



Altering the Rules of your Incorporated Association

To become incorporated, an association must, amongst other things, lodge a set of rules commonly referred to as a "constitution" with the Department of Commerce ("the Department"). Under the *Associations Incorporation Act 1987* ("the Act"), the rules held with this Department are the only effective rules of the association and remain so until they are lawfully changed.

What must the rules of an incorporated association contain?

All incorporated associations are expected to comply with the provisions of the Act and their rules must not be inconsistent with those provisions. Schedule 1 of the Act also lists those matters which must be provided for in the rules of any association that was incorporated after July 1988.

A set of model "Rules for Incorporated Associations" is available from the Department, or from our website: www.commerce.wa.gov.au/associations. These model rules have instruction sheets attached which highlight what needs to be included in an incorporated association's rules. If your association is considering making significant changes to its rules, you might want to check these requirements first.

Please note that the model rules are intended as a guide only. They can be adopted by your association, or changed to suit your needs so long as the basic requirements highlighted in the instruction sheets are met.

What processes must an incorporated association use to alter its rules?

Section 17(1) of the Act requires that any alteration to the rules of an incorporated association **must** be by special resolution. "Special resolution" is defined by section 24, which sets out some particular requirements that an association must abide by in altering its rules. These requirements are highlighted below in section 24(1), which states:

For the purposes of this Act, a resolution is a special resolution if:

1. it is passed by a majority of not less than three-fourths of the members of the association who are entitled under the rules of the association to vote and vote in person;
2. or, where proxies or postal votes are allowed by the rules of the association by proxy or postal vote;
3. at a general meeting; and
4. of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules.

As the Act states that the rules of an association must be altered at a general meeting, **all** members of the association, whether they have voting rights or not, must be given notice of the meeting and be invited to attend. This is so that the rules of an association cannot be changed without all its members having the opportunity to know about it.

Section 17(2) requires that within one month of the passing of a special resolution to alter its rules, the association must lodge notice of the special resolution with the Commissioner for Consumer Protection ("the Commissioner"). The notice must set out the particulars of the alteration and include a declaration by a member of the committee that the resolution was duly passed as a special resolution, and that the rules of the association as altered conform to the requirements of the Act.

Associations Info

DEPARTMENT OF COMMERCE

Unit 4
321 Selby Street Nth
Osborne Park
WA 6017

Postal address:
Locked Bag 14
Cloisters Square
Perth WA 6850

Website:
www.commerce.wa.gov.au/associations
Associations Governance Guide:
www.commerce.wa.gov.au/associationsguide

Associations information:
8.30am to 5pm
Monday to Friday
(excluding public holidays)

Phone: 9282 0764
1300 30 40 74
(country callers - local call cost)

Fax: 9282 4337
(for enquiries only)

Associations Form 5, "Notice of Special Resolution Altering the Rules of an Incorporated Association" has been developed to assist associations notify the Department of the relevant information and is available from the Department or our website. The appropriate lodgement fee* must accompany the notice.

If you have not lodged the notice within one month of passing the special resolution, you must attach a letter outlining the reasons for the delay. Upon consideration of these reasons, the Commissioner may allow an extension for the resolution to be lodged. Please note, however, that even with very good reasons, extensions are generally only allowed for a maximum of two to three months.

Note: Please keep a copy of all of the documents, including the proposed alterations to the rules, that you lodge with the Department. The Department does not provide a final copy to the association.

There are additional requirements if an association wants to change its name or its objects and these are described below.

Change of name

Section 18 of the Act deals with a change in the name of an association. This section requires the passing of a special resolution to amend the rules of the association as outlined above. Notice of the special resolution indicating that the name of the association is being changed must be lodged with the Commissioner together with the appropriate fee*. The *Form 5* referred to above can also be used for this purpose.

The Commissioner has a discretion as to whether or not the new name is approved and may require the association to advertise its intention to change its name. After the Commissioner has given approval for the change of name a Certificate of Change of Name will be issued.

If approval is not given, the association may apply in writing for an internal review of the decision. If, after the internal review, the applicant is still aggrieved by the Commissioner's decision, they can appeal the decision to the State Administrative Tribunal ("the SAT"). For information on making an application to the SAT, please visit the SAT website: www.sat.justice.wa.gov.au

Note: SAT's decision is final and the applicant will be advised of its decision in writing.

Change of objects

Section 19 deals with the alteration of the objects or purpose of an association. This also requires the passing of a special resolution as outlined above. Notice of the special resolution must be lodged with the Commissioner, indicating that the objects of the association are changed, together with the applicable fee*. The *Form 5* referred to above can also be used for this purpose.

The Commissioner has a discretion as to whether or not the amended objects are approved, and may require the association to advertise its intention to change its objects. If approval is not given, the association may request an internal review or subsequently appeal the matter to the SAT as previously set out under the heading 'Change of name'.

Receipt of Notice of Special Resolution

Any alteration of the rules of an association has **no effect** until the notice of special resolution is lodged with the Commissioner and any approval, if required, is given. A letter advising the association that the notice has been lodged and **the date of effect of the alteration** will be forwarded to the contact person nominated by the association.

* For **FEES** information, please refer to the current Schedule of Fees available from our website.

This info sheet must not be relied on as legal advice. For more information, refer to the complete Associations Incorporation Act and Regulations, available from the State Law Publisher (9321 7688) or on their website: www.slp.wa.gov.au (Online publications).