

Running an incorporated association in NSW

A guide for public officers and office bearers of NSW incorporated associations

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Glossary

Key words and abbreviations

Glossary

Key words and abbreviations

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| AAS | AAS refers to <u>Australian Accounting Standards</u> and is relevant to the review or audit of an incorporated association's financial statements. |
| AGM | AGM refers to an annual general meeting. |
| AI Act | AI Act refers to the <u>Associations Incorporation Act 2009 (NSW)</u> . |
| AI Regulation or Regulation | AI Regulation or Regulation refers to the <u>Associations Incorporation Regulation 2022 (NSW)</u> . |
| Annual summary | Annual summary is a document that an incorporated association must lodge with NSW Fair Trading within one month of each annual general meeting or within seven months after the end of the previous financial year (unless an extension is granted). |
| Association or association | Association or association means, broadly, a group (whether incorporated or not). Specifically, in this guide, the word 'association' refers to a New South Wales incorporated association. |
| ATO | ATO refers to the Australian Taxation Office. |
| Auditor | Auditor is an accountant (who is independent from the association) whose job is to check and confirm the accuracy of the association's financial records (commonly, once a year). The auditor provides a set of audited accounts for the association and an auditor's report. Some organisations are required to have their accounts audited, either under the <u>Associations Incorporation Act 2009 (NSW)</u> or for other reasons, such as funding agreements. |
| Ballot | Ballot is a method of voting in elections for office bearers and members of the committee of an association (like voting in an election for government). A ballot is often conducted confidentially, in which case it is called a 'secret ballot'. |
| Bankruptcy | Bankruptcy is a legal status that offers a person protection from further action against them by creditors (that is, people who the person owes money). |
| Committee | Committee is the governing body of an incorporated association, sometimes called the 'board', 'management committee', 'committee of management' or 'council'. The committee is responsible for overseeing the running of the association. |
| Committee members | Committee members are members of the committee (or board) of an incorporated association – commonly, including office bearers (for example treasurer or president) and a small group of other people (often called 'ordinary committee members'). Committee members are sometimes called board members. |



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| Common law | Common law means the law developed by the courts, or judge-made law (as opposed to legislation or statute, which is law made by Parliament). |
| Constitution (or rules) | Constitution (or rules) is the governing document of an incorporated association. The Constitution sets out the association's purposes and the procedures for running the association. An association can choose to adopt the model constitution (in Schedule 3 of the Associations Incorporation Regulation 2022 (NSW)) or write its own constitution (which must be approved by NSW Fair Trading). Every incorporated association must have a constitution which covers the matters listed in Schedule 1 of the Associations Incorporation Act 2009 (NSW) . |
| Convene | Convene means 'arrange' or 'call people together' – for example, the chairperson of an incorporated association may convene a meeting of the committee. |
| Fiduciary duties | Fiduciary duties are special legal obligations that have been developed by common law (judge-made law) and apply to certain people in an incorporated association because of the position they hold (such as committee members). Fiduciary duties require a person to exercise their powers in good faith for the benefit of others (in a committee member's case, on behalf of the association and the members as a whole). |
| Financial statement | Financial statement is a document (or set of accounts or reports) submitted to members of an incorporated association at the annual general meeting, as required by Part 5 of the Associations Incorporation Act 2009 (NSW) . The financial statement contains particular information about the financial activities of the association in its previous financial year. |
| General meeting | General meeting is a meeting of the members of the incorporated association which is convened using the procedures for general meetings in the association's constitution (or rules). These procedures will include giving notice of the meeting to members. General meetings include both 'annual' and 'special' general meetings. |
| Legislation | Legislation means laws that have been passed by Parliament. A single piece of legislation is called an Act. The names of all New South Wales Acts include the year the law was passed and the letters '(NSW)' – for example, the Associations Incorporation Act 2009 (NSW) . |
| Minutes | Minutes are a formal written record of the matters discussed and decisions made at a meeting. |
| Model constitution (or model rules) | Model constitution (or model rules) means the constitution set out in Schedule 3 of the Associations Incorporation Regulation 2022 (NSW) that can be adopted (in whole or part) by an association when it first incorporates (registers), or at a later date. The model constitution may be modified over time by legislation (ie. through changes to Schedule 3 of the Associations Incorporation Regulation 2022 (NSW)) or by the association. |
| Motion | Motion is a proposal that a member puts forward at a meeting, so that some action is taken, or decision made about an issue. Technically, when a member 'moves' a motion, another member must 'second' it. (Sometimes a member then moves to change (amend) the motion, and it is up to another member to second the amendment). Once the wording of the motion is settled, a vote is taken and, if passed, the motion becomes a resolution of the association. |
| NSW Fair Trading | NSW Fair Trading refers to the government agency responsible for regulating incorporated associations in New South Wales. |
| Objects | Objects is another word for the purposes of an incorporated association. |



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| Office bearer or officer | Office bearer or officer means a person who is appointed to a special position on the committee. The office bearers of most associations are the chairperson (or president), deputy chairperson (or vice-president), secretary and treasurer. |
| Organisation | Organisation means, broadly, a group (whether incorporated or not). Specifically, in this guide, the word 'organisation' refers to a New South Wales incorporated association. |
| Policy | Policy is a way of dealing with an issue or area of activity which the association has agreed on. Policies are usually (but not always) written down. An association may have policies about, for example, recruitment of new committee members, procedures for meetings or dispute resolution. Policies cannot override legal obligations in the <u>Associations Incorporation Act 2009 (NSW)</u> or the association's constitution (or rules), but they can supplement them. |
| Poll | Poll is a method for voting on a motion at a meeting. Technically this is different to a ballot, which is for voting in elections, but sometimes people use these words to mean the same thing. A poll must be in writing. In a poll, members vote by filling out a voting paper and putting it in a box or container. These papers are then counted by those organising the poll, but not shown to other voters. When a poll is validly demanded, the result on the poll will override a vote on a show of hands. |
| Proxy | Proxy is someone who is authorised to vote on behalf of another person at a meeting (if that person cannot attend the meeting personally). Under Schedule 1 of the <u>Associations Incorporation Act 2009 (NSW)</u> , an association's constitution (or rules) must set out whether members are entitled to vote by proxy at a general meeting. If proxies are allowed under the association's constitution, there must be a provision in the constitution which sets out how proxies are to be appointed and how they may exercise the voting rights of the person appointing them. |
| Purposes (or objects) | Purposes (or objects) of an association are usually found in the constitution and set out what the association has been established to do and may also identify for whose benefit the association operates. An association must include its purposes in its application for incorporation to NSW Fair Trading. |
| Quorum | Quorum is the minimum number of people that need to be present at a meeting for that meeting to proceed. |
| Register | Register is essentially a list, or database, containing information about certain matters, members or documents. |
| Register of Incorporated Associations | Register of Incorporated Associations is the register which contains information about every incorporated association in NSW. It is maintained by NSW Fair Trading. Some parts of the register are available on the <u>NSW Fair Trading website</u> , and you may purchase extracts from it about your association or about other associations. |
| Resolution (or ordinary resolution) | Resolution (or ordinary resolution) is a decision that is made at a meeting. A resolution is the result of a motion (or an amended motion) put before the meeting and is passed where more than 50% of the votes cast by members of the association who are entitled to vote are in favour of passing the motion (also known as a simple majority). |
| Rules | Rules is another word for the constitution of an incorporated association. |
| Schedule | Schedule refers to a Schedule (and the items, or paragraphs, within it) of the <u>Associations Incorporation Act 2009 (NSW)</u> or the <u>Associations Incorporation Regulation 2022 (NSW)</u> . |



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| Simple majority | Simple majority is when more than half (50%) of the people present and voting on a motion at a meeting, vote for (or 'in favour of') passing a resolution. |
| Special general meeting | Special general meeting is a type of general meeting (that is, a meeting of the members), which is usually convened for a particular reason or purpose. Under the model constitution (in Schedule 3 of the Associations Incorporation Regulation 2022 (NSW)), any general meeting which is not an 'annual' general meeting is classified as a 'special' general meeting. |
| Special resolution | <p>Special resolution is a resolution required for certain decisions such as changing an incorporated association's rules. Special resolutions must be passed in accordance with the procedures in section 39 of the Associations Incorporation Act 2009 (NSW).</p> <p>This requires at least 21 days' notice to be given to members. To pass the special resolution at least three quarters (75%) of members who are entitled to vote, and who actually do vote at the meeting (either in person, by proxy, or by postal or electronic ballot, if allowed), must vote in favour of the resolution. This can be contrasted with a resolution passed by simple majority, which only requires more than 50%.</p> <p>Special resolutions are required by the Associations Incorporation Act 2009 (NSW) when an association makes certain important decisions, such as:</p> <ul style="list-style-type: none"> • changing its name, constitution, purposes or official address • amalgamating with one or more other associations, or • winding up the association voluntarily or seeking cancellation or transfer of registration by NSW Fair Trading |
| Statutory duties | Statutory duties are legal obligations and responsibilities which are set out in particular legislation. For example, the members of the committee and office bearers of an incorporated association have statutory duties (relating to how they make decisions about the running of the association) under the Associations Incorporation Act 2009 (NSW) . This can be contrasted with duties that arise because of common law (judge-made law), such as 'fiduciary duties'. |
| Tier 1 association | <p>Tier 1 association is an incorporated association:</p> <ul style="list-style-type: none"> • whose gross receipts (total revenue) for a financial year exceed \$250,000, or • whose current assets (defined as assets other than real property and assets capable of depreciation) exceed \$500,000 |
| Tier 2 association | <p>Tier 2 association is an incorporated association:</p> <ul style="list-style-type: none"> • whose gross receipts (total revenue) for a financial year are less than \$250,000 • whose current assets are less than \$500,000, or • declared not to be a Tier 1 association by NSW Fair Trading |
| Wind up or winding up | Wind up or winding up refers to the legal process for ending an incorporated association – this can be done voluntarily by the association, or, in certain circumstances, by a court or NSW Fair Trading. When an incorporated association is finally wound up, it stops existing. |



Part 1

The association – an overview

The association – an overview



Disclaimer

This guide provides general information about running an incorporated association in New South Wales. This information is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this guide.

This part of the guide contains background information to help you understand your association, the roles of the members, public officer, office bearers and committee members, and how to use this guide.

Summary of key points

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| Who is this this guide for? | This guide is primarily for public officers, office bearers, including secretaries and members of committees of incorporated associations. This part provides an overview of an association. |
| How to use this guide | This guide is in seven parts and includes a range of practical tools and other links. |
| What is an incorporated association? | An incorporated association is one of the most common (but not the only) legal structure used by not-for-profit organisations. There are laws that regulate incorporated associations in each state and territory. This guide deals with New South Wales laws only. A NSW association must operate in accordance with the requirements of the Associations Incorporation Act 2009 (NSW) (AI Act) and the Associations Incorporation Regulation 2022 (NSW) (AI Regulation) . |
| What are the reporting obligations of an incorporated association? | Certain information must be reported to NSW Fair Trading under the AI Act and the AI Regulation, including an annual summary of the association's financial situation, and when changes occur (for example, when a new public officer is appointed, or the association's details change). |
| What are the rules and purposes of an incorporated association? | Every incorporated association has its own constitution (or rules) which sets out the procedures for running the association and the purpose for which the association is established. Use Tool 1 in this part of the guide to help you work out what your rules are – it's essential to be familiar with them. |



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| <p>What is the role of members of an incorporated association?</p> | <p>Members of an incorporated association have the power to make certain decisions about the association. In particular, they usually appoint the members of the committee.</p> |
| <p>What is a committee?</p> | <p>The committee of an incorporated association (that is, its governing body or board) is responsible for overseeing how the association operates. There are special positions on the committee, known as 'office bearers'. Often the public officer is a member of the committee, but this is not required under the AI Act.</p> |
| <p>How does the committee differ from the 'managers' of an association?</p> | <p>The committee of an incorporated association sets the overall strategic direction of (or 'governs') the association and is generally not involved in the day-to-day running of the association.</p> <p>In larger associations, there may be senior staff (for example, the CEO, operations manager and finance manager) who are responsible for the day-to-day running of the association.</p> |
| <p>Who is the public officer?</p> | <p>Every association must appoint a public officer, who must be over 18 years of age and a resident of NSW.</p> <p>The AI Act and AI Regulation set out the specific tasks required of the public officer. These tasks include notifying NSW Fair Trading of any changes to key information about the association and lodging an annual summary of the association's financial situation, collecting all association documents from former committee members and returning all association documents to a committee member when the public officer vacates office. An association's constitution may set out additional requirements and responsibilities.</p> <p>The public officer is an authorised signatory of the association. Part 2 of this guide sets out further information about the responsibilities of the public officer.</p> |
| <p>Who is the secretary?</p> | <p>Incorporated associations will usually elect a secretary. The secretary may be the same person as the public officer, or in addition to the public officer (either is permitted by the AI Act).</p> <p>The secretary's role and responsibilities will be governed by your association's constitution. If your association has adopted the model constitution (set out in Schedule 3 of the AI Regulation) and no separate secretary is elected, then the public officer will assume the role of secretary.</p> <p>This is not to be confused with the 'Secretary' who has replaced the 'Director-General' in the AI Act. References (in the AI Act and the AI Regulation) to the 'Director-General' have been replaced with the 'Secretary'.</p> <p>'Secretary', in the AI Act, is defined as:</p> <ul style="list-style-type: none"> • the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or • if there is no such position in the Department, the Secretary of the Department <p>This is different from a committee member of an incorporated association who may bear the title of a 'secretary'.</p> |
| <p>Where can I go for information and assistance?</p> | <p>This guide sets out information about running an incorporated association. Not-for-profit Law has further resources for incorporated associations.</p> <p>Information about other Not-for-profit Law services (such as training and legal advice) is also available on our website.</p> |

Who is this guide for?

This guide is designed to help you (as the public officer, the office bearer, including the secretary), in your association, to comply with the duties associated with your roles by:

- alerting you to your legal obligations, and
- providing good governance tips and tools for running an incorporated association in NSW

It doesn't matter whether you are a volunteer in a small support group, or a paid officer of a large social club – any public officer or officer bearer of an incorporated association in NSW can benefit from this guide.

Under the AI Act and the AI Regulation, an association's public officer can also hold the positions of committee member and secretary. However, this will depend on the association's constitution.



Note

It's important to understand which role a person is conducting at any time to determine what their duties are with respect to that role.



Summary – who this guide is for

- The **public officer** is the incorporated association's official contact person and is responsible for reporting about the association to NSW Fair Trading and for keeping up-to-date records about the association.
- If your association has a **secretary**, the secretary will usually be responsible for organising meetings, keeping minutes, dealing with documents and updating records about the association.
- Under the model constitution, the secretary is a member of the association's committee, and this is usual practice.

This guide may also be useful for **other key people** in your organisation including the chief executive officer, chief financial officer, chief operations officer, or founder, as well as people and organisations who work with incorporated associations (such as peak bodies, advocacy groups and lawyers assisting incorporated associations).

How to use this guide

The guide has seven parts and includes practical tools – such as sample documents, checklists, registers and flowcharts – to help you in your role. The tools are located at the end of each part of the guide.

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|---------------|---|
| Part 1 | The association – an overview |
| Part 2 | The public officer’s legal role, powers and duties |
| Part 3 | Registers, records and official documents |
| Part 4 | Annual General meetings |
| Part 5 | Special General meetings |
| Part 6 | Committee meetings |
| Part 7 | Reporting to NSW Fair Trading |

Introductory information

What is an incorporated association?

An incorporated association is one of the most common (but not the only) legal structure used by not-for-profit groups in NSW.

There are other legal forms used by not-for-profit groups, such as corporations (or companies) and cooperatives. Different laws and rules apply to them, which are not covered in this guide.

Every Australian state and territory has its own laws to regulate incorporated associations. This guide deals with incorporated associations in NSW.



For more information on what incorporation means, and different types of legal structures used by not-for-profit groups, see our free resources on [‘Getting Started’](#).



How do you know if an organisation is an incorporated association?

Incorporated associations have the word 'Incorporated' or the letters 'Inc' at the end of their name. This can be contrasted with organisations that have, for example, 'Ltd' or 'Pty Ltd' at the end of their name.

In NSW, the AI Act is the main piece of legislation regulating incorporated associations. The AI Act covers the establishment, operation and ending (or dissolution) of an incorporated association.

If you are not sure whether your association is an incorporated association in NSW, you can search the [Register of Incorporated Associations](#).



Tip

It's good practice to keep a copy of the current [AI Act](#) and [AI Regulation](#) with your association's official documents.



