the Act will provide protection from personal liability for committee members (or a person acting under the direction of a committee member) who act in good faith while undertaking the committee member's functions under the Act. This also covers any omissions that were made in good faith.

Financial records

Associations must keep their financial records and minutes in written or electronic form. If kept in electronic form, the records and minutes must be able to be converted into hard copy. A hard copy must also be made available within a reasonable time to a person who is entitled to inspect the records.

The financial records of an association must be kept for a minimum period of five years.

Fees

The fee schedule has been changed. In particular, the fees for lodging the annual financial return has been reduced for Tier 2 associations and increased for Tier 1 associations.

The new fee Schedule will be available on the Associations fees page on the Fair Trading website from 1 September 2016.