

Changes to an organisation's constitution or rules

Information for Victorian community organisations

Changes to the law

Victorian incorporated associations: New laws for Victorian incorporated associations came into effect on 26 November 2012. This information sheet reflects these new laws. The new laws include new model rules for incorporated associations.

There is a transition period until 26 November 2013, where associations using the old model rules can elect to transfer to the new model rules. On 26 November 2013, all associations still using the old model rules will automatically be transferred to the new model rules. This information sheet includes references to both the old and new model rules.

Associations with their own rules can continue to use their own rules, but where their rules do not address matters required by the new laws, the new model rule that deals with that matter will automatically apply to that association.

For more information on the transition period and the new laws, go to the [Transitional Guide](#).

ACNC: Some regulation of companies that are registered as charities will move from ASIC to the Australian Charities and Not-for-profits Commission (**ACNC**) during 2013. The ACNC will contact registered charities to explain how the changes affect them.

This information sheet assists Victorian not-for-profit community organisations to understand some of the issues that arise when making changes to their constitution or rules. It includes information about changing the constitution for an incorporated association, companies limited by guarantee (**CLGs**) and co-operatives.

This information sheet covers:

- ▶ What is a constitution?
- ▶ Why would we need to change our constitution?
- ▶ Our organisation has 'rules' or 'articles'- is this the same as a constitution?
- ▶ What is the legal process for making changes to our constitution?, and
- ▶ What issues should we look out for before we change our constitution?

What is a constitution?

Every community organisation needs to have a constitution or rules. This is the document that contains the rules of the organisation, describes its basic structure and processes, and will usually specify:

- ▶ the aims or purposes of the organisation
- ▶ how the members of the organisation are admitted
- ▶ the rights and obligations of members
- ▶ how the office-bearers and members of the governing body are elected or appointed
- ▶ how general meetings of members and meetings of the governing body are convened and conducted
- ▶ how the organisation is managed, especially its finances, and
- ▶ what will happen to the organisation's assets if it is wound up.

Why would we need to change our constitution?

It is important that the constitution accurately reflects how your organisation operates in practice. It's no use having a constitution that no one looks at or follows, so you may need to change your constitution to bring it up-to-date.

You may also need to change your constitution to implement a new structure, meet requirements of a new licence or funding arrangement, to alter the way in which the organisation operates or to reflect any changes in the law.

Our organisation has 'rules' or 'articles' - is this the same as a constitution?

The terminology for governing documents varies depending on whether your organisation is an incorporated association, a CLG or a co-operative (discussed further below). Nonetheless, the terms can generally be used interchangeably.

You can usually tell from an organisation's name whether it is an incorporated association, a CLG or a co-operative. All incorporated associations are required to have 'Incorporated' or 'Inc' at the end of their names (for example, ABC Org Inc.). Most CLGs have 'Limited' or 'Ltd' at the end of their names

(although some have an exemption from this requirement). All co-operatives must have “Co-operative”, 'Cooperative' or 'Co-op' in their names, and 'Limited' or 'Ltd' at the end.

Tip:

To confirm of the type of organisation yours or another is, you can search its name on the Australian Business number website or the Australian Securities and Investments Commission (**ASIC**) website (for companies) or the Consumer Affairs Victoria (**CAV**) website (for incorporated associations and co-operatives). We have included the links to these databases in the Resources section below.

Incorporated associations

An incorporated association registered under the Victorian *Associations Incorporation Reform Act 2012* is required by that Act to have rules that include a statement of purposes as well as a number of other matters. While organisations used to submit their purposes separately to their rules, the rules and purposes now form one document (if your organisation registered under the old system your purposes are now considered part of your rules).

CLGs

A CLG registered under the federal *Corporations Act 2001* (Cth) will have either a single constitution (for newer organisations) or two separate documents: a 'memorandum of association' and 'articles of association' (for older organisations that have not updated their constitution). The aims of a CLG are expressed through the 'objects' contained in its constitution or memorandum of association.

Co-operatives

A co-operative registered under the Victorian *Co-operatives Act 1996* must have a set of 'rules' that make up its constitution. Usually the aims of a co-operative are expressed by specifying its “primary activity” in the rules. The rules may also include objects.