More information

There are other laws which apply to incorporated associations – for example, laws dealing with work health and safety, workplace relations, volunteers, tax, advertising and fundraising. [Our website](#) has useful resources and information sheets on a range of topics and laws to help not-for-profit organisations.

What does NSW Fair Trading do?

NSW Fair Trading is part of the New South Wales Government and has primary responsibility for dealing with incorporated associations.

Under the AI Act and the AI Regulation, the Director-General (Commissioner of Fair Trading) has certain legal functions relating to incorporated associations.

The Director-General's legal functions include:

- maintaining the Register of Incorporated Associations (a list of all incorporated associations in NSW)
- approving applications for incorporation
- approving Constitutions drafted by incorporated associations
- receiving annual summaries from incorporated associations (see [part 7 of this guide: Reporting to NSW Fair Trading](#))
- approving important changes to an incorporated association (such as changes to an association's Constitution, statement of purposes or name)
- cancelling an association's incorporation status
- monitoring and investigating an association's compliance with the AI Act and AI Regulation (and taking other action if necessary), and
- imposing fines (or taking other action if necessary) where there has been a failure to comply with the AI Act

In practice, the office of NSW Fair Trading deals with these matters on behalf of the Director-General (Commissioner of Fair Trading).

You can contact NSW Fair Trading if you need help with:

- forms to be lodged with NSW Fair Trading, and requests for extension of time to lodge forms
- information and assistance to ensure your association's Constitution complies with the AI Act
- requests for documents (for example, your association's Constitution or other documents lodged with NSW Fair Trading), and
- general advice about your obligations under the AI Act

NSW Fair Trading is **not** able to:

- give legal advice or pre-approve changes to your Constitution
- provide advice about how to interpret your association's Constitution, or
- resolve internal disputes within your association

What are the reporting requirements of an incorporated association?

An incorporated association is required to report to NSW Fair Trading:

- every year by lodging an annual summary of the association's financial situation (see [part 7 of this guide: Reporting to NSW Fair Trading](#))
- whenever a new public officer is appointed, or if the existing public officer's details change (see [part 2 of this guide: The public officer's legal role, powers and duties](#))
- if the address or name of the association change, and
- when certain key decisions are made by the association – for example, if the association passes a special resolution to change its name or its Constitution (see [part 4 of this guide: Annual General Meetings](#) and [part 5 of this guide: Special General Meetings](#))

The constitution and purpose of an incorporated association

Every incorporated association must have its own constitution. The constitution sets out in detail the procedures for running the association. Your association must follow its own constitution.



Why follow the constitution?

Your association's constitution informs the association's members how the association is to be run and managed, and how decisions will be made. Members can also contribute to (or raise concerns about) the association's decision-making where appropriate.

The constitution is legally enforceable by members of your association.

Certain matters must be covered by your association's constitution (these are listed in Schedule 1 of the AI Act). The constitution must also be consistent with laws, including the AI Act.

Apart from these matters, your association has a fair degree of flexibility in establishing its constitution.

The constitution should also cover the same matters dealt with in the model constitution, and may adopt those to suit its own requirements, so it complies with the AI Act and the AI Regulation.



Tip

The association's constitution of the association is a key source of information for public officers and office bearers, including secretaries.

You should read your association's constitution, have an up-to-date copy handy and make sure it's consistent with the requirements of the AI Act.



Caution – disputes

You can be challenged by a member of the association if you don't follow your association's constitution.

If there is a dispute between members of the association as a result of a failure of someone to follow the constitution, the constitution will set out the procedure for the resolution of internal disputes between members, as well as between members and the association.

The model constitution sets out a procedure to resolve disputes via mediation between the members and the association. NSW Fair Trading doesn't get involved in the resolution of these types of disputes.

An association's constitution must cover all the mandatory items listed in Schedule 1 of the AI Act.

An association can either:

- adopt the 'model constitution', or
- write its own constitution by:
 - drafting a new constitution from scratch, or
 - making changes to the model constitution



What is the 'model constitution'?

The model constitution is an example constitution that complies with the minimum requirements of the AI Act. The model constitution is set out in Schedule 3 of the AI Regulation and is published on the NSW Fair Trading website.

Many associations choose to adopt the model constitution when they become incorporated. An association can also convert to the model constitution after it incorporates (although this is less common).

The model constitution can change over time if there are changes to the IA Regulation.



Note

If your organisation has adopted the whole model constitution, any changes to the model constitution in the AI Regulation over time will apply to your organisation automatically. This means you should check to see what the most up-to-date model constitution is – as this is the constitution your association should be following.



Tip

The model constitution can seem like a good option if you don't want to draft your own constitution. But the model constitution is not 'model' in the sense of being the 'best' for every association – for example, if your association wants to access certain tax concessions it may need to consider whether the model constitution meets the necessary tax law requirements.

An association can change its constitution by following certain procedures. An association's current constitution must be lodged with, and accepted by, NSW Fair Trading to be valid.

The different options available to an association when drafting and changing its constitution can make it difficult for members and committee members, and the public officer to work out what the current official constitution is. Some specific guidance is provided below.

Writing your own constitution

If your association has written its own constitution, make sure the constitution covers all the matters required to be addressed by Schedule 1 of the AI Act. You should also consider the matters covered in the model constitution and decide whether they need to be addressed in your constitution. For example, what officer-bearers or committee members you will have and what titles they will be given?



Note – 'reading in' parts of the model constitution

If your association's constitution doesn't cover an item in Schedule 1 of the AI Act, the relevant model constitution provision that covers the particular item will be automatically included in your constitution.

For example, if your association's constitution doesn't specify the number of days' notice is required for a general meeting, then clause 30 of the model constitution will apply so that at least:

- 14 days' notice is required, or
- 21 days' notice if a special resolution has been proposed

The process of 'reading in' model constitution provisions can become very confusing, so it's better to make sure your own constitution covers all the required items listed in Schedule 1 of the AI Act.



Caution

Your association's constitution can't override the AI Act or any other laws.

If there is an inconsistency between the AI Act and a clause in your association's constitution, the clause in your constitution has no effect to the extent of the inconsistency (section 25(6) of the AI Act).

If the AI Act says something must be covered in your constitution, but your constitution doesn't cover it, then the relevant part of the model constitution will fill the 'gap' automatically (section 25(2) of the AI Act).

When reviewing your constitution, make sure you are reviewing the correct version. You can request a copy of your constitution from NSW Fair Trading to make sure you have the most up-to-date version.

If your association has written its own constitution, or made changes to the model constitution, you must submit a copy of your constitution to NSW Fair Trading. NSW Fair Trading will reject it (if there are problems with it), or register it.

Your association's constitution, including any changes to it, is not official (legally binding) until it is approved by and registered with NSW Fair Trading.



Tip

To check what your association's constitution is, follow the steps in the [flowchart tool](#) at the end of this part of the guide.

What is the role of members of an incorporated association?

The members of an incorporated association have certain rights and responsibilities under the AI Act, the association's constitution, and the law developed by the courts (judge-made law or common law).

Importantly, members of the association can attend general meetings and vote on particular matters such as:

- electing the committee
- changing the association's name, purposes, or its constitution
- amalgamating the association with one or more other associations, or
- winding up (ending) the association voluntarily

An association's constitution must set out the procedures for formal meetings where the members can make official decisions - an 'annual general meeting' and 'special general meetings'. Both annual and special general meetings are 'general meetings' in the model constitution.



The term 'general meeting'

In this guide, we use the term 'general meeting' to mean any meeting of the members of the incorporated association (whether the annual one or a 'special general meeting') which has been convened using the procedures for formal meetings of members in the association's constitution.

These procedures include giving notice of the meeting to members.

Under Schedule 1 of the AI Act an association's constitution must also set out the rights, obligations and liabilities of members, including:

- the qualifications (if any) for membership of the association
- any fees, subscriptions or other amounts to be paid by members
- the procedure for disciplining members and handling internal disputes
- the process by which members may inspect the books and records of the association, and
- the liability (if any) of the association's members to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association

The members of an incorporated association are not responsible for making decisions about the overall running of the association – that is the job of the committee (see below, 'What is a committee?').

However, if you have drafted your own constitution, you can require the committee to get member approval of certain decisions (for example, investment plans, or entering into contracts over a certain dollar value).

The members may be (and often are) involved in carrying out the association's activities (for example, helping teams with coaching), but this is different to having the **legal** responsibility for management of the association. Sometimes the line between these two can seem unclear or artificial. If the constitution doesn't specifically state that a decision must be made by the members, then it's likely to come under the overall responsibility of the committee. The committee may then choose to delegate 'the doing' to others (for example, involve members, volunteers or paid staff to actually do what is needed).

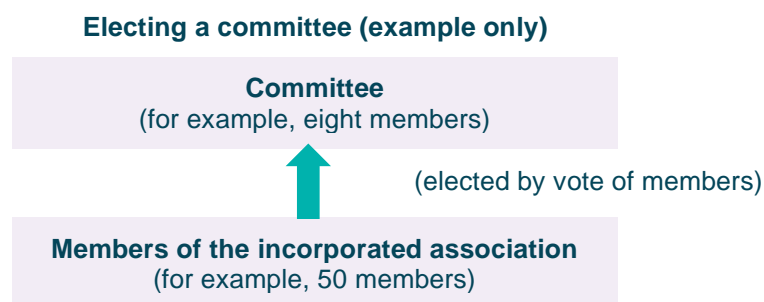
What is a committee in an incorporated association?

Managing an incorporated association is the responsibility of an elected committee. Sometimes other names are used for this governing body, such as the 'board', 'council', 'management committee' or 'committee of management'.

In many cases, the members of the association elect a small group of people.

Under the AI Act, the committee must be made up of at least three (or more) members of the association who are 18 years or over, and at least three of the committee members must reside in Australia.

If the association's constitution contains other qualifications or requirements for a committee member, these provisions must also be complied with, in addition to the requirements under the AI Act.



In some associations, all the members of the incorporated association are also members of the committee. This often happens in small associations or when the association first begins.

When all the members of an association are also on the committee, it can seem strange to separate the governance of the association from the actual doing of the work. However, it's important to understand the separate (legal) role of the committee.

Governance – how the committee differs from 'managers' of an association

Good governance practices are crucial to an association's ability to function, to achieve its objects, and to comply with all the legal, ethical and operational requirements of an incorporated association.

Incorporated associations, especially small associations, often struggle to distinguish between:

- the role and responsibility of an association's committee (to govern the association), and
- the role and responsibility of the staff, 'organisers' or key volunteers that are not on the committee (to manage the association)

While these two functions may be performed by the same group of people, distinguishing between issues of strategic governance and day-to-day management is important, as particular legal duties apply to the governance, but not management, of associations.

The 'governance' of an association is the responsibility of the committee, and generally refers to the direction and control of an association. This includes overseeing the affairs of the incorporated association and making sure its legal obligations are met.

Members of the committee have particular legal duties under the AI Act, under judge-made law and under the Constitution, such as:

- the duty of reasonable care, skill and diligence
- the duty to disclose interests
- the duty not to misuse information or position, and
- the duty to act in good faith

NSW Fair Trading is responsible for enforcing these requirements and members also have the right to take action to enforce them.

In larger associations, different people may be 'managers' (such as a CEO, finance manager or operations manager), and in smaller associations, 'key volunteers' are responsible for making decisions about the day-to-day running of the association, based on the strategy decided by the committee.

Normally these people don't need to comply with the legal duties that the committee must comply with, but occasionally, 'managers' or 'key volunteers' also need to comply with legal duties. This occurs where they are deeply involved in making key decisions that affect the operations of an association or who are influential in the affairs (financial or otherwise) of the association.

Are there special positions on the committee?

There are often special positions on a committee.

The people who take positions on the committee are called 'officers' or 'office bearers' or 'the executive' of the association. The titles of positions on a committee will vary between associations and will be set out in the constitution.

Some common positions and their traditional roles:

- **the chairperson** (or president) runs meetings and usually represents the association at public events
- **the deputy chairperson** (or vice-president) takes on the role of the chairperson when that person is not available
- **the treasurer** (or financial officer) deals with the financial affairs of the association
- **the public officer** reports to NSW Fair Trading and will conduct the role of secretary if no secretary is elected or if the public officer is separately elected as secretary (for further information about the role of the public officer, see [part 2 of this guide: Public officer's legal role, powers and duties](#)), and
- **the secretary** organises meetings, deals with documents and keeps minutes and other records of the association

The committee may have other members who are not office bearers. These are sometimes called 'ordinary committee members'. These members must also meet the duties that apply to members of the committee.



For more information about legal duties of committee members in your association, see our [Duties Guide](#).

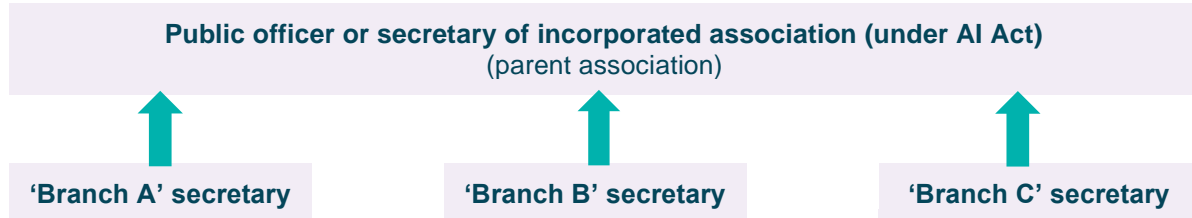
Branches and branch secretaries

A large association may have branches if its constitution provides for this.

Each branch will usually have its own branch secretary (and possibly its own committee), reporting to the secretary, public officer or committee of the parent association (see the diagram below).

In most cases, branches are not separately incorporated under the AI Act – the rules of the parent association control the branch, and a member of the branch is a member of the parent association. As a result, a branch secretary is not the ‘secretary’ or ‘public officer’ for the purposes of the AI Act. Only the secretary or public officer of the parent association performs these statutory roles.

Example of branch secretaries reporting to secretary of parent association



If an association chooses to establish branches, it's good practice for the governance arrangements for the branches to be explained in the association's constitution.

An association with branches should draft its own, tailored constitution rather than adopt the model constitution.



Who is the public officer?

The public officer of an incorporated association has responsibilities under the AI Act for submitting forms and documents to NSW Fair Trading and is the primary public contact person for the association.

The public officer may, but does not need to, be part of the committee. For example, the public officer could be an employee of an association (for instance, the general manager), who is neither a member of the committee nor a member of the association. Under the model constitution, the public officer is not a member of the committee.



Note

If you have just been appointed as the public officer (or you are the existing public officer and your details have changed), you need to notify NSW Fair Trading – even if your association (or the previous people in your role) has not done this in the past.

See [part 2](#) of this guide: [The public officer's legal role, powers and duties](#).



Who is the secretary?

An association will usually have a secretary (although this isn't a requirement under the AI Act).

The model constitution provides for a secretary and says the secretary of the association means:

- the person holding office under this constitution as secretary, or
- if no person holds that office – the public officer of the association

Depending on your association's circumstances, the public officer and secretary roles may be held by the same person or by two different people.

If you act as both the public officer and secretary of an association, it's important to understand in which capacity you are acting (that is, which 'hat' you are wearing) when acting on behalf of the association. This will ensure you comply with all your relevant duties for your particular roles.

There is no restriction at law or in the model constitution on a public officer standing for election as an association's secretary (or any other committee position). However, if your association hasn't adopted the model constitution, you should check your constitution to see if this is permitted or prohibited.

Consequently, unless your constitution states otherwise, a public officer can assume the role of secretary by:

- election (a person must be elected to both the role of public officer and the role of secretary), or
- automatic effective appointment (where a public officer's appointment as a secretary is automatically effective when they are elected as a public officer)

This distinction may be relevant if a new candidate stands for election, or the members wish to remove the secretary from office.



