



WHAT'S IN THE RULES

EXPLAINING THE SCHEDULE 1 REQUIREMENTS OF THE *ASSOCIATIONS INCORPORATION ACT 2015*

Every incorporated association has a set of rules (often called the constitution) which outlines how the association is operated and managed by its members. The *Associations Incorporation Act 2015* (the Act) includes 19 matters (known as the Schedule 1 requirements) that need to be addressed in the rules of the association. Associations have a choice of writing their own rules, or using the Prescribed Model Rules which are set out in Schedule 2 of the *Associations Incorporation Regulations 2016* (the Regulations).

This publication has been prepared to assist incorporated associations in developing a set of appropriate rules by explaining each of the Schedule 1 requirements that need to be addressed and how these matters have been addressed in the model rules.

1. The name of the incorporated association

The rules should clearly state the name of the association. An association's name should reflect its objects and purposes. The Commissioner for Consumer Protection can reject a name if it is:

- already in use;
- offensive or undesirable;
- likely to mislead the public; or
- likely to be confused with the name of an existing body corporate or registered business name.

An association can do its own name availability check using AssociationsOnline prior to submitting its application.

What the model rules say:

The model rules (as set out in the Regulations) do not contain a space for the association's name however it is included on the application form submitted to Consumer Protection.

For practical purposes the version of the model rules available on Consumer Protection's website includes a space on the front page for this information to be inserted.

2. The objects or purposes of the incorporated association

This section of the rules should include a summary of the purposes, aims or activities the association has been incorporated to undertake.

The Repealed Act required a "not for profit clause" to be included as part of the objects section of the rules. The Act still requires the rules to include this information but it does not need to form part of the objects clause anymore.

If an association decides to remove this clause from its objects it must make sure that the following statement is included somewhere else in the rules:

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.

What the model rules say:

The model rules (as set out in the Regulations) do not contain a space for the association's objects however it is included on the application form submitted to Consumer Protection.

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The not-for-profit clause is included as rule 3.

3. The qualifications (if any) for membership of the incorporated association and provision for when membership commences and when it ceases.

It is up to the association to decide who membership will be open to and if there will be any conditions or qualifications that need to be met before a person can join.

The rules must include information about who can be a member, how they apply for membership and the circumstances in which they cease to be a member.

What the model rules say:

The model rules break this topic up into three separate sections:

- Rule 4 states that any person who supports the objects of the association is eligible to apply for membership.
- Rules 5,6 and 7 explain the process of becoming a member; and
- Rules 9 explains the circumstances in which a person stops being a member.

4. The register of members of the incorporated association

The Act requires an association to maintain a register of members that includes the name and residential, postal or email address of each member. This register must be made available for a member to inspect upon request.

To meet Schedule 1 the rules simply need to confirm that the association maintains a register of members. It is up to the association to decide whether it will include information about:

- what is kept in the register;
- the format it is kept in;
- who is responsible for maintaining the record; and
- the requirements under the Act for it to be available for a member to inspect.

If the committee would like the option of requiring a statutory declaration to be completed by a member before access to the member register is given this needs to be included in the rules.

What the model rules say:

Rule 13 states that the Secretary (or another person authorised by the committee) will be responsible for keeping the record.

The clause explains what information is kept in the register and confirms that it is available for inspection.

Rule 13(5) provides flexibility to request a statutory declaration before the register is made available for a member to copy.

5. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.

An association can charge a fee for a person to join the association or to renew their membership each year if it wants to.

The rules need to include information about whether there will be any fees for members. Options for addressing this matter include:

- making a statement that there will be no fees payable to be a member.
- including an option for a fee to be set by either the committee or the membership (this is a flexible option that allows groups to set and change fees easily).
- setting a specific fee and writing it into the rules ie members must pay an annual fee of \$10 (note that if the association wanted to change the amount in the future it would be necessary to pass a special resolution changing the rules).

What the model rules say:

Rule 12 is a flexible clause that allows the association to charge a fee if it wants to.

If there will be a fee it is to be set by the committee.

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:

The rules must identify the name by which the governing body for the association will be known; for example the Management Committee or the Board; and who its members will be.