What is the legal process for making changes to our constitution?

Whether your organisation is an incorporated association, a CLG or a co-operative, it can only change its constitution by passing a 'special resolution' at a formal meeting of members. It is important that the statutory (legal) requirements for a special resolution are complied with, otherwise the resolution will not be valid and the changes will not take effect.

A special resolution means the resolution needs to be supported by 75% of members' votes at a general meeting to pass (compared to a majority vote). There are extra statutory requirements for passing a special resolution (discussed below).

As well as complying with statutory requirements, you also need to comply with any extra requirements in your own constitution. For example, the rules of a locally-based organisation may require the approval of the national body before changes to the local organisation's rules are effective.

Incorporated associations and companies

The following are the statutory requirements for a valid special resolution for both incorporated associations and companies:

- ▶ a special resolution can only be passed at a general meeting of members. This can either be the annual general meeting (AGM) or a special general meeting. A special resolution cannot be passed at a committee or board meeting, or by a resolution without meeting (except in the rare case of companies with only 1 member)
- ▶ at least 21 days' notice of the general meeting must be given to all members (and, for companies, to their auditor and to any directors who are not also members)
- ▶ the notice must state the text of the proposed special resolution
- ▶ the notice must specify the intention to propose the resolution as a special resolution. Preferably, use words along the following lines
 - ▶ *It is intended that the following resolution be proposed as a special resolution, or*
 - ▶ *The following resolution will be proposed as a special resolution,*

However, provided the notice makes it clear that the proposed resolution is a special resolution, this requirement will be met, and

- ▶ the special resolution will only be passed at the general meeting if at least 75% of those members who vote on the resolution, vote in favour. This includes members who are not actually present themselves but whose 'proxies' (see below) cast votes on their behalf. It excludes those members who abstain from voting (for example members who do not attend the meeting, or who attend but abstain from voting at the meeting).

Proxies

A proxy is a person you authorise to vote on your behalf if you cannot attend a meeting yourself. The appointment of a proxy is usually required to be in writing using a specified form. Organisations may have rules about when proxy forms need to be received (eg – at least 48 hours prior to the relevant meeting). Proxy voting is permitted for all CLGs, but may be excluded by the rules of an incorporated association.

Co-operatives

For co-operatives, the statutory requirements are similar to those set out above, except that:

- ▶ the proposed alteration of the rules must be submitted to the Registrar of Co-operatives at Consumer Affairs Victoria for approval at least 28 days before notice is given. The notice form is available on the Consumer Affairs Victoria website (see the Related Resources section below)
- ▶ the notice must also specify the reasons for the proposed special resolution, and the effect of it being passed
- ▶ at a general meeting, the special resolution only requires a 66% majority of those present and voting (including by proxy)
- ▶ special resolutions may also be passed by a two-thirds majority of those members voting in a postal ballot in accordance with Schedule 3 of the *Co-operatives Regulations 1997* (Vic), but only if this is expressly permitted under the rules of the particular co-operative - check the rules, and
- ▶ the rules of a co-operative may also be altered by a resolution passed by the co-operative's board, but only if the alteration does no more than give effect to a requirement of the *Co-operatives Act 1996* (Vic).

How do we lodge and get approval of changes to constitution?

Incorporated associations and co-operatives

For incorporated associations and co-operatives, a special resolution to change the constitution will only take effect once it has been approved by the Registrar of Incorporated Associations or the Registrar of Co-Operatives. For both types of organisations, a form must be lodged with Consumer Affairs Victoria (**CAV**) within 28 days of the vote.

For incorporated associations, CAV will review the changes after the vote, and will approve the changes (or reject them).

For co-operatives, CAV will review and approve changes prior to a vote. The changes will not take effect until CAV is notified of the successful vote.

Companies limited by guarantee

For companies, a special resolution to change the constitution takes immediate effect (unless otherwise set out in the resolution (eg *from x date the constitution will change to...*). However, a copy of the special resolution and the changes to the constitution must be lodged with Australian Securities and Investments Commission (ASIC) within 14 days of the vote.