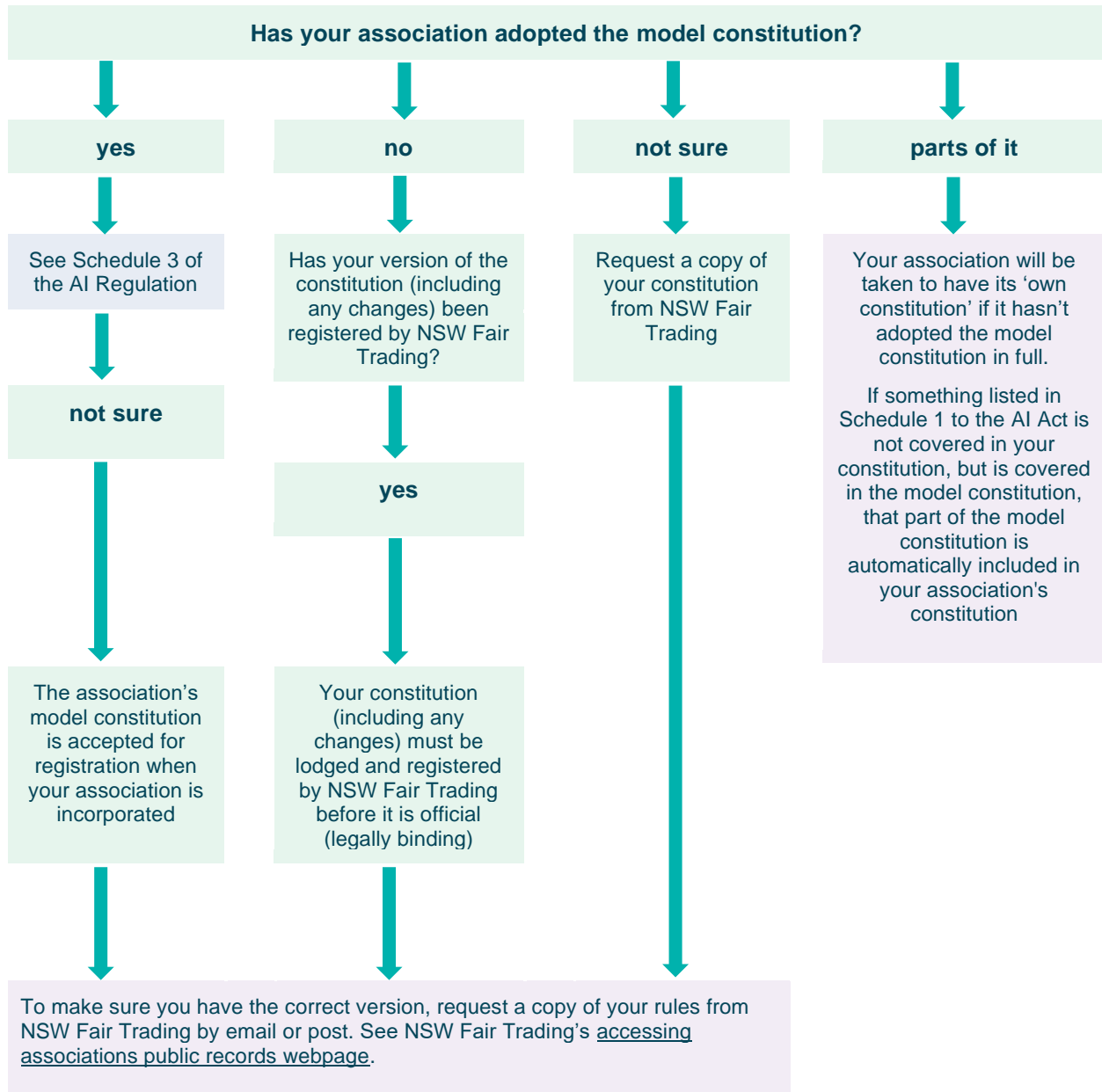
Note – this is not the 'Secretary' referred to in the AI Act and AI Regulation

The 'Secretary' referred to in the AI Act and AI Regulation is NSW Fair Trading (part of the NSW Department of Finance, Services and Innovation).

The AI Act gives the 'Secretary' powers and responsibilities to administer incorporated associations. In practice, the functions of the 'Secretary' are carried out by NSW Fair Trading.

In this guide, we use 'NSW Fair Trading' in place of 'Secretary'.

Tool 1 – Working out what your association's current constitution is



Beware

If your constitution doesn't cover all the items listed in Schedule 1 of the AI Act, certain clauses of the model constitution may automatically apply to your association.

If a clause in your constitution is inconsistent with the AI Act, the clause is invalid.



Part 2

**The public officer's legal role, powers
and duties**

The public officer's legal role, powers and duties

This part of the guide covers the public officer's legal role, powers and duties in New South Wales, including the legal requirements for appointing and removing a public officer of an incorporated association.

Under the *Associations Incorporation Act 2009 (NSW)* (**AI Act**) it's compulsory for the association's committee (or board) to appoint a public officer to the association.

The public officer doesn't have to be a member of an association's committee, although the AI Act and the *Associations Incorporation Regulation 2022 (NSW)* (**AI Regulation**) don't prevent an association's public officer from also holding the positions of committee member (or board member) and secretary. For some associations, a committee member will automatically be appointed the public officer by reason of their committee position.

However, it's important to understand that the role of a public officer is a separate and independent role from the role of a committee member. This guide is focused on the legal role, powers and duties of the public officer only.

Summary of key points

| | |
|---|---|
| Public officer | <p>The <i>Associations Incorporation Act 2009 (NSW)</i> (AI Act) regulates who can be the official 'public officer' of an incorporated association. In addition, an association's own constitution and policies may have particular requirements.</p> <p>Under section 34 of the AI Act, it's compulsory for the association's committee (or board) to appoint a public officer to the association.</p> <p>The public officer is, by virtue of being appointed to that office, an authorised signatory for the association (section 36 of the AI Act).</p> |
| How is the public officer appointed? | <p>In the case of a new association, the public officer is nominated in NSW Fair Trading's application form for registration of the association.</p> <p>Whenever there is a vacancy in the position of public officer, the association's committee must appoint a new public officer within 28 days after the vacancy arises (section 35 of the AI Act).</p> <p>The position of a public officer can, but does not need to, be held by a committee member.</p> |
| What happens after the public officer is appointed? | <p>Every new public officer must notify NSW Fair Trading of their details (full name, date of birth, address and the fact of the appointment) within 28 days after they have been appointed and update those details if they change.</p> <p>Associations may also need to notify the Australian Taxation Office of a change of public officer.</p> |
| When will the public officer's position become vacant? | <p>The AI Act and an association's constitution set out the circumstances in which the position of public officer will be automatically terminated (vacated).</p> |



| | |
|--|--|
| | <p>These circumstances may include the public officer becoming bankrupt, dying, becoming mentally incapacitated or if they cease to ordinarily reside in New South Wales (section 35 of the AI Act).</p> <p>A public officer's position also becomes vacant if they resign or if the association removes the public officer from their position (section 35 of the AI Act).</p> |
| What are the main legal tasks of a public officer? | <p>There are specific tasks required of the public officer in the AI Act and the AI Regulation. These include notifying NSW Fair Trading of any changes to key information about the association, collecting all association documents from former committee members, and returning all association documents to a committee member when the public officer leaves their role. An association's constitution may set out additional requirements and responsibilities.</p> |
| What are the legal duties of a public officer? | <p>The public officer has specific duties set out in the AI Act when performing their role and carrying out tasks. These statutory duties are in addition to general law duties that apply through the law developed by the courts ('judge-made' law, or common law).</p> |
| What happens if a public officer breaches any of their legal duties? | <p>There are consequences for breaching a duty under the AI Act and under judge-made law, including financial penalties (discussed further in this part of the guide).</p> |
| Does a public officer have the power to act on behalf of the association? | <p>Under the AI Act, a public officer has powers to act on behalf of the incorporated association in certain situations. The committee may (but is not required to) authorise the public officer to act on behalf of the association more broadly (this is called 'delegating').</p> |
| When is a public officer liable for the debts and liabilities of the association? | <p>A public officer is generally not personally liable (legally responsible) for the debts and liabilities of an association unless the public officer provides a personal guarantee (for example, agrees to act as guarantor for a loan of the association) or is found guilty of an offence under the AI Act (section 91).</p> |

Who can be the public officer?

The public officer is the principal contact point between NSW Fair Trading (and other regulators, for example, ATO, ACNC) and your association.

The public officer is legally responsible for a number of specific tasks required by the AI Act — for more information, see [part 7 of this guide: Reporting to NSW Fair Trading](#), and [NSW Fair Trading's webpage on the public officer](#).

The public officer role is very important to your association. Your association should appoint a person who has the experience, skills and qualifications to carry out the role of public officer.

Effective public officers should have a range of skills, including:

- enthusiasm for, and knowledge of, the association and its mission
- adequate time for the task
- interest in committee work
- good working relationships with other people involved in managing the association, and
- reliability and good organisational skills

In choosing your public officer, also take into account:

- any restrictions or qualifications required by law, particularly the AI Act (such as the requirement to reside in New South Wales and be at least 18 years of age)
- your association's constitution, and



- any policies your association has about this issue

More details about these requirements are outlined below.

AI Act requirements

A public officer of an association incorporated in New South Wales:

- must be a person who is at least 18 years old and ordinarily a resident in New South Wales (section 34(2) of the AI Act)
- can, but does not have to, be a committee member of the association (section 34(3) of the AI Act), and
- must not be bankrupt or mentally incapacitated (sections 35(1)(d) and (e) of the AI Act)

Unless the constitution of your association provides otherwise:

- the public officer may also hold another position in your association (including on the committee, such as being the secretary or president), and
- there is no upper limit to the public officer's age, subject to any other legislative requirements



Tip

Some associations accidentally appoint a public officer who is not allowed under law to hold the position. To avoid this, before someone is appointed as public officer, get them to sign a letter in which they:

- agree to act as the association's public officer
- confirm that they satisfy the AI Act requirements for being a public officer, and
- agree to notify the association if any of these matters, or their contact details, change

Who is a 'resident' of New South Wales?

The AI Act does not define who is a resident of New South Wales. However, generally, the public officer's primary residence (that is, the place where they usually live) must be in New South Wales.

Even if the public officer is not an Australian citizen or if they frequently travel outside Australia, they can usually still be the public officer if they are based in New South Wales. Check your association's constitution for any additional requirements.

What does 'bankrupt' mean?

Bankruptcy is a legal process where a person is declared unable to pay their debts. It offers a person protection from further action against them by people they owe money to. A person is 'declared bankrupt' when an actual declaration of bankruptcy has officially been made about them. The usual period of bankruptcy is three years. For further information about bankruptcy, see the [Australian Financial Security Authority website](#).

Bankruptcy records are publicly accessible on the National Personal Insolvency Index (NPII), so it's possible to check if a person has been declared bankrupt — you can [search the bankruptcy register online](#) (fees apply for searching the NPII).

Who is a 'mentally incapacitated' person?

Generally, a person may be mentally incapacitated if they are unable to make decisions for themselves, even after any necessary information, advice or support has been given to assist.

A person's mental capacity may be in doubt if they can't:

- understand information given to them
- consider issues, options and consequences of making a decision

- remember information long enough in order to make a decision, or
- communicate their decision

Note that a finding of mental incapacity in one area does not automatically mean that a person loses capacity in another area. In most cases, a person's mental capacity will not be in doubt. If an association's committee has concerns about the mental capacity of their public officer, they should consider appointing a new public officer and seek legal advice.

Your association's constitution and policies

Your association's constitution may provide for the appointment and removal of your public officer.

Check the constitution and any relevant policies of your association for additional requirements (over and above those in the AI Act) about who can be appointed as the public officer and the term (or length) of their appointment. For example, your constitution may require certain qualifications or experience for the role or may state that the person elected secretary or president of your association is to be the public officer.

However, the constitution and any policies of your association can't override the AI Act requirements – for example your constitution can't permit your public officer to reside outside of New South Wales or to be under the age of 18. The constitution can only provide for additional requirements over and above the AI Act requirements.

If your association is large, your constitution may state that the public officer can be a paid manager. In some large associations the constitution may allow for certain work of the public officer to be carried out by a specialist firm for a fee. However, even if the public officer delegates their functions to another person or firm, the public officer remains legally responsible for those duties being properly carried out (information on the public officer's duties follows in this part of the guide. Also see [part 7 of this guide: Reporting to NSW Fair Trading](#)).



Note

Make sure you have the most up-to-date version of your constitution, including any changes that the association's members and NSW Fair Trading have approved.

If you are confused about which constitution applies to you and whether the copy you have is up to date, the best thing to do is to contact NSW Fair Trading and request a copy of your association's constitution and purposes.

Does the public officer have to be on the committee (or board)?

No, there is no requirement in the AI Act for the public officer to be on the committee (or board). But the constitution of your association may state that the public officer is a member of the committee or that a person appointed to a particular position on the committee (such as the secretary) is required to take on the role of public officer. This is optional – it's not required by the AI Act or by the AI Regulation.

Note that, under the model constitution, if there is no person holding the office of secretary of the association, the public officer will be deemed the secretary until a secretary is properly elected, and during this period automatically be on the committee. Refer to your association's constitution for further information.

If your association's constitution doesn't require the public officer to be a member of the committee, it will usually be the case (unless your constitution expressly states otherwise) that the public officer can't vote at committee meetings.

Where to find a new public officer

In many cases, a new public officer is found from within the association – for example, there may be an existing member of the committee or member of the association who has suitable skills and interests.

If your association needs someone with particular expertise to fulfil the position (for example, because of the size and complexity of your association), ask around. New public officers are often found by the existing committee members (or others within the association) who can use their networks to find people who may be suitable for the role.



It may also be helpful for your association to look for someone by contacting the various volunteer brokers and support organisations. You can also advertise online or in your local paper. Organisations who can help include:

- [Volunteering Australia](#)
- [Go Volunteer](#)
- State-based volunteering bodies, such as [NSW Volunteering](#) and [NSW Volunteer Centre Network](#)
- [Community Builders NSW](#)
- [Goodcompany](#)
- [OurCommunity](#),
- [Volunteer Match](#), and
- [Pro Bono Australia](#)

For further ideas, speak to any peak body to which your association may belong – they may be able to put a note in their next newsletter or e-bulletin. For example, NSW Council of Social Service can point groups working in social services in the right direction for assistance in finding a public officer.

How is the public officer appointed?

Your association's committee (or board) has responsibility for appointing the public officer (section 34(1) of the AI Act). Your association may have special requirements for how the association appoints a new public officer when there is a vacancy.

The first public officer of your association is the person nominated as public officer in the application for registration of the association (section 34(5) of the AI Act).

If the position of public officer becomes vacant, the association must fill the vacancy within 28 days (section 35(3) of the AI Act) and notify NSW Fair Trading of that appointment within 28 days (section 34(6) of the AI Act). The circumstances in which the position may become vacant are discussed below.



Note

The public officer may be a member of the committee – but doesn't have to be.



Example

A sample resolution of a committee to appoint a new public officer is set out below:

The management committee appoints Ms Katherine Smith to be the public officer of XYZ Inc, effective from 1 January 2016 until the end of the next annual general meeting of XYZ Inc (or earlier resignation or termination in accordance with the constitution).

To help make sure the public officer is eligible to hold the position, the association may also wish to state in the minutes something like this:

The management committee has received (and will keep for its records) a written statement by Ms Katherine Smith confirming that she:

- *agrees to act as the public officer of XYZ Inc*
- *satisfies the AI Act requirements for being a public officer, and*
- *agrees to notify the management committee of XYZ Inc if any of these matters or her contact*

What happens after the public officer is appointed?

Report to NSW Fair Trading

Within 28 days after a new public officer is appointed, the public officer must notify NSW Fair Trading of (section 34 of the AI Act):

- the person's full name and date of birth
- the person's address (in NSW) for service of notices, being either the person's residential address or some other address at which the person can generally be found, and
- the fact that the person has taken office as public officer

If the existing public officer's details change (for example, their address) this information must also be provided to NSW Fair Trading.



Note

If you have just been appointed as the public officer (or you are the existing public officer and your details change), you need to notify NSW Fair Trading – even if your association or the previous people in this role have not done this in the past.

The public officer can advise NSW Fair Trading of these changes by lodging [Form A9 - Notice of appointment of public officer and Notice of change of association address](#).



Caution

If the public officer doesn't notify NSW Fair Trading within 28 days of their appointment, your association can be penalised.

The association's ongoing reporting responsibilities

The association has responsibilities for reporting to NSW Fair Trading about:

- the association's financial information in its annual statement
- certain decisions made by the association's members which must be approved by NSW Fair Trading before they can become official (such as changes to the association's name, objects or constitution)
- any change in the association's official address, and
- any change to the public officer

In practice, the public officer will generally be responsible for reporting the above issues to NSW Fair Trading on behalf of the association.

As mentioned previously, the public officer must also report to NSW Fair Trading any changes in the public officer's details.

See [part 7 of this guide: Reporting to NSW Fair Trading](#) for more information about the reporting responsibilities of the public officer of an incorporated association.

Who else should be notified of the appointment of a new public officer?

If your association is registered for tax purposes (for example, if it has an ABN), the association must also notify the Australian Taxation Office (**ATO**) of certain changes, including the appointment of a new public officer. The ATO must be notified of a change in public officer within 28 days of the association becoming aware of the change. For more information, go to [the ATO webpage 'Not-for-profit key personnel'](#).