The association can decide how many committee members it will have and what the office bearers will be called, for example president, vice president, treasurer or secretary.

The rules should also include details of any eligibility criteria that a person must meet to be a committee member. For example a particular class or member or someone who has been a member of the association for a specific period of time.

What the model rules say:

Rule 26 explains that the association will be managed by a committee.

This committee consists of:

- A chairperson
- Deputy chairperson
- Secretary
- Treasurer; and
- At least 1 ordinary committee member.

To be eligible to sit on the committee the person must be an ordinary member who is at least 18 years old.

6A: The election or appointment of members of the committee;

It is important to set out in the rules how the members of the committee will be selected. The most common approach is for members to elect their chosen committee at a general meeting.

The rules will need to include information which explains:

- who is eligible to sit on the management committee; and
- how the election will be conducted.

Note: *The Act states that a person will be prohibited from sitting on the management committee of an incorporated association (without prior approval by the Commissioner for Consumer Protection) if they:*

- *are an undischarged bankrupt or whose affairs are under insolvency law,*
- *been convicted with an offence involving fraud or dishonesty punishable on conviction by 3 months or more imprisonment; and*
- *have been convicted of an offence in connection with the promotion, formation of management of a body corporate, including duties under the new law.*

Where a person is prohibited because they have been convicted of an offence they cannot be a committee member for a period of five years from their conviction, except where the conviction resulted in imprisonment, in which case they cannot be a committee member for five years from their release from custody.

What the model rules say:

The process for electing a committee member is set out in rules 31-34.

A person can become a committee member if they are elected at a general meeting or appointed by the committee to fill a casual vacancy.

Nomination forms are to be submitted to the Secretary at least 28 days before the Annual General Meeting (AGM) with the election to be conducted at the AGM.

6B: The terms of office of members of the committee;

The rules need to clearly state how long a member of the committee can hold the position.

What the model rules say:

According to rule 35 the committee member's term begins when the member is elected at the AGM and ends when the position is declared vacant at the next AGM.

6C: The grounds on which, or reasons for which, the office of a member of the committee shall become vacant;

An association will need to decide under what circumstances a person will cease to be a member of the committee.

Generally these circumstances include:

- the end of term;
- resignation (remember to include information about how the person resigns ie in writing, verbally);
- death;
- insolvency (bankruptcy);
- loss of mental capacity; or
- being removed from office by a resolution of the association at a general meeting.

What the model rules say:

Rule 37 outlines the situations where a committee position becomes vacant and include:

- The person dies or ceases to be a member;
- The person resigns or is removed from the position;
- The person becomes ineligible to sit on the committee under the Act (see note at 6A);
- The person becomes permanently unable because of a mental or physical disability;
- The person fails to attend 3 consecutive committee meetings without sending an apology.

6D: The filling of casual vacancies occurring on the committee;

It is important that the association is able to replace a committee member in a situation where they leave the position before their term ends and so the rules need to include details of the process to be followed to fill an empty position until the term ends.

It is common for these appointments to be done by the committee but the rules could involve the members in the decision if the association wants to.

What the model rules say:

Rule 38 allows the committee to appoint an eligible member (an ordinary member who is at least 18 years old).

In a situation where there are not enough committee members remaining to form a quorum, the model rules also allow the committee to act to appoint committee members to fill the vacancies or call a general meeting so the members can make the appointments.

6E: The quorum and procedure at meetings of the committee;

Quorum:

A “quorum” is the minimum number of members who must be present for a meeting to be legally effective.

If an association make the number of committee members for a quorum too high it may be difficult for the committee to be effective. At the same time, if the quorum is too low, it may leave the management of the association without an adequate spread of responsibility, experience and representation.

The quorum can be expressed as whole number, percentage or fraction.

Procedure at committee meetings:

The rules must also cover the procedure to be followed at committee meetings, such as:

- how much notice committee members will be given before meetings
- who chairs committee meetings
- order of business
- how decisions are made. Do they need to be unanimous or is there a vote? Does the Chair have a casting vote?
- what should happen if a committee member has a conflict of interest regarding a matter under consideration
- can meetings be conducted using telephone or video communications or does every member have to be physically present in the same place
- who takes minutes of the meeting and what is to be recorded.

