

Changes to associations legislation

A new law has recently been passed by State Parliament which will introduce a number of changes to help associations run more effectively.

It is anticipated that the new *Associations Incorporation Act 2009* will come into effect during late 2009.

Until then, the existing *Associations Incorporation Act 1984* will remain in place and associations should keep following the current requirements for now.

The Office of Fair Trading will conduct an education and information campaign later in the year to make sure people involved in associations clearly understand the changes.

What will change?

Most of the changes are designed to modernise the law, reduce red tape and allow more flexibility for associations. There will also be stronger protection of association finances. Most of the day-to-day procedures and operations of associations will not be directly impacted. The new laws have been carefully designed to make the transition as smooth as possible for associations.

The most important changes are outlined below.

Modernising the laws and reducing red tape

Changes to association constitution

Under the new Act, an association's 'rules' will instead be called its 'constitution'. The constitution will need to specify the association's end of financial year. A 'model constitution' will be set out in the Regulation.

Association's constitution will automatically comply with the new requirements

To ensure there is no unnecessary work for associations, the current 'rules' of an existing association will be taken to comply with the requirements of the new Act until the association chooses to lodge changes. When the association lodges changes they will need to ensure all

other aspects of their constitution comply with the new requirements.

More flexibility for meetings and resolutions

An association will be able to hold a postal ballot to pass any kind of resolution where this is provided for in the association's constitution. An association's constitution may also permit meetings to be held at more than one venue using technology that allows members in different places to participate. This should make it easier for meetings to be organised and for more members to be involved.

More choices for official address of the association

Currently, the only address for an association that can be put on the public register is the residential address of the public officer. The new Act will allow the official address to be the association's premises or the public officer's residence or place of business or employment. The address will still have to be in New South Wales. The public officer's address currently on the public register will continue to be the official address of the association until notice of another address is lodged with Fair Trading.

Common seal will no longer be required

Associations will no longer need to use a common seal to execute documents. Instead, they can have documents signed by two of their authorised signatories. The public officer will be an authorised signatory by virtue of that office.

More flexibility for annual general meetings

Associations will still have a financial year of 12-18 months. Associations will no longer be required to hold an annual general meeting in each calendar year but will still need to hold one within 6 months of the end of the financial year.

Supporting stability and accountability

The new Act will introduce reforms to provide more accountability for larger associations, clarify the duties of committee members and make it easier for associations to comply with the legislation.

Two tiered financial reporting

The new Act will divide associations into two tiers for reporting purposes. The requirements will not change for smaller, or 'Tier 2' associations as they will be known, and they will still only need to lodge a summary of their financial affairs.

Larger, or 'Tier 1', associations above a certain financial threshold will be required to provide an audited financial statement each year, unless they have been granted an exemption by Fair Trading. The audit requirements will protect associations that have responsibility for significant financial turnover or assets.

The amount of the threshold is to be prescribed in regulations, and will be determined in consultation with the community. At this stage, a threshold of \$200,000 in gross annual receipts is being considered. All associations and the public will be able to make submissions on the draft regulations, which will be released for consultation later in 2009.

Statutory duties of committee members and obligations of office bearers

New provisions imposing statutory duties on committee members are set out in the new Act. Committee members will need to disclose any potential conflict of interest and will not be able to use their position or information for a dishonest purpose. Office bearers will have to hand over any documents of the association within 14 days after ceasing to hold office. This will make it easier for new committee members to carry out their duties.

Australian residency

At least three committee members will have to reside in Australia and the public officer will have to be a resident of New South Wales.

Penalty notice system

Certain offences under the new Act will be able to be dealt with by a 'penalty notice', which is a type of fine issued as an alternative option to having a matter dealt with in court. No penalty notices will be issued in the first 6 months after the new Act commences, they will only be used where other warnings and notices have not been followed.

Before the new Act starts, Fair Trading will publish detailed information and guidance to ensure all associations are able to easily follow the requirements of the new Act.

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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