**Tip**

An outgoing public officer should notify the ATO and other authorities of the new office holder's details before they leave their role. This will ensure a smooth transition from one person to the next.

In addition to the public officer, who is referred to as a 'primary contact', an association may authorise another person (including a committee member) to make enquiries to the ATO about tax affairs. A tax officer will only discuss your association's account with your authorised contact person. You will need to notify the ATO if your authorised contact person changes.

The ATO can be notified of a change of public officer or other authorised contact person by:

- sending the [form 'Change of Registration Details' \(NAT 2943\)](#) which you can request through the [ATO Public Ordering Service](#), or
- online, through the [Australian Business Register](#) or the ATO's [online services for business](#)

The ATO has a useful checklist '[Handover checklist: not-for-profit administrators](#)' on its website.

**Tip**

Consider whether there are other people, organisations or agencies that should be notified of a change of public officer. Check your association's policies and important documents such as funding agreements and leases.

When will the position of public officer become vacant?

Under the AI Act (section 35(1) of the AI Act), the position of public officer becomes vacant:

- if the public officer:
 - dies
 - resigns the office in writing addressed to the association's committee
 - is removed from office by resolution of a general meeting of the association (see below)
 - becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with their creditors or makes an assignment of their remuneration for their benefit
 - becomes a mentally incapacitated person, or
 - no longer ordinarily resides in New South Wales, or
- in such other circumstances as the association's constitution may provide

If any of these circumstances apply, the association doesn't have to pass a resolution removing the person as public officer. Their position is automatically terminated (vacated) under the AI Act. Where an automatic vacancy occurs, an association must appoint a new public officer within 28 days of the vacancy (section 35(3) of the AI Act).

The positions of public officer and all committee members also become vacant if an external administrator is appointed to run the association (section 56(1)(a) of the AI Act).

Public officers can also retire or be removed from office. Members of an association can remove a public officer by resolution of a general meeting (section 35(1)(c) of the AI Act). For more information about passing resolutions at general meetings, see [part 5 of this guide: Special General Meetings](#). The constitution of an association can provide other ways to remove a public officer (for example by resolution of the committee).



Note

If the position of public officer becomes vacant, the association must fill the vacancy within 28 days, and NSW Fair Trading must be notified within 28 days of the vacancy being filled.

The public officer will have access to documents and information about the association because of their role. After they have left their position, these documents must be returned to the committee within 14 days (section 35(2) of the AI Act). A penalty applies under the AI Act for failing to comply with this requirement.

It's good practice for the outgoing public officer to sign a statement confirming they have returned all relevant documents after they have finished in the position.



Tip

To assist the transfer of information from one public officer to the next, it's a good practice to:

- arrange a handover from the outgoing to the incoming public officer
- arrange for the new public officer to seek information from the outgoing public officer (for example, logins and passwords, financial records, copies of documents lodged with NSW Fair Trading) as soon as they are appointed or elected
- ensure that public officers store all information securely in a central place (such as the association's office or computer), including back-ups of electronic data, and
- provide a copy and explain the association's policies and procedures to the next public officer

Removing a public officer

Sometimes an association may have to remove a public officer from office (for example, because the person is not carrying out their duties properly). Under section 35(1)(c) of the AI Act, a public officer may be removed from office by resolution of a general meeting of the association.

What if the removed public officer is a member of the committee?

If the removed public officer is also a member of the committee, depending on your association's constitution, the person may be automatically removed as a committee member. However, check what is stated in your constitution.

What if the public officer is an employee of your association?

If the public officer is also an employee of your association, their employment arrangements should be carefully considered. If the person's main role is as the public officer, the association may no longer want to employ them.



Caution

If your association wants to remove a public officer who is also an employee, this will mean that the person no longer has a paid position within the association. Seek legal advice before taking any action to remove the public officer.



The association must ensure it complies with relevant contractual and statutory requirements about terminating (ending) a person's employment. Under the national *Fair Work Act 2009* (Cth), it's illegal to dismiss an employee on a range of grounds.

For more information on fair and lawful termination, see the [Fair Work Ombudsman's webpage 'Ending employment'](#).

The public officer's main tasks and legal obligations

The main tasks and legal obligations of a public officer of an incorporated association are contained in:

- the AI Act and the AI Regulation
- the association's constitution (which outlines the rules of the association)
- the association's policies and procedures (if any), and
- other legislation (for example, work health and safety legislation)

The laws in Australia relating to incorporated associations vary between each State and Territory. If your association is incorporated outside New South Wales, you will need to check the legislation that is relevant to you.



Tip

Make sure you have an up-to-date version of your constitution, including any changes that the association's members and NSW Fair Trading have approved.

If you are unsure whether the copy you have is up to date, contact NSW Fair Trading and request a copy of your association's constitution.

Your constitution may not reflect all the requirements of the laws for incorporated associations. If there are any compulsory legal requirements missing from your constitution, those requirements will still apply to your association.

The public officer is responsible for:

- notifying NSW Fair Trading of any change in the association's official address within 28 days
- collecting all association documents from former committee members and delivering the documents to the new committee member
- returning all association documents to a committee member within 14 days, when they vacate (leave) their role as public officer
- acting as the official contact for the association for any external (including governmental) body or person wishing to contact the association, including taking delivery of documents served on the association and bringing them to the attention of the committee as soon as possible, and
- custody of any documents as required by the constitution

For further information about external reporting tasks, see [part 7 of this guide: Reporting to NSW Fair Trading](#).

The public officer may authorise someone else – for example, the association's secretary, (if the public officer does not assume the role of the secretary), a committee member, volunteers or paid staff) – to do some or all of the particular tasks that they are responsible for (called 'delegating').

However, the public officer remains legally responsible for the tasks carried out by others. Therefore, public officers should be careful to supervise those carrying out their tasks, and to put in place policies and procedures to ensure the tasks are carried out properly.

Duties and obligations under other legislation

Other laws may also apply to the public officer as a person who is involved the management of the association.

Other laws that public officers should bear in mind are laws relating to employment, work health and safety (**WHS**), fundraising, liquor licensing, gaming, industrial relations, copyright, defamation, crime, privacy, and environment laws as well as local council by-laws. These laws can apply to the public officer, the committee, or to any member of the incorporated association.

Where such laws apply, the public officer – and the association generally – must comply with them. For example, criminal laws relating to theft and obtaining property by deception would apply to a public officer (or any other person) who was stealing from an association.



For further information about New South Wales WHS laws, see [our webpage 'Work health and safety laws'](#).

The legal duties of the public officer and other committee members

In New South Wales, the legal duties of public officers and committee members come from:

- legislation (the AI Act and the AI Regulation), and
- the law developed by the courts ('judge-made law' or common law)

'Statutory duties' under the AI Act generally apply to committee members (see sections 30A, 31, 32 and 33 of the AI Act) – this will include the public officer if the public officer is also a committee member.

A public officer's duties under judge-made law arise because of the position of trust that a person in that role holds and because they are trusted to act in the best interests of the association. These duties are sometimes called 'fiduciary duties'. These fiduciary duties under judge-made law overlap with statutory duties under the AI Act.

In practical terms, the combined effect of the AI Act requirements and judge-made law is that a public officer should:

| | |
|-----------|--|
| 1. | • act honestly, fairly and for a proper purpose |
| 2. | • not misuse their position or information |
| 3. | • disclose and properly manage conflicts of interest, and |
| 4. | • act with reasonable care, diligence and skill, and use their skills for the benefit of the association |

These duties overlap and are discussed briefly below (if there is a specific statutory duty under the AI Act, the section number from the Act is included).

Duty 1 – act honestly, fairly and for the benefit of the association

Acting honestly and fairly for the benefit of the association means that a public officer should:

- act in good faith (with integrity) and in the best interests of the association, assisting the association to achieve its objectives (as contained in the association's objects in its constitution)
- not act for their own benefit or the benefit of a particular group of members. Examples of acting for their own benefit include:
 - receiving bribes or 'kickbacks' from suppliers to the association



- acting in a way which treats a particular member of the association unfairly, or is not in the interests of members of the association, and
- using their powers to discriminate against members of the association they don't like or prevent them from attending or voting at a general meeting
- make sure the association is only doing things that are permitted by the association's constitution and objects (see section 26(1) of the AI Act), and
- make sure their decisions are based on what is best for the association and which will help guide the association towards achieving its objectives

Duty 2 – not misuse position or information

A public officer must also not misuse their position, or the information they have access to through their position, to (directly or indirectly) get an 'advantage' (financial or not) for themselves or any other person (such as a relative, friend or another association) or to cause detriment to the association (see sections 32 and 33 of the AI Act).

Some examples of misuse of information or position could be:

- using details from the register of members for a mail-out about a friend's business
- authorising their own petty cash reimbursements
- executing contracts for the association when they have a personal interest in the contract (for example a contract to purchase stationery from their own stationery business)
- providing information about job applicants for a position available in the association to a friend who is applying for the position, or
- revealing confidential information which is discussed at meetings held by the association (for example, client details, commercially sensitive plans or bids, employee or salary issues etc.) to people outside the association

Duty 3 – disclose and properly manage conflicts of interest (only applies when the public officer is a member of the committee)

A conflict of interest may arise when a public officer sits on the committee, and their personal interests (or interests of a friend, family, or another association) are (directly or indirectly) at odds (in 'conflict') with the interests of the association.

A public officer may have a 'conflict of interest' if an opportunity is available to the association that the public officer could profit from personally – for example, if the association was looking for an electrician, and the public officer owns an electrics business. See section 31 of the AI Act.



Example

The committee of XYZ Inc is deciding on pay rates for staff. The public officer of XYZ Inc is on the committee, and their partner is a paid staff member of the association.

The public officer must:

- disclose to the committee that their partner is a member of staff (as they may have a conflict of interest)
- not take part in discussions about their partner's pay rate
- not vote on motions about their partner's pay rate
- make sure that the minutes record what they told the committee, and also how the committee dealt with the matter (for example, they left the room while their partner's pay rate was discussed and voted on)
- record the disclosure in the association's conflicts of interest register (a book kept by the committee for the purpose of recording conflicts of interest), and
- include details of their interest in the financial statement submitted to members at the annual general meeting

To comply with the legal duty to manage conflicts of interest, a public officer needs to take a three-step approach when a conflict arises.

This means that a public officer should:

Disclose – tell the committee about any actual (you are being influenced), perceived (you could appear to be influenced) or even potential (you could be influenced) conflict of interest

For example, if the public officer is a member of a competing association, or owns a business that is tendering for a contract, they should tell the committee about any direct or indirect interest they have in the matter and include this in the statement provided to members at the annual general meeting (section 31(1) of the AI Act)



Manage – unless the committee otherwise determines, not be involved in any discussion about the matter in which they have an interest (section 31(5)(a) of the AI Act) and not take part in any decision of the committee with respect to the matter in which they have an interest (section 31(5)(b) of the AI Act)



Record – make sure any disclosure by a committee member of a conflict of interest is recorded in a book kept for this purpose. This book must be available for inspection by any member of the association on payment of a fee determined by the committee (sections 31(3) and 31(4) of the AI Act).



Tip

People's perceptions about whether there is a conflict of interest are important. So, even if you are legally allowed to participate in discussions or vote on matters in which you have a personal interest as one of the exceptions applies, it's usually good practice not to do so.

Avoiding conflicts of interest gives members and other people dealing with the association confidence that the association is well managed, and that decisions are being made fairly and for the benefit of the association.

Duty 4 – act with reasonable care, diligence and skill, and use your skills for the benefit of the association

This duty is sometimes called exercising due care and diligence (section 30A).

It means the public officer is required to meet the standard of an average public officer in an association of a similar type and size, taking into account their particular skills and capabilities.

Unless the association's constitution states otherwise, you do not have to have any particular qualifications to be a public officer. However, you do need to use whatever skills and experience you do have for the benefit of the association and put reasonable effort into the tasks you take on, be aware of your obligations and seek to perform those obligations to the level of your skill and experience.

This duty includes things such as:

- knowing the association's financial position and making sure the committee acts if there is a concern about whether debts can be paid on time (every member of the committee must do this, rather than leaving it entirely to the treasurer)
- attending and participating in meetings

- following up action items between meetings
- keeping the association's records up to date, and
- reporting to NSW Fair Trading and other regulators accurately and on time

If a public officer does not have the required skill or knowledge on a particular matter, this duty means that they need to seek help from someone who does. For example, a public officer may need to ask the organisation's treasurer or auditor for help in understanding the organisation's financial position.

Business judgements

The law recognises that running an association involves making informed decisions on behalf of the association. While a public officer will not be involved in committee decisions, they are automatically an authorised signatory (except to the association's bank account) and may be asked by the committee to sign official documents on behalf of the association as an authorised signatory. These decisions will not always, with the benefit of hindsight, benefit the association, but this does not mean the person making the decision has breached a duty owed to the association.

A decision will generally be considered to have been made with reasonable care if it can be shown that the public officer:

- made a decision or undertook a course of action honestly and for a proper purpose
- did not have a material interest in the subject matter of the decision
- informed themselves about the subject matter of the decision, and
- rationally believed that the decision or course of action was in the best interests of the association (even if in hindsight the decision was not the best choice for the association)

This defence is historically known as the 'business judgment rule'.



Note

The 'business judgment' rule only applies as a defence to the duty of reasonable care and diligence. It can't be relied on as a defence for any of the other statutory duties of the public officer discussed above.

Personal liability of committee members if acting

Under the AI Act (section 30B), committee members (including the public officer where they are also a committee member) and others acting under the direction of a committee member, are protected from personal liability for actions (or omissions) done in good faith for the purpose of exercising the committee members' functions under the AI Act.

What happens if a public officer does not comply with their legal duties?

Fair Trading's powers to investigate and intervene

If there are allegations that the public officer (or others involved in running the association) are not complying with their legal duties, or that the association is in breach of its legal obligations, NSW Fair Trading may decide to investigate the association or send a letter requesting compliance.

To establish whether your association is complying with its legal duties, NSW Fair Trading has the power to give any person (including a public officer) a written notice requiring that person to:

- produce such information as the person possesses in connection with the affairs of an association to NSW Fair Trading, and
- furnish such documents as the person possess in connection with the affairs of the association to NSW Fair Trading (section 85 of the AI Act)

An authorised officer from NSW Fair Trading may also enter the incorporated association's premises and inspect and copy any document that relates to the association's business to determine compliance with the AI Act (section 86). This can be done either with or without the association's consent in certain

circumstances, or in accordance with a search warrant issued by a magistrate (sections 86 and 87 of the AI Act).



Note

In exercising these powers, an authorised officer from NSW Fair Trading must do as little damage as possible. NSW Fair Trading must compensate all interested parties for any damage caused by an authorised officer in the exercise of these powers (unless the authorised officer was obstructed or hindered by the occupier of the premises).

NSW Fair Trading's powers to investigate and intervene also include:

- appointing a person as an administrator for the purposes of the provisions of Part 5.3A of the *Corporations Act 2001* if NSW Fair Trading is of the opinion that the association is, or is likely to become, insolvent (section 54(2) of the AI Act)
- appoint an administrator to administer an association's affairs if the association has persistently failed to comply with requirements of the AI Act or AI Regulation (section 55 of the AI Act)
- direct the association to apply for cancellation of its registration (section 73 of the AI Act)
- cancel the association's registration (section 76 of the AI Act), or
- apply to the Supreme Court to wind up the association (section 63(2) of the AI Act)

NSW Fair Trading must follow a procedure, including giving notice to the association. If your association receives such notice (or correspondence indicating that NSW Fair Trading or another person intends to take action to wind up your association), you should seek legal advice urgently.

Under the AI Act it's an offence for an incorporated association (or anyone involved in its activities – such as the public officer and committee members) to:

- refuse or fail to comply with a requirement of NSW Fair Trading (for example, to produce relevant documents, section 85 of the AI Act), or
- obstruct or hinder an authorised officer in the exercise of the officer's functions under the AI Act (section 92 of the AI Act)

Consequences of a breach of duty under the AI Act

It is an offence under the AI Act for any person, including a public officer, to obstruct or hinder an authorised officer (such as a NSW Fair Trading investigator) who is performing functions under the Act and a court may order them to pay a penalty.

If an association contravenes the AI Act (section 91(1) of the AI Act) or the AI Regulation, each committee member of the association is taken to have contravened the same provision if they knowingly authorised or permitted the contravention. For the purpose of this section the AI Act (section 91(1)), an association's public officer (not otherwise being a committee member) is taken to be a committee member.

Some breaches of the AI Act may attract criminal penalties, or the court may order imprisonment or both (sections 32, 33, 68 and 69 of the AI Act).