What the model rules say:

Quorum:

The model rules (as set out in the Regulations) do not contain a space for the committee meeting quorum however it is included on the application form submitted to Consumer Protection.

For practical purposes the version of the model rules available on Consumer Protection’s website includes a space on the front page for this information to be inserted.

Procedure :

Rules 41 to 46 outline the procedure to be followed for a meeting of the committee and includes the following:

- committee meetings must be held at least 3 times a year;
- all committee members are to be given at least 48 hours notice of any meeting;
- the Chairperson is responsible for presiding over the meeting; and
- each committee member present at a committee meeting has one vote.

6F: The making and keeping of records of the proceedings at meetings of the committee;

The rules need to include clear guidelines about who will be responsible for keeping the minutes of committee meetings.

This responsibility usually sits with the Secretary but the Association can consider other options like rotating the minutes taking role.

What the model rules say:

Rule 47 requires minutes to be taken at each committee meeting and requires the following to be recorded:

- a. the names of the committee members present at the meeting;
- b. the name of any person attending the meeting by invitation;
- c. the business considered at the meeting;
- d. any motion on which a vote is taken at the meeting and the result of the vote.

6G: The circumstances (if any) in which payment may be made to a member of the committee out of the funds of the association.

The Act allows a member to be reimbursed for any out of pocket expenses relating to the affairs of the association. It is normal to request that the member provide evidence of the payment such as a receipt before the refund is paid.

There may be some situations where an association would like to pay a committee member an honorarium for the service they provide to the group. The Act does not refer to 'honorariums' and whether the payment is permitted will depend on the actual reason for the payment.

If the association would like the option of making any payments to committee members (apart from reimbursement of expenses) the rules must provide for approval of the payments by the members of the association.

What the model rules say:

Rule 40 states that:

A committee member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred —

- a. in attending a committee meeting or
- b. in attending a general meeting; or
- c. otherwise in connection with the Association's business.

7. The quorum and procedure at general meetings of members of the incorporated association.

Quorum:

Again the quorum set by the association is very important. Make sure that the number for the quorum for a general meeting is achievable, without being so small that the meeting might not be representative of the general membership.

It is also recommended that the rules include information about what will happen if there is no quorum present at a meeting.

Procedure for general meetings

Set out the procedure to be followed at general meetings. Include:

- who chairs the meeting
- how voting is conducted (show of hands, secret ballot, casting vote)
- whether and in what circumstances the meeting can be adjourned
- the minimum number or percentage of all members who must be present to conduct a valid general meeting (the quorum)
- whether voting by proxy is allowed

What the model rules say:

Quorum:

The model rules (as set out in the Regulations) do not contain a space for the general meeting quorum however it is included on the application form submitted to Consumer Protection.

For practical purposes the version of the model rules available on Consumer Protection's website includes a space on the front page for this information to be inserted.

Procedure :

Rules 55 to 60 outline the procedure to be followed for a general meeting of the members and includes the following:

- the Chairperson is responsible for presiding over the meeting;
- each ordinary member has one vote and they may vote personally or by proxy;
- the minutes for the meeting will be taken by the secretary or a person authorised by the committee.

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.

The rules of an association must provide for all members of the association to be entitled to receive notice of and to attend any general meeting of the association irrespective of their membership class or voting rights.

To avoid any confusion it is also important for the rules to clearly explain who is able to vote at a general meeting and how the votes may be cast.

What the model rules say:

Notice of meetings

Rule 52 requires the secretary to give all members:

- at least 14 days notice of a general meeting;
- at least 21 days notice of a general meeting if a special resolution is to be proposed.

Voting

Rule 8(5) gives each ordinary member full voting rights. The model rules also include provisions for proxies voting (rule 53).

9. The time within which, and manner in which, notices of general meetings and

notices of motion are to be given, published or circulated.

A **notice of meeting** is a written notice that a meeting is going to take place at a specified time.

A **notice of motion** is a notice, given by a member of the association that proposes some decision or action be discussed and voted on at the meeting.