Updated copies

All types of organisations should make sure copies of the consolidated constitution (that is, the constitution with all amendments made) are provided to committee members/directors so that they can familiarise themselves with it. Copies of the constitution must also be provided to any member who requests one. Any member is legally entitled to a copy of the constitution (although for companies and co-operatives there may be a small fee).

What issues should we look out for before we change our constitution?

Schedule requirements

For incorporated associations, check that the rules as amended provide for each of the 23 matters specified in the Schedule to the *Associations Incorporation Reform Act*, otherwise CAV will reject the amendments and new members meeting will have to be held.

It's a good idea to prepare a list or table, cross-referencing each of the items in the Schedule with the rules as they will be once the amendments are approved. Write the applicable rule numbers against each of the matters required to be included. That way you can see if anything has accidentally been left out.

Rights and liabilities of members

Any changes to the constitution that affect the existing rights of members or that may increase their potential financial liability need to be approached with particular care. In such cases, unless the changes are completely uncontroversial, it will be prudent to seek legal advice.

Transitional arrangements

Be careful when changing your constitution, (especially if you replace the whole constitution), that the members under the old constitution remain members under the new constitution. Problems can arise when the categories of membership or the eligibility for membership change.

Similarly, you may need to make it clear that, despite the changes to the constitution, the office holders of the governing body (eg. management committee or board) under the old constitution continue in office under the new constitution. Alternatively, there may need to be an extraordinary election for the new governing body, or the officer holders may need to be specified in the new constitution, with effect from a given date. If unsure, seek legal advice.

Tax status

If your organisation has been endorsed by the Australian Taxation Office as a Deductible Gift Recipient (DGR) or is exempt from income tax, whether as a Tax Concession Charity (TCC) or otherwise, you also need to make sure that any changes to the constitution will not jeopardise your tax status. In particular, any changes to the purposes of an incorporated association, the objects of a CLG or the activities of a co-operative, and to the winding up provisions of these organisations should be approached with care. If unsure, seek legal advice.

Funding agreements

If you receive funding from an outside body (for example, a government department or philanthropic trust), check that the proposed changes do not conflict with anything in the relevant funding agreement or terms and conditions of the grant. Also, once any changes have been made, you may be required by the funding documents to send a copy of the new constitution to the funding body.

Resources

Legislation

► [*Associations Incorporation Reform Act 2012 \(Vic\)*](#)

This is the legislation that regulates incorporated associations in Victoria

► [*Co-operatives Act 1996 \(Vic\)*](#)

This is a link to the legislation that regulates co-operatives in Victoria.

► [*Corporations Act 2001 \(Cth\)*](#)

This link is to the legislation that regulates companies in Australia. Not-for-profit's usually incorporate as companies limited by guarantee.

Consumer Affairs Victoria (CAV) resources

Incorporated associations

► [Database of Victorian incorporated associations](#)

This is a CAV database where you can search to find Victorian incorporated associations and co-operatives.

► [CAV's incorporated associations information](#)

This section of CAV's website has information about incorporated associations. Click on the fees, forms and online transactions link for the forms for changing your incorporated association's constitution or rules.

Co-operatives

- ▶ [CAV's Co-operatives information](#)

This section of CAV's website has information about co-operatives. Click on the forms and publications link for the forms for informing CAV about proposed changes to your co-operative's constitution.

- ▶ [Database of Victorian co-operatives](#)

This is a CAV database where you can search to find Victorian incorporated associations and co-operatives.

Australian Securities and Investments Commission (ASIC) resources

Companies limited by guarantee

- ▶ [ASIC database for companies](#)

This is the ASIC database where you can search to find all types of companies in Australia.

- ▶ [ASIC special resolutions information](#)

This link provides information about special resolutions for companies limited by guarantee, and includes a link to the form (205) which needs to be submitted to ASIC to notify of changes to constitution

Australian Charities and Not-for-profits Commission

Companies limited by guarantee that are registered with the ACNC

- ▶ [Information on changing from ASIC to ACNC regulation and reporting](#)

This ACNC webpage explains who will automatically transfer so be registered with the ACNC and transitional arrangement for moving from ASIC to the ACNC as a regulator.

Commonwealth Government Resources

- ▶ [Business.gov.au - ABN Lookup](#)

ABN Lookup provides access to publicly available information provided by businesses when they register for an Australian Business Number.