For example, in cases of insolvent trading, a public officer and any person who is a committee member of the association may commit an offence by allowing the association to incur debts while insolvent (sections 68 and 91 of the AI Act).

When facing liability for insolvent trading, a public officer and the association's committee members may have the following defences available to them:

- the debt was incurred without the public officer's or committee member's authority or consent, or
- at the time the debt was incurred the public officer or committee member did not have reasonable grounds:
 - to believe that the association was insolvent, or
 - to expect that if the association incurred the debt, it would become insolvent



Consequences of breach of duty under judge made law

If a public officer or committee member is in serious breach of their duties under judge-made law, they may be taken to court (sued) by the association and may have to pay compensation for any loss or damage they have caused.

Do penalties apply if the public officer is not a member of the committee?

Even though certain duties under the AI Act apply to current or former committee members only (for example, sections 31 to 33 of the AI Act), the public officer may be liable for certain offences under the AI Act even though they are not a member of the committee.

In particular, (as mentioned above) section 91(5) of the AI Act provides that the public officer will be considered to be a committee member for the purposes of that section and, consequently, may be taken to have contravened the AI Act or the AI Regulation if the public officer knowingly authorised or permitted the contravention. Also remember that a public officer may automatically be appointed secretary (and so will be a committee member) if there is no appointed secretary.

On the other hand, the duties under judge-made law apply only where someone has a 'fiduciary duty' to the association. A public officer will owe a fiduciary duty in respect of the duties of a public officer, but if the public officer is not on the committee and does not take part in making governance decisions for the association, then the scope of the fiduciary duty may be limited. It will depend on the circumstances – sometimes a person who is not 'technically' on the committee may need to comply with common law duties.



For more information, see [our duties guide](#).

Does a public officer have power to act on behalf of the association?

The AI Act gives the public officer certain express powers to act on behalf of the association – for example, to lodge documents with NSW Fair Trading and notify them of any changes to key information about the association.

Also, as the public officer is also an 'authorised signatory' of the association (sections 36(1) of the AI Act), the public officer has the power to execute documents on behalf of the association. For more information, see [part 7](#) of this guide: [Reporting to NSW Fair Trading](#).

Additionally, the AI Act allows an incorporated association to appoint a person to execute documents (including deeds) on its behalf either generally or in specific circumstances (sections 22 and 36(2) of the AI Act). A deed is a particular type of legally binding document similar to a contract and is required in some situations, such as for a transfer of land. Associations can also give 'express' or 'implied' authority to a person to make, vary, ratify or discharge a contract on behalf of the association (section 21 of the AI Act).

These types of authority are set out in the table below, with examples.

| Authority | Explanation | Example / comment |
|--------------------------|---|---|
| Express authority | Express authority is when the committee has given the public officer direct instructions. In substantial or important matters, the public officer should only enter into a contract (or legally bind the association) on express authority of the committee. | An example of express authority would be where the committee passes a resolution authorising the public officer to sign a building contract for a new kitchen area in the association's club house. |



| | | |
|--------------------------|---|--|
| Implied authority | <p>Implied authority to act on behalf of the association is a less precise source of authority. However, under judge-made law, a public officer has implied authority to do all the things a public officer in such a position would customarily (ordinarily) do.</p> | <p>A public officer of a multi-million-dollar sporting club with poker machines will have greater implied authority (customary power) than the public officer of a newly incorporated tiddlywinks club with seven members and a \$10 bank balance.</p> |
| | <p>A public officer generally has implied authority to legally bind the association in:</p> <ul style="list-style-type: none"> • matters incidental to their duties, and • matters incidental to their express authority | <p>Matters incidental to a public officer's duties might include:</p> <ul style="list-style-type: none"> • buying minute books, and • printing the association's constitution <p>Matters incidental to express authority might include:</p> <ul style="list-style-type: none"> • organising to pay GST and insurance after having been expressly authorised by the committee to buy an expensive piece of equipment for the association |

When is a public officer personally liable for the debts and liabilities of the association?

As a general rule, the public officer is not personally liable for the debts and liabilities of the association, including any costs, charges and expenses incurred in winding up the association, unless the AI Act or the association's constitution provides otherwise.

The same applies to committee members and members of the incorporated association (section 26(2) of the AI Act and rule 6 of the model constitution – **Note:** always refer to your association's constitution).

However, a public officer may be held to be jointly and severally liable (ie. together with and separately responsible) with the committee members for the debts and liabilities of the association if the debt was incurred and the association was insolvent or likely to become insolvent as a result of the debt (section 68 of the AI Act) and the public officer knowingly authorised or permitted the debt to be incurred. In addition, if a public officer has specifically accepted personal liability (for example, if they have given a personal guarantee for a loan by the association), the public officer will be liable for those particular debts.

Remember that a public officer can be liable for a breach of duty (see above) and in some circumstances can be ordered to pay compensation.



Part 3

Registers, records and official documents

Registers, records and official documents

This part of the guide covers the legal requirements for various registers, records and documents (including official and business documents) prepared and kept by incorporated associations in New South Wales.

The secretary is usually responsible for maintaining these registers, records and documents, and some duties under the AI Act are carried out by the public officer.

Summary of key points

| | |
|---|--|
| <p>What are the main legal requirements for registers, records and official documents?</p> | <p>The legal requirements for incorporated associations to prepare and keep documents, registers and records are outlined in this part of the guide and are found in the AI Act, the AI Regulation and in the association's constitution.</p> |
| <p>Types of registers</p> | <p>Every incorporated association must have:</p> <ul style="list-style-type: none"> • a members register • a committee member register, and • a register of all disclosures of conflicts of interest <p>This part of the guide discusses these registers, and other types of registers which an association may choose to have to assist in meeting its legal obligations in line with good governance practice. Sample registers are provided.</p> |
| <p>NSW Fair Trading's powers of inspection, entry and search</p> | <p>Under the AI Act (Part 8, Sections 85-94), NSW Fair Trading has certain powers, including to enter premises, to inspect and copy relevant documents of an incorporated association in connection with the affairs of an association and to verify that the AI Act is being complied with.</p> |
| <p>Can NSW Fair Trading refuse to register documents lodged?</p> | <p>In certain circumstances, NSW Fair Trading can refuse to register an association, or some documents, for example, when it considers a document to be false or misleading, incomplete, incorrect, or unreadable, if some provision is contrary to law or if the AI Act has not been complied with.</p> |
| <p>What are 'official and business documents' and what information must be included in them?</p> | <p>The AI Act sets out some specific requirements for official and business documents of incorporated associations in NSW. In some circumstances, federal legislation (such as company and tax laws) may also be relevant to an incorporated association.</p> |

The main legal requirements for keeping registers, records and official documents

Under the AI Act, an incorporated association must have:

- a register of committee members (section 29 of the AI Act)
- a register of any conflicts of interest of committee members (section 31(3) of the AI Act)
- records of the association's financial position and meeting minutes (section 50 of the AI Act)
- provisions in the association's constitution about a register of members (Item 2 of Schedule 1 of the AI Act)
- provisions in the association's constitution about the custody (safe keeping) of books, documents and securities of the association (Item 14 of Schedule 1 of the AI Act), and
- provisions about members' inspection of the association's books and documents (Item 15 of Schedule 1 of the AI Act)

An incorporated association may keep records of financial accounts and minutes of proceedings in electronic form, provided the records are able to be converted into hard copy and are able to be made available for inspection within a reasonable time (regulation 15 of the AI Regulation).

Incorporated associations may also need to keep certain records for certain periods of time.

The AI Regulation specifies that records of an association's financial position and meeting minutes must be kept for a period of no less than five years (regulation 15 of the AI Regulation).

Incorporated associations may also have obligations under taxation or employment legislation to keep certain records for specific periods of time. In addition, the [Charitable Fundraising Act 1991 \(NSW\)](#) (**Fundraising Act**) requires that any association conducting fundraising must keep records of income and expenditure in relation to each such appeal (section 22 of the Fundraising Act) and retain them for a minimum of seven years (regulation 17(1) of the [Charitable Fundraising Regulation 2021 \(NSW\)](#) (**Fundraising Regulation**).

Your association's constitution and policies may include additional record-keeping and register-keeping requirements, such as:

- a record of the authorised signatories, or
- a record of the current public officer and official address

Who is responsible for the association's documents, records, registers, books and documents?

The AI Act doesn't specify who in an association is responsible for keeping and maintaining the association's records, registers, books and documents.

Check your association's constitution, policies and procedures — sometimes the secretary, the treasurer or other members of the committee will be responsible for record keeping (or at least, have an obligation to provide documents to the public officer for safekeeping).

The custody of books, documents and securities of the association is a matter which must be addressed in an association's constitution (Item 14 of Schedule 1 of the AI Act). Under rule 42 of the model constitution, all 'records, books and other documents' must be kept in NSW:

- at the main premises of the association, in the custody of the public officer or a member of the association (as determined by the committee), or
- if the association has no premises, at the association's official address, in the custody of the public officer

To conform with the requirements under the AI Act, a committee member or public officer has 14 days to return all association documents after vacating office (sections 28(5) and 35(2) of the AI Act). Keep in mind your association's constitution may have additional provisions about the custody of documents.

Public officer's obligation under applicable taxation legislation

The public officer is responsible for ensuring that the association complies with any applicable obligations under relevant taxation legislation.

Note that, as an incorporated association, the association is taken to be an entity for the purposes of that legislation by virtue of section 202 of the *Income Taxation Assessment Act 1936* (Cth).

Financial records

You will need to determine whether your association is a 'Tier 1' or a 'Tier 2' association (sections 42 and 46 of the AI Act). The requirements for financial records vary depending on whether an association is Tier 1 or Tier 2.

An incorporated association must maintain the required accurate financial records that correctly record and explain its financial transactions and position (section 50(1)(a) of the AI Act).

The AI Act specifies requirements for the preparation of the financial statements and penalties for non-compliance. Financial statements must also comply with additional information requirements in the AI Regulation.

For more information about financial requirements, see [part 7 of this guide: Reporting to NSW Fair Trading](#).



Tip

Check what your association's constitution says about these matters.

Make sure you have the most up-to-date version of your constitution, including any changes that have been registered with NSW Fair Trading.

If you are unsure whether the copy of the constitution you have is up to date, contact NSW Fair Trading and request a copy of your association's constitution.

Requirements to keep and store documents

The AI Act requires the association to include provisions in its constitution addressing storing and providing access to the association's 'books, documents and securities' (Items 14 and 15 of Schedule 1 of the AI Act). If the model constitution is adopted, it addresses this requirement in rule 42.

Relevant documents will include:

- the members register and other membership records
- committee member register
- conflict of interest register (sometimes called a disclosure of interests)
- financial records and statements
- notices and minutes of meetings of members and the committee
- the original application for incorporation
- the certificate of incorporation
- originals of documents lodged with NSW Fair Trading and related correspondence (see [part 7 of this guide: Reporting to NSW Fair Trading](#))
- a record of authorised signatories
- a record of the current public officer and official address, and
- a copy of the association's current constitution



Tip

Some documents (such as minutes of meetings) are important historical records of your association. So, it's good practice to keep them permanently – rather than throw them out after five years.

The following documents may also be important to your association:

- certificates of title, documents relating to property (such as leases) and to other transactions, dealings, business activities or property of the association
- government licences and certificates
- insurance policies (including workers' compensation)
- trust deeds
- contracts and other documents relating to transactions
- mortgage and loan agreements
- investment documents (such as deposit notes, share scripts or debentures), and
- Australian Taxation Office correspondence and documents



Note

Computer or other electronic data containing any of the above (including back-ups on CDs, DVDs or external hard drives) may be considered documents of the association. They must be convertible into hard copy (regulation 15(2) of AI Regulation).



Tip

Many associations have a constitutional provision similar to rule 42 of the model constitution which gives the public officer the responsibility for keeping the association's records, books and other documents (except as provided elsewhere by the constitution).

Many associations also have a rule similar to rule 43 of the model constitution, which allows a member of the association to:

- inspect free of charge all the association's records, books, financial documents, constitution and minutes of all meetings, and
- take a copy of any of these documents (which may involve a charge)

The public officer is often also responsible for dealing with members' requests to inspect or copy documents.

Keeping documents safe and organised

There is no requirement under the AI Act to keep a register (a list) of all official and relevant documents (other than the committee member and conflict of interest register, which is required – see below). However, you should check your association's constitution.

Even if the constitution doesn't require your association to maintain a register of important documents, it's best practice (and demonstrates good governance) to keep such a register. This ensures you can locate documents when they are needed and inspected or copied in accordance with your constitution.



Note

It's good governance practice for the public officer or secretary (with the treasurer) to maintain accurate and up-to-date registers of all the association's relevant documents. Among other things, this will help everyone, especially the secretary or public officer, keep track of important documents as required by the AI Act.

Fundraising Act requirements

Generally, if your association intends to conduct a fundraising appeal, the association must hold an authority to fundraise from NSW Fair Trading under the Fundraising Act (section 9(1)).

Division 1 of the Fundraising Regulation and section 7 of the Fundraising Act outline some of the exceptions to this requirement to hold an authority (for example, religious organisations, local councils, universities, small fundraisers and organisations authorised to marry people).

The Fundraising Act requires all fundraisers to keep certain information and records for at least seven years, in English, at the registered office or address of the association (section 17 of the Fundraising Regulation). This information includes details on the income and expenditure involved during a fundraising appeal.



For more information about registering as a fundraiser, see:

- [our fundraising webpage](#), and
- [NSW Fair Trading's webpage on charitable fundraising](#)



Tip

If your association is authorised as a fundraiser under the Fundraising Act or exempt from the requirement to get an authority, it must keep records containing full details of certain matters about its appeals for support (section 22 of the Fundraising Act and regulation 17 of the Fundraising Regulation).

An organisation that fails to keep the required records can be penalised.

Fundraising laws are not discussed further in this guide but see [Tool 2 – a Checklist for records of fundraising appeals](#) at the end of this part of the guide.

Keeping registers

A register is simply a list (or database) of information. An incorporated association must keep several types of registers.

Every association must have a register of its:

- members
- committee members, and
- any declared conflicts of interest

Your association may choose to keep other registers, depending on the size of the association and how the association is run.

Register of members

Your association's constitution must contain provisions regarding a register of members (Item 2 Schedule 1 of the AI Act).

Rule 4 of the model constitution sets out an example of what information could be recorded in the members register - that is:

- each member's name and postal, residential or email address
- the date that person became a member, and
- when a person leaves the association, the date that person stopped being a member



Note

Under the model constitution, a member may request that information contained in the members register about them (other than their name) not be available for inspection (see rule 4(5)).

Your association may also have provisions in the constitution about members requesting that their personal details be restricted from the register.

If a member has requested that their details be restricted in accordance with your association's constitution, the association must take care that this information can't be accessed when the register is provided for copying or inspection, so long as the provisions of the constitution are not contrary to any law.



Tip

Check your association's own constitution (and any policies) about the members' register. You may have different or extra requirements to those in the model constitution. For example, your association's constitution may require the secretary or public officer to record the membership fees each member pays, or the date they paid it.



What is the purpose of the members' register?

The members' register (and the proper maintenance of it) is important because, among other things, it may help the association work out:

- who should be sent notices of the association's meetings
- who is eligible to vote at general meetings of the association
- the number of members at the end of each financial year, and
- the number of members in any or all classes of membership (if your constitution allows different classes)

The members' register may be open for inspection by members, free of charge and at any reasonable hour (see rule 4(2) of the model constitution). This enables transparency about who belongs to the association.

Note that the model constitution allows members to request that their entry on the register (other than the member's name) be kept private. If your association has such private entries, you will need to keep a full register that is protected from inspection, and a register available for inspection with restricted entries removed or redacted. See in **part 2** of this guide: '[The main tasks and legal obligations of a public officer](#)' and '[The legal duties of a public officer \(and other committee members\)](#)'

Your association's constitution must contain provisions concerning how the members' register is to be set up and maintained. If provisions are not included in your association's constitution, the model constitution will apply.

See [Tool 3](#) at the end of this part of the guide for an example of a members register.

Register of committee members

An association must keep a register of committee members (section 29(1) of the AI Act).

This register must contain (section 29(2) of the AI Act):

- the committee member's name, date of birth and residential address
- the name of committee members who hold the positions (if any) of president, vice-president, secretary or treasurer and the dates they hold the position
- the date on which the committee member takes office, and
- the date on which the committee member vacates office

This register must be kept in NSW at either the association's main premises or at the address that is recorded in the Register of Incorporated Associations as the association's official address (section 29(3) of the AI Act).

