



RULES CHECKLIST: THE NEW LAW REQUIREMENTS

From 1 July 2016, the following items must be addressed in all rules (also known as the constitution) of Western Australian incorporated associations.

NOT FOR PROFIT CLAUSE

The rules must include a provision in, or substantially in, the following terms:

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.

SCHEDULE 1 REQUIREMENTS

The rules must address all of the following matters set out in Schedule 1 of the Act.

Any changes to the previous Schedule 1 requirements are highlighted in bold.

- | |
|--|
| 1. The name of the incorporated association. |
| 2. The objects or purposes of the incorporated association. |
| 3. The qualifications (if any) for membership of the incorporated association and provision for when membership commences and when it ceases. |
| 4. The register of members of the incorporated association. |
| 5. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association. |
| 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: <ul style="list-style-type: none">a) The election or appointment of members of the committee;b) The terms of office of members of the committee;c) The grounds on which, or reasons for which, the office of a member of the committee shall become vacant;d) The filling of casual vacancies occurring on the committee;e) The quorum and procedure at meetings of the committee;f) The making and keeping of records of the proceedings at meetings of the committee;g) The circumstances (if any) in which payment may be made to a member of the committee out of the funds of the association. |

Note: Any rules that provide for payment to a committee member from the Association's funds must state that this can only occur if the payment is authorised by a resolution of the association.

7. The quorum and procedure at general meetings of members of the incorporated association.
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. Note: The rules made must provide for all members of the incorporated association to be entitled to receive notice of and to attend any general meeting of the association.
9. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.
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.
11. The manner in which the funds of the association are controlled.
12. The day in each year on which the financial year of the incorporated association commences.
13. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
14. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.
15. Provisions for the custody and use of the common seal of the incorporated associations, if it has one.
16. The custody of books and securities of the incorporated association.
17. The inspection by members of the incorporated association of records and documents of the incorporated association.
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.
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. Note: An association's surplus property can only be distributed to: <ul style="list-style-type: none"> • An incorporated association • A company limited by guarantee registered under the <i>Corporations Act 2001</i>; • An organisation that holds a current licence under the <i>Charitable Collections Act 1946</i> • 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 <i>Co-operatives Act 2009</i>.

OTHER MATTERS TO REVIEW

When updating your rules, keep in mind that there have also been law changes regarding the issues below. Your rules should not say anything that is inconsistent with the new laws.

Register of Members

- Under the new laws an incorporated association will have the option to keep the names and either residential, postal or email address of its members.
- It also allows members to provide a statutory declaration setting out the purpose for which the copy of the register of members is required.
- If a members requests that the Association provides them with a copy of the register, the rules may permit the Association to charge the member a reasonable amount.

Rules of Association

- A copy of the rules must be given to each person who becomes a member of the association

Committee and officer duties

- Committee member and officer duties are now codified in the Act. If your rules say something about committee duties you should check that the provisions are consistent with the requirements in the Act, in particular, around managing conflicts of interest.
- Under the new law 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 their affairs are under insolvency laws;
 - have been convicted of an offence in connection with the promotion, formation or management of a body corporate;
 - have been convicted of an offence involving fraud or dishonesty punishable on conviction by at least three months or more imprisonment; or
 - have been convicted of an offence under Division 3 (the duties of officers provisions) or section 127 (the duty with respect to incurring of debt) of the Act.
- 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.

MORE INFORMATION

- Detailed information about the new associations law is available from www.commerce.wa.gov.au/consumer-protection/new-laws-associations
- A copy of the draft model rules can be downloaded from www.commerce.wa.gov.au/modelrules

ASSOCIATIONS BRANCH

Consumer Protection Department of Commerce

 associations@commerce.wa.gov.au

 **1300 30 40 74**

 www.commerce.wa.gov.au/associations