The rules must specify the period (time) required to be given to members of a general meeting and the manner in which notice is to be given (such as post or email or both).

The rules must also set out the period of notice (if any) a member must give other members if they propose to move a motion at a general meeting. If you wish to allow for members to propose motions from the floor at a general meeting, state that no advance notice is required.

What the model rules say:

Rule 52 requires the secretary to give members:

- at least 14 days notice of a general meeting;
- at least 21 days notice of a general meeting if a special resolution is to be proposed.

The notice must include details of each item of business to be considered at the meeting

Notice may be:

- Delivered by hand
- Sent by post; or
- Sent electronically (fax or email)

(Rule 66)

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.

While it is common for the committee to be responsible for convening general meetings it is also important that the members have the ability to request meeting be called if necessary.

The rules must include information about the minimum number of members required to request a meeting.

This information must be expressed as a percentage and cannot be greater than 20%.

What the model rules say:

Rule 51 requires the committee to convene a special general meeting if at least 20% of the members require the meeting to be called.

The meeting request must be submitted to the secretary in writing and clearly state the business to be considered at the meeting.

The committee then has 28 days to call the meeting.

11. The manner in which the funds of the association are controlled.

The rules need to include details about how the funds will be managed. It is suggested that information is included about who:

- is responsible for receiving funds on behalf of the association and issuing receipts for those funds
- is responsible for paying funds received into the associations' bank account
- can authorise expenditure by the association and how authorisation is given (such as by signature of the treasurer and another committee member)
- can sign cheques on behalf of the association and what authorisation they need to do so (such as resolution of the committee).

What the model rules say:

Rule 62 explains how the funds will be controlled and requires:

- a bank account to be held in the name of the association.
- all association monies to be deposited into the account within 5 days of receipt
- cheques, bills of exchange and other promissory notes to be signed by either 2 committee members or 1 committee member + 1 person authorised by the committee.

12. The day in each year on which the financial year of the incorporated association commences.

An association must define a financial year that it will operate under. The chosen financial year will determine the timeframe in which the AGM will be held and financial reports prepared.

The association may use:

- the standard fiscal year 1 July - 30 June;
- the calendar year 1 January to 31 December;
- a 12 month period based on their playing season or period of main activity; or
- any other 12 month period it chooses.

What the model rules say:

The model rules (as set out in the Regulations) do not contain a space for the association's financial year however it is included on the application form submitted to Consumer Protection.

For practical purposes the version of the model rules available on Consumer Protection's website includes a space on the front page for this information to be inserted.

13. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.

The Act only requires an association to hold one general meeting per year, being the annual general meeting.

Holding additional general meetings is decided by each association. An association may decide that general meetings will be held at regular intervals. For example the association may hold a general meeting every four months.

Alternatively an association may only need the ability to call general meetings when a need arises in which case the rules could provide that the committee may call a general meeting from time to time or at the request of the members.

What the model rules say:

An association is required to hold an annual general meeting each year within 6 months after the end of the association's financial year (Rule 50).

Any other general meeting is considered to be a Special General Meeting and may be convened:

- by the committee at any time; or
- if requested by at least 20% of members.

14. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.

Under the Act an association may only alter its rules, name or objects by passing a special resolution. Section 51 of the Act outlines the requirements for passing a special resolution so it would be acceptable to include a simple statement in the rules that:

The rules of the association may be altered by special resolution at a general meeting of the association.

If the association wants to include more detailed information it should be mindful of the following requirements:

- a special resolution must be passed by at least 75% of the members present or voting by proxy at a general meeting.
- The notice must be in writing and include:
 - the date, time and place of the meeting
 - the full proposed resolution
 - a statement of the intention that the motion be proposed as a special resolution.

What the model rules say:

Rule 72 includes a simple statement that:

If the Association wants to alter or rescind any of these rules, or to make additional rules, the Association may do so only by special resolution and by otherwise complying with Part 3 Division 2 of the Act.

15. Provisions for the custody and use of the common seal of the incorporated association, if it has one.

An association can decide whether or not it wants to use a common seal. If the association has one the rules need to set out who will be responsible for its custody.