Any change in the committee's membership must be recorded on the register within one month (section 29(4) of the AI Act). Unlike other documents the AI Act mandates that the committee members register be available for inspection, free of charge, by any person (section 29(5) of the AI Act).

See [Tool 4](#) at the end of this part of the guide for an example of a committee member register.

Register of disclosed conflicts of interest

If a committee member has a conflict of interest (direct or indirect) in a matter being considered by the committee, that member must as soon as possible disclose the nature of this conflict of interest (section 31(1) of the AI Act).

The details of any disclosure of a conflict of interest must be recorded by the committee in a book specifically kept to record such disclosures (section 31(3) of the AI Act). This book must be available for inspection by any member of the association on payment of a fee to be determined by the committee but must not be the amount prescribed in Schedule 4 of the AI Regulation (section 31(3) of the AI Act). This book must be kept with the register of committee members (section 31(4) of the AI Act).

See [Tool 5](#) at the end of this part of the guide for an example of a disclosure of interests register.

**Every association *should* have a register of its:**

- documents

Documents register (optional)

As discussed above, it's good practice for the association to maintain a register of documents to keep track of the documents it must keep.

In some associations (particularly small, recently incorporated ones) it may be enough for the secretary or public officer to keep a simple register of all documents of the association (see the table below).

This single register approach may not work for larger associations, or those that have been running for many years simply because of the sheer volume of relevant documents. In associations with many documents, the association can maintain 'sub-registers' (see further below) to make finding documents easier.

If a document is lodged by email (for example a document lodged with NSW Fair Trading), you should keep both the sent email and the attachment (and note these details in the register).

See [Tool 6](#) at the end of this part of the guide for an example of a documents register.

Specific additional registers (optional)

Some associations may find keeping additional registers, such as registers of insurance policies or registers of assets, helpful. A list of possible extra registers is set out in the tables below.

It's a good idea to discuss registers and record-keeping generally with your association's auditor (if it has one) or the treasurer, to make sure you take the best approach.

Type of register – common seal

| | |
|-----------------------------|--|
| AI Act requirements | It's not compulsory to have a common seal, but if your association has one, you may want to include information about its custody and use in your constitution. |
| Explanation and tips | <p>A 'common seal' is a rubber stamp with the name of the association on it. It may be used for official purposes, such as signing a lease or title deed to property. (See 'Information and details that must be included on an association's documents and advertising' below).</p> <p>If your association has a common seal, it's good practice to keep a register of when the seal is used. Ideally, the register should cross-reference to the relevant committee minutes authorising its use.</p> |

See [Tool 7](#) at the end of this part of the guide for an example of common seal register.

Type of register – assets

| | |
|-----------------------------|--|
| AI Act requirements | <p>There is no specific requirement to keep a register of any kinds of assets (but see above for requirement to keep financial records).</p> <p>The AI Act covers how any surplus assets will be distributed if the association is wound up or dissolved (section 65 of the AI Act) and where property vests if the association's incorporation is cancelled by NSW Fair Trading (section 77 of the AI Act).</p> |
| Explanation and tips | <p>A register of the association's assets (for example, those worth more than a specific amount) is very helpful when:</p> <ul style="list-style-type: none"> • your association needs to calculate surplus assets (especially if your association is large) • preparing annual accounts |



- preparing your association's financial summary and statements (to be lodged with NSW Fair Trading after each annual general meeting see sections 45 and 49 of the AI Act), and
- an auditor wishes to check your financial records and assets (section 51 of the AI Act)

See [Tool 8](#) at the end of this part of the guide for an example of an assets register.

| Type of register – insurance policies | |
|---------------------------------------|--|
| AI Act requirements | There is no specific requirement to obtain, or have rules about, specific insurance cover, but check your association's constitution. |
| Explanation and tips | <p>Check your association's constitution, policies and operations for any requirements to take out particular insurance policies – for example, public liability, volunteers insurance, worker's compensation or directors' and officers' liability insurance.</p> <p>For more information, see our guide: Insurance and risk management for community organisations</p> |

See [Tool 9](#) at the end of this part of the guide for an example of a sample insurance register.

| Type of register – banking details | |
|------------------------------------|--|
| AI Act requirements | There are no specific requirements to keep, or have rules about, a register of bank accounts or signatories. However, the constitution must specify how the funds of the association are to be managed and in particular how cheques are drawn and signed (Item 13 of Schedule 1 of the AI Act and see for example rule 38 of the Model Constitution). |
| Explanation and tips | <p>If your association has bank accounts or credit cards, it's good practice for either the secretary or the treasurer to keep a register of them. A register of bank accounts (and details about online banking facilities) can help the treasurer manage the association's cash flow. And, for example, if the association is required to keep a special account for project or trust moneys or fundraising funds, this can be noted this in the register.</p> <p>Many associations (including those using the model constitution) have a rule in the constitution requiring cheques to be signed by two members of the committee (usually one of these signatories is the public officer or secretary). To keep track of who is authorised to sign cheques, it's good practice for the association to keep a register of signatories.</p> <p>Sometimes limits are made on bank account signatories' authority (for example, they may be authorised to transfer money only up to a specified amount). The association can record these limits in the register. It may also be useful to cross-reference the appointment of a signatory to the minutes of the relevant committee meeting.</p> |

See [Tool 10](#) at the end of this part of the guide for an example of a register of bank accounts.



Caution

Bank account details should never be kept in the same place as passwords or 'sample' signatures. It's poor practice and exposes a real risk of fraud.

Type of register – investments

AI Act requirements

There are no specific requirements to keep, or have rules about, an investments register.

Explanation and tips

If your association invests any of its funds (for example, in term deposits, managed funds or shares), or has been donated actual assets (for example, paintings), it's good practice for the association to maintain an investments register. It will help the association keep track of its investments (and, for example, the dates on which invested funds mature).

See [Tool 11](#) at the end of this part of the guide for an example of an investments register.

Type of register – keys

AI Act requirements

There are no specific requirements to obtain, or have rules about, a register of keys.

Explanation and tips

If your association has a number of keys – for example, to buildings, filing cabinets, petty cash boxes, vehicles – it's a good security measure for the association to maintain an up-to-date key register.

See [Tool 12](#) at the end of this part of the guide for an example of a key register.

Requests for restricting access to details on members register

As a general rule, members' details are stored in the members register, and that register can be inspected by members of the association (see rule 4 of the model constitution).

The model constitution includes a provision which allows members to seek to have access to their details on the register restricted (under rule 4(5) of the model constitution). Under the model constitution a member can request, without cause, that all but their name be unavailable for inspection by others. While the model constitution doesn't provide a specific form for members to make this request, a request would normally be made in writing to the public officer. Your constitution may have its own rules about who can access information on the members' register and how that information may be restricted.



Example

Sally is a member of an association whose membership is limited to victims of family violence. Sally would prefer that her address telephone number not be available to other members. Sally writes a letter to her public officer, and requests that access to her details on the members register be restricted to her name only.

NSW Fair Trading's powers of inspection, entry and search

NSW Fair Trading may use its powers of inspection, entry and search to establish whether your association is complying with the AI Act and the AI Regulation.

While Fair Trading's powers under the AI Act are rarely used, they are extensive. NSW Fair Trading has the power to give a written notice requiring your association to provide NSW Fair Trading information and documents possessed in connection with the affairs of your association (AI Act section 85(1)).

An authorised officer from NSW Fair Trading may enter any premises at which an association carries on any activity and may inspect or take copies from any document relating to the carrying on of business at or from the premises (section 86(1) of the AI Act). However, an authorised officer may not enter any part of a premises that is used for residential purpose and may not enter the premises outside the ordinary hours of operation for the association (section 86(2) of the AI Act).

Access to the premises may be given either with the consent of the occupier, or without consent in certain circumstances, or in accordance with a search warrant issued by a Magistrate under section 87 of the AI Act. Generally, the occupier will be given 24 hours' notice that these powers are to be exercised, however this notice requirement may be waived by NSW Fair Trading in certain circumstances.

Can an association be penalised for failing to comply with NSW Fair Trading requirements regarding inspection, entry and search?

Yes. Under the AI Act it's an offence for an association (or anyone involved in its activities) to:

- refuse or fail to comply with any requirement of an NSW Fair Trading authorised officer, for example, to produce documents related to the affairs of an association (section 85 of the AI Act)
- knowingly give false or misleading information or false or misleading documents or information to NSW Fair Trading (section 85(2) of the AI Act), or
- obstruct or hinder a NSW Fair Trading authorised officer who is exercising their powers under the AI Act (section 92 of the AI Act)

Can NSW Fair Trading refuse to register documents lodged?

NSW Fair Trading can refuse to register or may reject documents lodged by an association for reporting purposes for certain reasons (section 99 of the AI Act).

These include if NSW Fair Trading:

- considers the document is not complete (by omission or misdescription), is not able to be read (or opened in the case of electronic material), contains an error, alteration or erasure, or doesn't comply with the law or the AI Act, or
- believes the document contains a matter which is false or misleading

For more information, see [part 7](#) of this guide: [Reporting to NSW Fair Trading](#).

Information that must be included on an association's documents and advertising

The main legal requirements for the official and business documents of an incorporated association in New South Wales arise under the AI Act and various other laws.

To satisfy the requirements under the AI Act your association must always legibly display the full name of the association, including 'Incorporated' or 'Inc' on all official and business documents, such as letters, statements, invoices, notices, publications, orders and receipts (section 41 of the AI Act).



Note

Incorporated associations must include the word 'Incorporated' or the letters 'Inc' at the end of their name (section 18(1)(a) of the AI Act).

Your association can be fined for failing to include its full name and registration number legibly on any of the documents listed above.



What if the association is a 'Registrable Australian Body' under the Corporations Act?

Some New South Wales associations are registered as a 'Registrable Australian Body' with the Australian Securities and Investments Commission (**ASIC**) under Part 5B.2 of the Corporations Act.

Through this registration, these associations can operate in any state or territory in Australia (they are not restricted to operating only in New South Wales). Registration means that associations must meet some Commonwealth Government reporting requirements in addition to reporting requirements for incorporated associations.

If your association is a Registrable Australian Body, the association must ensure that particular details are displayed on all of the association's 'public documents' and negotiable instruments (for example, cheques).

'Public documents' under the Corporations Act are defined in section 88A of the Corporations Act and include any document which is signed, issued or published by or on behalf of the association.

The details required to be displayed on public documents and negotiable instruments (in addition to any requirements for incorporated associations generally) are:

- your association's name
- your association's Australian Registered Body Number (**ARBN**) or, if the last 9 digits of your Australian Business Number (**ABN**) are identical to the last 9 digits of its ARBN, the words 'Australian Business Number' followed by your association's ABN
- your association's place of origin (that is, New South Wales), and
- notice of the members' limited liability (section 601DE of the Corporations Act)

The public officer or secretary of an association is usually responsible for ensuring that the association complies with these requirements.



Tip

A Registrable Australian Body's details are usually set out on public documents and negotiable instruments (such as cheques) in this form:

*[name of incorporated association] [notice of members' limited liability] [place of origin]
[incorporation registration number] [ABRN/ABN number]*

For example (if the last 9 digits of an association's ABRN are identical to its ABN):

'XYZ Inc Limited Liability (NSW) A1234567A, ABN 123 456 789'

What if the association has an ABN or is registered for GST?

It's not compulsory for an association to have an ABN, unless it has a goods and services tax (**GST**) turnover of \$150,000 or more for non-profit organisations, or over \$75,000 for other businesses, (in which case it is required to register for GST and must have an ABN to do this). However, even if your association is not required to register for GST, you can still apply for an ABN.

According to the Australian Taxation Office (**ATO**), if an association has an ABN, the ABN should be included on:

- invoices
- quotes
- renewal notices (such as for subscriptions)
- order forms
- receipts
- contracts or lease documents
- letterheads, emails or internet records (web pages)
- records of over-the-phone quotation of an ABN, and
- catalogues (and other promotional documents) the association produces



For more information about ABNs, see:

- the [ATO webpage 'ABN registration for not-for-profits'](#)
- [our webpage 'How to set up your organisation'](#)

If your association is registered for GST

If your association is registered for GST under Part 2-5 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**), any invoices issued by the association that are 'tax invoices' must:

- be in the form approved under the GST Act (section 29.70(1)(b) of the GST Act), and
- set out your association's ABN and name (section 29-70(1)(c) of the GST Act)



For further information about GST, see the [ATO webpage 'GST registration for not-for-profits'](#).

What if the association has deductible gift recipient (DGR) status and can receive tax deductible donations from the public?

Some associations are granted DGR status under the *Income Tax Assessment Act 1997 (Cth)* (**Income Tax Act**). This status allows them to receive tax deductible donations from the public.



For more information on DGR status and tax issues generally, go to [our webpage 'Understanding the tax landscape'](#).

If your association has DGR status, according to section 30-228 of the Income Tax Act, the receipt for a tax-deductible donation must contain the following information (in addition to general requirements for public and business documents):

- your association's ABN
- the date the donation was received
- the fact it is a receipt for a donation
- the name of the organisation or person making the donation
- the name of the fund
- the signature of a person authorised to act on behalf of the fund
- the name of the donor
- the type of donation (money or property) and value, and
- if applicable, an indication that the fund is listed on a particular register maintained under subdivision 30-B of the Income Tax Act (such as the Register of Cultural Organisations)

If your association issues a receipt for a donation in relation to an eligible fundraising event, there are extra requirements.



For more information go to the [ATO's webpage on not-for-profits and gifts and fundraising](#).



Tool 2 – Checklist for records of fundraising appeals

This checklist is for associations that are registered as fundraisers under the Fundraising Act.

The checklist covers the details your association should include in your association's records of fundraising appeals to satisfy the requirements of the Fundraising Regulations

| Order | Description | Done |
|-------|--|--------------------------|
| 1. | Funds and assets received as a result of the appeal | <input type="checkbox"/> |
| 2. | What happened to all those funds and assets | <input type="checkbox"/> |
| 3. | The amount applied to the purposes or objects of the appeal and how it was distributed | <input type="checkbox"/> |
| 4. | Any expenditure on assets | <input type="checkbox"/> |
| 5. | Any expenditure on wages, salaries, commissions and other remuneration in relation to the appeal | <input type="checkbox"/> |
| 6. | Any other administrative expenses related to the appeal | <input type="checkbox"/> |
| 7. | Any other expenditure related to the appeal | <input type="checkbox"/> |
| 8. | The name and address of any commercial fundraiser that conducted or administered part or all of a fundraising appeal on behalf of the association | <input type="checkbox"/> |
| 9. | Details of any condition that has been imposed on your association in accordance with the Fundraising Act and if applicable your authority to fundraise | <input type="checkbox"/> |
| 10. | The name of the person from your association who is responsible for overseeing the association's involvement in the appeal | <input type="checkbox"/> |
| 11. | The name and address of each person who participates in the appeal and the activities undertaken | <input type="checkbox"/> |
| 12. | The name and address of each person who gained a financial advantage from the appeal (other than as a person for whose benefit the appeal was held or other than as a supplier of goods or services) and details of the reason for, and nature and amount of, that financial advantage | <input type="checkbox"/> |
| 13. | The name and address of every person, or name or description of every class of people, on whose behalf the appeal was made | <input type="checkbox"/> |
| 14. | Copies of the written consent provided by each intended beneficiary of the appeal (if practicable) | <input type="checkbox"/> |
| 15. | The dates on which the appeal started and finished | <input type="checkbox"/> |
| 16. | Details of receipts issued | <input type="checkbox"/> |
| 17. | Minutes containing details relating to the fundraising appeal that is transacted by the governing body and a general or extraordinary general meeting held. | <input type="checkbox"/> |



Tool 3 – Sample members register (mandatory)

This is a sample members register for an incorporated association in New South Wales.

Adapt this register as necessary for the purposes and requirements of your association and its constitution.

Your association must keep a members register, however the content, maintenance and rules regarding inspection may be modified by your constitution. **Remember** – members may have a right under your constitution to have their details suppressed from registers available for copy or inspection (you may choose to keep one full register, and one register for inspection with suppressed entries redacted or removed).

| Member number | Name | Address | Date member approved | Membership class (if any)* | Date membership ended | 2012 | | | 2011 | | |
|---------------|-----------|---|----------------------|----------------------------|-----------------------|-------------|------|--------|-------------|------|--------|
| | | | | | | Receipt no. | Amt | Date | Receipt No. | Amt | Date |
| | (i) | (ii) | (iii) | (iv) | (v) | (vi) | | | | | |
| 1 | Ima PAYE | 21 Smith Street Burwood New South Wales | 8/1/2008 | Ordinary member | | 2410 | \$10 | 9/1/12 | 4567 | \$15 | 8/1/11 |
| 2 | Mei TAN | 5 Garden Court Woodend New South Wales | 9/1/2012 | Ordinary member | | 2413 | \$10 | 9/1/12 | | | |
| 3 | Reg JONES | | | | 20/2/2012 | | | | | | |

* **Classes of membership.** These will vary, depending on your association's constitution, but may include: ordinary member, associate member, life member, honorary member.

General notes:

- (i) Member's full name
- (ii) Postal, residential or email address of the member
- (iii) Date of admission
- (iv) See above for class of membership (will vary according to each association's constitution)
- (v) The date the person stopped being a member
- (vi) Membership fees can help to establish whether a member is a 'financial member'. This may have implications for voting at meetings and use of the association's facilities.



Tool 4 – Sample committee members register (mandatory)

| Year | Committee member name | Position | Date of birth | Residential address | Date member took office | Date member vacated office |
|------|-----------------------|-----------|---------------|--------------------------------|-------------------------|----------------------------|
| 2013 | Joe Bloggs | President | 01/01/1965 | 4 Yellow Street, Woodvale, NSW | 3/3/2010 | 3/3/2012 |

Tool 5 – Sample disclosure of interests register (mandatory)

| Date of entry | Committee member name | Committee meeting date | Details of conflict of interest | Did the committee member take part in related deliberations or decisions? |
|---------------|-----------------------|------------------------|--|---|
| 2/1/2011 | Joe Bloggs | 03/02/2012 | J Bloggs is currently employed by Greener Grass mowing a company that the committee had considered hiring to maintain sporting fields. | No |

Tool 6 – Sample documents register (optional)

| Document type | Document name | Description | Location | Comments (including retention, renewal, review dates where applicable) |
|---|--|--|--|---|
| Incorporation and governance | Certificate of Incorporation | Certificate based by NSW Fair Trading dated 1 July 2009 | Folder 1 in the office | Registration number A1234567A |
| | Constitution of the association | Current version (with changes as registered with NSW Fair Trading as at 2 December 2009) | Folder 2 in the office | See minutes of meeting of members on 1 November 2009 for special resolution approving changes |
| Documents lodged with NSW Fair Trading | Policies and procedures manual | Contains current policies and procedures | Folder 3 in the office | Date for review 1 January 2018 |
| | Application for incorporation of association | Lodged with NSW Fair Trading on 1 June 2008 | Folder 1 in the office | Retain for 5 years 1 June 2013 |
| | Financial statement (2015) | Lodged with NSW Fair Trading on 2 November 2010 | Folder 1 in the office | Retain for 5 years 1 June 2015 |
| | Application for alteration of constitution | Lodged with NSW Fair Trading on 2 November 2016 | Folder 2 in the office | Retain for 5 years 1 June 2015 |
| | Financial statement (2016) | Lodged with NSW Fair Trading on 2 November 2016 | Folder 3 in the office | Retain for 5 years 1 July 2021 |
| Property | Certificate of title | CT Vol 3603 Fol 150 | Kept in safe custody at Mooncorp Bank, 1 George Street, Sydney | Sporting club at 3 Riverside Street, Sydney |



Tool 7 – Sample common seal register (optional)

This is a sample common seal register for an incorporated association in New South Wales. Adapt this register as necessary for the purposes and requirements of your association.

| Date | Document | Authorising signatures | Minute reference | Location |
|----------|---|---|------------------------------------|---|
| 2/1/2011 | Contract of purchase of clubhouse at 1 Green Street, Blackfield | Mr J Bloggs, President Ms T Bag, Secretary | Minute No 3 of meeting 1/1/2012 | Original document kept in Folder 1.1 in club house office |

Tool 8 – Sample assets register (optional)

This is a sample assets register for an incorporated association in New South Wales. Adapt this register as necessary for the purposes and requirements of your association.

| Date purchased or acquired | Description of assets | Cost or valuation | Asset ID number | Disposed of... | ... at (location) | ... date/manner | ... for (consideration received) |
|----------------------------|---|-------------------|-----------------|----------------|--|-----------------|----------------------------------|
| 5/4/10 | Overhead Projector (IBM model 246x) | \$1,000.00 | 1 | Club House | 2/2/12 by Sam Slick Auctions Pty Ltd at public auction | | \$800.00 |
| 5/5/10 | Desk (wood veneer) with 3-drawer return | \$600.00 | 2 | | | | |

Tool 9 – Sample insurance register (optional)

This is a sample insurance register for an incorporated association in New South Wales. Adapt this register as necessary for the purposes and requirements of your association.

| Policy number | Company/ Broker | Type of policy | Premium \$ | Date paid | Period of insurance From: — To: | Type of cover and exclusions | Location of original document |
|---------------|-----------------|------------------|------------|-----------|---------------------------------------|---|-------------------------------------|
| 0132561 | PMA Insurance | Public Liability | \$320 | 30/6/11 | 1/7/10 — 30/6/11 | Excess of \$200 on fusion and exterior for storm damage | 'Insurance' file kept in the office |

Tool 10 – Sample register of bank accounts (optional)

This is a sample register of bank accounts for an incorporated association in New South Wales. Adapt this as necessary for the purposes and requirements of your association.

| Financial institution | Branch | Account names and number | Signatories | E-banking details | Comments |
|---------------------------|--|--|--|--|--|
| Mooncorp Building Society | Upper Black Stump (1 Brown Street, Black Stump) | XYZ Club Inc general account BSB-343-01 Acc. 123456 | Mr X Ray, Treasurer Ms T Bag, Secretary | Username: XYZINC12938 Password: [known by signatories only] | Overdraft limit of \$5,000 with cheque facilities Delegation of authority to signatories: see minutes of meeting of committee 3 July 2011 |

Caution: The signatories **must** act in the best interests of the association when signing blank cheques or forms and should carefully guard passwords for e-banking.



Tool 11 – Sample investments register (optional)

This is a sample investments register for an incorporated association in New South Wales. Adapt this register as necessary for the purposes and requirements of your association.

| Financial Institution: Mooncorp Building Society | | | | | Branch: Upper Black Stump | | |
|--|-----------------|----------|---------------|-----------------|---------------------------|-----------------------|---|
| Date | Principal | Rate | Maturity date | Interest earned | Rec/Chq Number | Instructions/Comments | |
| | Amount invested | Redeemed | | | | | |
| 1/1/09 | \$100,000 | 1/5/10 | 10% | 1/6/09 | 8% | 16534 | Redeemed by authority of committee minute No 3/2010 |

Tool 12 – Sample key register (optional)

This is a sample key register for an incorporated association in New South Wales. Adapt this register as necessary for the purposes and requirements of your association.

| Date | Key number | Description | Person | Signature | Date of return | Comments |
|--------|------------|-----------------------------------|----------|-----------|----------------|----------|
| 1/1/07 | E-1 | Master key to club exterior doors | Ima Late | Ima | | |



Part 4

Annual General Meetings



Annual General Meetings

This part of the guide covers preparing for, conducting and minuting annual general meetings (AGMs) of an incorporated association in New South Wales.

Summary of key points

| | |
|---|---|
| <p>What is an Annual General Meeting?</p> | <p>An annual general meeting (AGM) is a meeting of the members of an incorporated association required to be held within 18 months after the association is registered (section 37(1) of the AI Act).</p> <p>In subsequent years, an association's committee must ensure that an AGM is held within six months after the close of the association's financial year or within such further time as may be allowed by NSW Fair Trading (section 37(2) of the AI Act).</p> |
| <p>What is a notice of meeting and a notice of motion?</p> | <p>A notice of meeting is a written notice that a meeting is going to take place at a specified time.</p> <p>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.</p> |
| <p>Giving notice of an annual general meeting</p> | <p>This part of the guide sets out the special requirements for notices of AGMs. A sample notice and checklist tools are provided at the end of this part of the guide.</p> <p>Schedule 1 of the AI Act provides that an association's constitution is required to outline the time within which, and the manner in which, notices of an AGM and notices of motion are to be given, published and circulated.</p> |
| <p>Procedures for an annual general meeting</p> | <p>At an AGM, certain matters must be considered by members and elections of the committee may be held.</p> <p>A sample agenda, with guidance for the secretary, is provided at the end of this part of the guide.</p> <p>Schedule 1 of the AI Act provides that an association's constitution is required to outline the procedure at general meetings, including the quorum and whether voting by proxy is permitted. For further information about what needs to be considered by members at an AGM refer to your association's constitution</p> |
| <p>Voting methods</p> | <p>There is a range of ways in which people who are entitled to vote at a meeting can do so.</p> <p>A variety of voting methods are set out in a tool at the end of this part of the guide.</p> <p>Schedule 1 of the AI Act provides that an association's constitution is required to outline the kinds of resolution that may be voted on by means of postal or electronic ballot</p> |



| | |
|---|--|
| What are 'minutes'? | Minutes are a written record of what was discussed and decided at a meeting. One of the key legal tasks of the secretary of an incorporated association is to make sure that accurate minutes are made of the association's AGMs, and of any special general meetings, and that these minutes are kept in a safe place. Section 50 of the AI Act sets out the legal requirements for the minutes of the association. Those requirements are discussed in this part of the guide. |
| Preparing and keeping minutes | This part of the guide sets out what should be included in meeting minutes and how they should be kept. It also contains tips and tools for drafting minutes, including 'action lists' which summarise people's responsibilities arising from the AGM. |
| Confirming and verifying minutes | The secretary should ensure, at each AGM, that the members pass a resolution confirming the minutes of the previous meeting, and that the chairperson signs a copy of the confirmed minutes. This part of the guide explains this procedure and includes a tool to help you. |
| Special general meetings | In addition to AGMs, an incorporated association may hold other general meetings - usually these are called 'special' general meetings (SGMs) and they are specially convened to deal with a particular matter that has arisen, or which has been proposed by a member or members. For more information, see part 5 of this guide: Special General Meetings . |

What is an Annual General Meeting?

An AGM is a meeting of the members of an incorporated association required to be held:

- within 18 months after its registration (section 37(1) of the AI Act)
- within six months after the close of the association's financial year (section 37(2)(a) of the AI Act), or
- within such further time as may be allowed by NSW Fair Trading or prescribed by the AI Regulation (section 37(2)(b) of the AI Act)

An association's constitution must specify the financial year for the association.

An AGM is a particular type of 'general meeting' of the association (a meeting which all members of the association are entitled to attend, and that is convened in a formal way).

The business of an AGM is normally to:

- confirm the minutes of the last AGM and of any special general meeting held since that meeting
- receive, from the committee, reports on the activities of the association during the last financial year
- elect or appoint office bearers and ordinary members of the committee
- receive and consider the association's financial statements and, if required, the auditor's report (this must be done at the AGM and may not be done at any other general meeting), and
- conduct other business of which notice has been given to the members

An AGM must be convened using the procedures set out in the association's constitution.

An association will have its own rules and procedures for giving members notice of an AGM (see for example rule 30 of the model constitution).

An AGM must:

- if required, elect new committee members (or board members) and possibly new office-bearers (that is, the president or chairperson, vice-president or vice-chairperson, treasurer and secretary – if no secretary is appointed the public officer will hold the position) for the following 12 months, and
- report to members on the year's activities, including financial performance and events

AGMs will also usually:

- decide on any proposed changes to the association's name, objects and constitution, and
- discuss any significant issues relevant to members

What is a notice of meeting and a notice of motion?



What is a notice of meeting?

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

A notice of meeting should set out information (such as the date, time, place, and what is proposed to be considered at the meeting) so that those entitled to attend the meeting know what it's about and can decide whether to attend.

The contents of a notice of meeting may vary significantly from association to association, depending on the type of association and how formal the AGM is.

In some cases, there are particular notice requirements under the AI Act before certain resolutions can be passed at a meeting – for example, there may be a requirement as to which members must be sent the notice before the meeting is valid.



What is a notice of motion?

A notice of meeting may include a 'notice of motion'.

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

The member usually gives a notice of motion to the secretary, either at the previous meeting (usually at the end) or a specified time before the next meeting. The motion is then included as an item of business for the next meeting (usually under a heading such as 'motions on notice').

The secretary of an incorporated association is usually responsible for preparing and giving notice of meetings under the association's constitution (see for example rule 22 and 30 of the model constitution).

This is an important job. If a notice of meeting is not correctly prepared and given, the meeting may be invalid, and decisions made at it may be void (of no legal effect).

Giving notice of an annual general meeting

The constitution of an association is required to specify:

- the intervals between general meetings
- the manner of calling general meetings
- the procedure at general meetings
- the voting entitlements and if members are entitled to vote by proxy at general meetings, and
- the time within which and the manner in which notices of general meetings, and notices of motion, are to be given, published or circulated

The notice convening the AGM should specify that the meeting is an AGM.

If the model constitution applies, the secretary must give a notice to each member specifying the place, date and time of the meeting and the nature of the business, including the fact that it is the AGM.

However, the association's constitution may impose different or additional requirements (to the ones in the model constitution) about:

- when the notice must be given
- the content of the notice
- how notice must be given

- who the notice must be given to, and
- what to do if the meeting is adjourned

You need to consider any requirements imposed by:

- the AI Act
- the AI Regulation
- the model constitution if it applies and, if it does not apply, the association's own constitution
- the law developed by the courts (that is, 'judge-made law')
- your association's constitution, and
- any policies your association has about this issue

The [checklist for notice of annual general meeting](#) at the end of this part of guide (Tool 13) will help you to prepare a notice for an AGM.



Tip

Check your association's constitution for requirements about notices of AGMs.

Make sure you have the most up-to-date version of your constitution, including any changes that the association's members and NSW Fair Trading have approved.

If you are confused about which rules in the constitution apply to you and whether the copy you have is up to date, contact NSW Fair Trading and request a copy of your association's constitution and purposes.

When to give notice of an annual general meeting

The AI Act requires an incorporated association to hold its first AGM within 18 months of being registered (section 37(1) of the AI Act).

After that, your association must hold an AGM within six months after the close of the association's financial year (section 37(2)(a) of the AI Act) or as otherwise specified by your association's constitution in accordance with any such time allowed by the NSW Fair Trading or prescribed by the AI Regulation.

The constitution of an incorporated association should set out the time within which notices of AGMs (and notices of motion) are to be given, published or circulated. If the model constitution applies (rule 30), notice of an annual general meeting must be given:

- at least 14 days before the date fixed for holding the meeting, or
- at least 21 days before the date fixed for holding the meeting, if the nature of any of the business proposed to be dealt with at the meeting requires a special resolution of the association



Example

If your association operates on a calendar financial year (1 January to 31 December), your annual general meeting must be held by **30 June** in the following year.

If your association operates on a business financial year (1 July to 30 June), your annual general meeting must be held by **31 December** in the following year.

Also, associations will usually have a rule (similar to rule 28(3) of the model constitution) that the committee decides the specific date, time and place to hold a general meeting, including the AGM.

The association's financial statements for the previous financial year must be submitted to members at the AGM (see sections 44 and 48 of the AI Act, as applicable). For more information about the financial statements, see **part 7** of this guide: [Reporting to NSW Fair Trading](#).

How to measure time for giving notice

Calculating the number of days' notice can be confusing. First, check whether your association has its own rules about measuring time. The model constitution doesn't have any provisions about measuring time.

If your constitution doesn't address measuring time, it's good practice when counting days to exclude both:

- the day on which the notice is sent, and
- the day on which the meeting is to be held



Example

Most associations have a rule that a notice of general meeting should be sent to members at least 14 days before the meeting is held.

If a notice is personally delivered to a member on **1 January**, you would count 14 days from 2 January. That makes **16 January** the earliest date for holding the meeting.

The model constitution contains rules relating to the service of notices, including provisions about the permitted methods of giving notice, and when notice is taken to have been given for each permitted method (see rule 41 of the model constitution).

Check your association's constitution for requirements about the service of notices.



Tip

When calculating the number of days' notice that needs to be given, to be safe, you should allow a couple of extra days, especially if the notice is sent by post.

What information should be in a notice of an annual general meeting?

A notice of an AGM should:

- be sufficiently clear and detailed so that members understand what is proposed to be discussed at the meeting and can then decide whether to attend
- be a full and fair disclosure of the matters to be discussed at the meeting, and
- not mislead any member of the association

To meet these requirements, it is best that an association's constitution specifies what details must be included in a notice of AGM. As a minimum, the notice should include the date, time and place of the AGM and a list (agenda) of the matters to be considered at the meeting.

An association's constitution may also specify the 'ordinary business' which must be dealt with at an AGM. If your association's constitution specifies items of ordinary business for an AGM, these should be included on the notice of meeting, as well as any other (or 'special') business to be dealt with at the meeting.