If the Association does not want to use a common seal it should include a simple statement in its rules that it has no common seal.

What the model rules say:

Rule 65 states that if the association has a common seal it will be kept by the secretary or another authorised committee member.

16. The custody of books and securities of the incorporated association.

There are a number of records that need to be kept by an association relating to its specific activities. It is important for all association records to be held in a secure location and the rules should state who will be responsible for keeping these records.

It should also be noted that where a person ceases to be a member of the association's committee, section 41 of the Act requires that as soon as practicable after their membership ceases, the person must deliver to a member of the committee all of the relevant documents and records they hold pertaining to the management of the association's affairs.

To make these obligations clear the association may also wish to include information about the handover of records in the rules.

What the model rules say:

Rule 67 states that the records will be kept by the following custodians:

- the books and any securities of the Association must be kept in the secretary's custody or under the secretary's control
- the financial records and, as applicable, the financial statements or financial reports of the Association must be kept in the treasurer's custody or under the treasurer's control.
- the books of the Association must be retained for at least 7 years.

17. The inspection by members of the incorporated association of records and documents of the incorporated association.

The documents and records of the association include items such as:

- information relating to incorporation, rules, management, membership records and financial statements;
- the association's transactions, dealings, business or property

The rules need to detail which records the members may inspect, including any terms and conditions subject to which access may be granted.

The committee may refuse to permit inspection of confidential material, such as confidential personal, employment, commercial or legal matters. However, all members should be given the right to inspect the rules of their association, minutes of general meetings of the association at any reasonable time, the register of members and the register of officer bearers

All members are also entitled to a copy of the rules of their association if they make a request for a copy. If a member requests to inspect the register of members, the incorporated association must allow this at a reasonable time.

What the model rules say:

Rule 69 allows a member to inspect free of charge the:

- register of members
- record of office holders; and
- any other records

If the member wants to inspect a document that records the minutes of a committee meeting, the right to inspect that document is subject to any decision the committee has made about minutes of committee meetings generally, or the minutes of a specific committee meeting, being available for inspection by members.

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.

An association can decide the process to be used for settling disputes under the rules between the association and any members or between a member and other member.

This procedure must give each party to the dispute an opportunity to be heard on the matter and ensure that an unbiased decision maker decides the outcome.

If there is an affiliated or peak body who the association may be able to escalate the matter to, this may be mentioned in the rules however the association should check with the relevant body that they are agreeable to assist before committing them to be part of the process outlined in the rules.

What the model rules say:

Rules 17 to 25 outline the procedure for dealing with disputes and include the following:

- a requirement for the parties to the dispute to try and resolve the issue themselves;
- powers for the committee to consider and determine the matter if a resolution cannot be reached by the parties; and
- opportunity for a mediator to be appointed to assist in the matter.

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.

The rules need to set out what will happen to surplus assets of the association if it is wound up or dissolved. The distribution of surplus assets must not be inconsistent with the Act and generally surplus assets must not be distributed to any member or former member of the association.

The association can specify the organisation(s) that they want to distribute their property to or take a more flexible approach which allows the member to choose an organisation when the time comes to wind up.

Remember under the Act an association's surplus property can only be distributed to:

- An incorporated association;
- A company limited by guarantee registered under the *Corporations Act 2001*;
- An organisation that holds a current licence under the *Charitable Collections Act 1946*;
- An organisation that is a member or former member of the association and whose rules prevent the distribution of property to its members; or
- A non-distributing co-operative registered under the *Co-operatives Act 2009*.

What the model rules say:

Rule 71 is a flexible clause that allows the members to decide who the property will be given to at the time they wind up.

On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

MORE INFORMATION

MODEL RULES

Available to download at

www.dmirs.wa.gov.au/consumer-protection/model-rules

INC GUIDE

A good governance guide for incorporated associations including detailed information about altering the rules of an incorporated association.

Browse the guide at www.dmirs.wa.gov.au/inc.

ASSOCIATIONS ONLINE

AssociationsOnline is an online portal for incorporated associations and industry stakeholders to submit applications and manage contact information.

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