Tip

Agendas for AGMs often include a catch-all item such as ‘any other business’ or ‘general business’. This allows members to discuss any additional matters which arise at the meeting (such as setting a time and place for the next meeting).

However, the AGM should not pass resolutions on important matters which have not been previously notified to members. If additional matters of business are raised at the meeting, it’s best for the association to convene a **special general meeting** (with at least 21 days’ notice to members) to consider the issues properly, and vote on any resolutions. For information on special general meetings, see [part 5 of this guide: Special General Meetings](#).

Your association may also have additional policies about the content of notices of AGMs. For example, it may be your association’s policy to specify who authorised the notice, usually the secretary or the president or chairman.

The notice is usually sent to members together with any relevant documents which provide background information on the matters to be discussed at the meeting, such as:

- the minutes of the last meeting
- reports prepared by the committee, staff or volunteers, and
- financial statements and, if applicable, the auditor’s report

See the [checklist for notice of annual general meeting \(Tool 13\)](#) and [sample notice for annual general meeting \(Tool 14\)](#) at the end of this part of the guide.

How to give notice of an annual general meeting

The constitution of an incorporated association must set out the manner in which notices of AGMs (and notices of motion) are to be given, published or circulated (item 9 of Schedule 1 of the AI Act). This might include that a notice of an AGM may be:

- provided in person
- sent by post to each member’s address, or
- sent by fax, email or other form of electronic transmission

Check your association’s constitution. The way in which a notice must be given varies depending on the type of association and the formality of meetings.

Some associations’ constitutions require a notice to be posted to each member. Others may require notice by an advertisement in a local newspaper, and others may place a notice in their regular newsletter or on a club notice board.

Extra requirements apply if there will be a motion put at your AGM that requires a special resolution to pass.

Your association may also have supplemented its constitution with policies about how to give notice of an AGM. Refer to your constitution for further information.



Tip

When giving a notice of an AGM, it’s good practice to give each member of the association an individual notice (rather than, for example, only putting up a notice on the club notice board). This prevents a claim by a member that they were unaware of an AGM.

With large associations this may be expensive. Therefore, some associations’ constitutions may allow for electronic methods of providing notice to members (for example, the constitution may allow for notices to be sent by email).

Who should be given notice of an annual general meeting?

Unless your constitution provides otherwise, the model constitution requires the secretary to give notice of an AGM to all members listed on the association's register of members (the secretary usually has responsibility for maintaining the members register).

Some associations elect not to use the model constitution and instead specify in their constitution that only paid-up (financial) members or some other special membership class are required to receive notice of any general meeting, including an SGM. Your association may also have 'life members', who may or may not need to be notified.

Check your association's constitution and policies about who should be given notice of a general meeting, including an SGM.

What if an annual general meeting (or a motion) is adjourned to a later date?

Sometimes, an AGM may be adjourned to a later date – for example, if there are not enough members at the meeting to meet the quorum and make decisions for the association.

In these cases, you will need to consider whether a new notice of meeting (or notice of motion) is required. Check your association's constitution for any specific provisions about this. The model constitution provides, for example, that when a general meeting is adjourned to a date that is 14 days or more from the date of the original meeting, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting (see rule 32 of the model constitution).

Sometimes, even though the AGM goes ahead, a motion (of which notice has been given) may need to be adjourned - for example, if you run out of time at the AGM to address all motions proposed, or if the meeting has to be adjourned as there is no quorum. If the motion concerns an item that must be addressed at the AGM, then the AGM should be adjourned and remaining essential motions addressed at the adjourned AGM. If a motion relates to ordinary business, the AGM can be concluded, and a future special general meeting can be held to address the remaining motions.

Notice of AGM where motion requiring special resolution will be put to members – extra requirements

There are extra notice requirements if certain types of decisions are proposed to be made at an AGM. One of these situations is when a motion requiring a 'special resolution' is proposed.

Special resolutions are required under the AI Act for an association to make certain decisions such as:

- changing the association's name
- changing the association's constitution or its objects (purposes)
- applying for registration by an unincorporated group
- amalgamate (or 'join') with another association
- transferring the association's registration to combine it with another registered association, or
- voluntarily winding up or cancelling the registered association and dealing with the subsequent distribution of the association's assets



Note – why have extra requirements for special resolutions?

The policy reason for having extra requirements for a notice of a meeting proposing a special resolution is that special resolutions are used to make important decisions under the AI Act.

It's important to give members more time and information about the matter so that they can consider it carefully before the meeting.

See 'Procedures for an annual general meeting' below for information about passing a special resolution at an AGM (and then seeking approval from NSW Fair Trading, where applicable).

Check whether your constitution permits these types of 'special' business to be dealt with at an AGM. Depending on these rules, you may need to hold a special general meeting to deal with special motions.



When to give notice of a proposed special resolution

A notice of a meeting that will include a motion requiring a special resolution for the resolution to pass must be given to all members who are entitled to vote at least 21 days before the date the meeting is proposed to be held (section 39(1)(a)) of the AI Act). Otherwise, the resolution can't be passed as a special resolution at the meeting.

What information should be included in the notice?

To pass a special resolution at any general meeting, including at an AGM, the AI Act (section 39(2)) requires the notice of the meeting to:

- set out the terms of the proposed special resolution, and
- include a statement to the effect that the resolution is intended to be passed as a special resolution

Check your association's constitution carefully for any additional requirements regarding notices of proposed special resolutions.



Note

If a special resolution is proposed for an AGM, your association must comply with the notice requirements in section 39 of the AI Act. Otherwise, the resolution can't be passed as a special resolution at the AGM.

See also [part 5 of this guide: Special General Meetings](#) and [part 6 of this guide: Committee Meetings](#).

A special resolution to amalgamate the association with another association

If the motion requiring special resolution is proposing to **amalgamate** (or 'join') an association with other associations (one or more), the notice should:

- include the terms of the proposed amalgamation, and
- attach a copy of the proposed constitution of the amalgamated association

An amalgamation must be passed by members of each of the associations that propose to amalgamate (in other words, the members of **both** association 1 and association 2 must separately vote to amalgamate).

An application to amalgamate can only be approved by NSW Fair Trading (section 6 of the AI Act) if the application ([Form A3 Application for amalgamation](#)) includes the following details about the amalgamated association:

- proposed name and address
- constitution (with objects)
- first public officer's details
- an estimate of the income and expenditure for the first financial year
- an estimate of the combined assets and liabilities
- copies of the passed special resolutions (by each of the amalgamating associations) approving the proposed terms of the amalgamation,
- the original certificate of incorporation for each amalgamating association,
- any outstanding annual summary of financial affairs for each of the amalgamating associations for the last three financial years, and
- the prescribed fee

Who should notice of general meeting proposing a special resolution be given to?

A notice of general meeting proposing a special resolution should be given to all members of the association who are entitled under the association's constitution to vote on the resolution.

Check whether your association has classes of members who are, or are not, eligible to vote on the matter.

What if a notice of an AGM might be invalid (defective)?

If there is a defect with a notice of AGM (for example, it doesn't contain the details required by the AI Act, or was sent without providing sufficient notice), the notice may be 'invalid'. If this happens, any actions taken and decisions made at the meeting may be void (that is, have no legal effect).

If a member of your association alleges that a notice of an AGM is invalid, it can be difficult to work out whether the alleged defect is something that would make the meeting void. The answer will depend on the seriousness of the alleged defect.

Is it possible to waive any defects in a notice?

If you have realised that your notice of AGM was defective, there are steps you can take to fix the defect. If all the members entitled to attend the AGM (not just those who actually attend) agree to 'waive' a defect in the notice (that is, essentially to ignore it), the invalidity may be overcome. The courts have long recognised this as a way of 'curing' defects in a notice. However, waiving a defect can prove difficult for an association that has a large number of eligible voters (not all of whom attend the AGM) or where the AGM is more formal.

A defective notice of an AGM that includes a proposed special resolution is unlikely to be cured by a waiver. If 21 days' notice has not been given, you should seek legal advice. You may need to postpone the meeting, hold the meeting again or confirm the resolution at a future general meeting.

Is it possible to overcome alleged defects in any other way?

One method of overcoming any alleged defects in a notice is to continue to hold the (possibly) invalid AGM (if those present agree) and to keep records of the decisions made at the meeting. At the next validly convened general meeting, a motion can be put adopting the decisions made at that earlier (possibly) invalid AGM.

Of course, until that subsequent meeting validates the decisions of the previous (invalid) AGM, the decisions of that previous meeting will have no legal standing or effect. This approach is therefore usually taken only if there is likely to be no dispute about the previous decisions.



Tip

If there is ever any concern about the validity of any notice, you should either re-issue the notice with a new meeting date or seek legal advice.

Procedures for an annual general meeting

Procedures for general meetings, including AGMs, of incorporated associations in New South Wales can vary considerably, depending on the type of association, who is attending and what is being discussed. Generally, the larger the group, the more formal the meeting procedures (so that order is maintained, and the meeting can deal with its business efficiently).

The person who chairs the meeting (usually called the chairperson or president) guides the style of the meeting. As long as the legal requirements are met, the chair may run the meeting in as relaxed or formal a style as the particular situation allows.

You need to take into account any requirements imposed by the AI Act, the AI Regulation and your association's constitution when establishing meeting procedures.

Each association also develops its own customs, practices and 'culture' over time. These may not be formally reflected in the constitution of the association, but they can't be inconsistent with the constitution. So, it's important to ask about your association's policies and procedures (written and unwritten), as well as the constitution, to find out how your association usually conducts meetings, and the AGM in particular.



Tip

Some customs and practices are intentionally designed to promote efficiency of time and effort, to focus on certain key meeting issues, or for other strategic purposes. For example, an association may table certain reports and take them as read (that is, the AGM does not deal in detail with the report, but members may ask questions).

What is the role of the secretary?

For general meetings, including AGMs, the secretary is usually responsible for the following tasks:

- preparing and distributing any reports or documents to people who are invited to the meeting
- dealing with any correspondence
- assisting in and recording the outcome of any votes taken, and
- taking minutes of the meeting (or arranging for someone else to take them)

The constitution and annual general meetings

Check your association's constitution and follow the requirements about your AGM, including:

- the agenda for the meeting
- the 'quorum' for the meeting (that is, the minimum number of members who must be present)
- how resolutions are passed
- voting methods, and
- how meetings can be adjourned

Each of these matters are discussed in more detail below.

Agenda for the annual general meeting

The agenda for the AGM is different to the agenda for other general meetings because the business dealt with at the AGM is different to the business of other types of meetings.

Your association's constitution may specify the ordinary business to be conducted at the AGM.

For example, rule 28 of the model constitution provides that in addition to any other business, the business of the AGM is to include:

- confirming the minutes of the previous AGM, and of any special general meeting held since that meeting
- receiving reports from the committee on the activities of the association during the last financial year
- electing office-bearers of the association and the ordinary committee members, and
- receiving and considering any annual financial statement or report required to be submitted to members of the association under the AI Act

Check your association's constitution to find out whether any other business can be conducted at an AGM, and the type of notice required.

A [sample agenda for an annual general meeting \(with explanatory notes for the secretary or public officer acting as a secretary\) \(Tool 15\)](#) is provided at the end of this part of the guide. **Note** – the sample agenda is a guide only. You must adapt the document to suit your association's own constitution and requirements.

How many people need to be at an annual general meeting?

Before you can deal with any business at an AGM, there must be a minimum number of the association's members present. This number is called the 'quorum'.

Your association's constitution must specify the quorum for AGMs and other general meetings (item 10 of Schedule 1 of the AI Act). Rule 31 of the model constitution provides that the quorum is five members present and entitled to vote, however, in larger associations, it is more common for the constitution to stipulate a minimum percentage of the total membership and not an actual number of members.

So long as an association's constitution so provides, a general meeting may be held at two or more venues using any technology that gives each member a reasonable opportunity to participate. (see section 37(3) of the AI Act). If this is the case, members present at any such location would count towards a quorum.

Check your association's constitution for the quorum number, and as to whether members may vote by proxy.

What happens if there is no quorum?

If there is no quorum at an AGM, your association's constitution should set out what will happen. For example, rule 31 of the model constitution provides that:

- no item of business is to be transacted at a general meeting unless a quorum of members entitled to vote is present during the time the meeting is considering that item
- if within half an hour after the appointed time for the commencement of the general meeting a quorum is not present:
 - if the meeting has been convened at the requisition of members, the meeting is dissolved, and
 - in any other case, the chair must adjourn (reschedule) the meeting to the same day in the following week at the same time and at the same place, (unless the chair specifies a different venue when adjourning the meeting, or unless written notice of a change of venue is given to members before the new date for the meeting)

Rule 31 of the model constitution also provides that if, at the adjourned meeting, a quorum is not present within half an hour after the time appointed for the start of the meeting, the members present (being at least three) are to constitute a quorum. In that situation, the rescheduled AGM will be able to deal with the items of business, so long as that amended minimum number of members are present.

Check your association's constitution for information relating to what happens if there is no quorum for a general meeting.

Motions and resolutions

The words 'motion' and 'resolution' are often (incorrectly) used as if they mean the same thing. They don't. They have separate, but related, meanings.



What is a motion?

A motion is a proposal that a member puts at a meeting in order that some action be done, or decision made about an issue. (See 'What is a notice of motion?' above).

The technical procedure for a motion is – a member moves the motion, and then another member seconds the motion.

Sometimes, members may wish to change the wording of the motion. If they do – a member moves an amendment to the motion, and then another member seconds the amendment.



Example

The XYZ Club calls a general meeting at which a motion is put forward by a member 'that this meeting approve the lodgement of a zoning application for the association's Club House with the City Council'. Another member seconds the motion.

Then the meeting can vote to approve or pass the motion (or not).



Example

The XYZ Club meeting votes to approve the motion 'that this meeting approve the lodgement of a zoning application for the association's Club House with the City Council'.

The motion then becomes a resolution that legally binds the XYZ Club and its members. If necessary, the association can change or cancel its decision by passing another resolution to override the previous one.

A motion typically relates to a procedural aspect of the meeting – for example, someone may move a motion that the minutes of the last meeting be confirmed or that a ballot be conducted in order to decide a question.

Refer to your association's constitution for any additional requirements.



What is a resolution?

A resolution is a decision of the meeting to approve or 'pass' a resolution and is the result of a motion (or an amended motion) put before, and approved by, the members at the meeting. Once the resolution is passed, the meeting has made a binding decision.

There are two main types of resolutions:

- **ordinary resolutions** (often simply called a 'resolution'), and
- **special resolutions**

The requirements for passing ordinary and special resolutions are different and are discussed in more detail below. For information about drafting motions and resolutions, see 'preparing and keeping minutes' below.

How is an ordinary resolution passed?

Section 38 of the AI Act provides that an ordinary resolution will be passed by an association at a general meeting (or in a postal or electronic ballot conducted by the association) if it is supported by more than 50% of the votes cast by the members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.

For example, if there were 20 members voting on a resolution, you would need 11 (or more) members voting in favour to pass the resolution.

Check your association's constitution for any requirements for passing resolutions (either ordinary or otherwise), in particular, as to whether voting by proxy is permitted and the type of resolution that may be voted on by means of a postal or electronic ballot.

As discussed above, special resolutions are required under the AI Act for certain important decisions, including:

- registering the association
- changing the association's name
- changing the association's constitution or objects (purposes)
- amalgamating (joining) with another registered association
- transferring the association's registration, or
- voluntarily winding up an association and distributing its assets
- Your association's constitution may specify other situations, or types of decisions, which require a special resolution.



A special resolution must be passed in accordance with the requirements in section 39 of the AI Act in the following ways:

- at a meeting of the association where members have been given no less than 21 days' notice
- in a postal or electronic ballot, or
- in such other manner as the Director-General (Commissioner of Fair Trading) may direct

How is a special resolution passed?

To pass a special resolution at an AGM, the AI Act (section 39) requires:

- a minimum of 21 days' notice of the proposed special resolution must be given in the proper way (see 'Notice of AGM where motion requiring special resolution will be put to members - extra requirements' above), and
- at least three quarters (that is, 75% or more) of the votes cast by members of the association who are entitled to vote on the proposed resolution, are cast 'in favour of' (for) the special resolution.

Your association's constitution can impose additional requirements (for example, a requirement to include certain extra information about the proposed special resolution in the notice of meeting) but can't contradict the requirements of the AI Act.

If it would be too difficult (impracticable) for your association to pass a special resolution in the way required by section 39, you can ask NSW Fair Trading for approval to pass a special resolution in another way (section 39(4)).



Note

Some decisions passed by special resolution (for example, changing the association's rules) are not valid under the AI Act until they have been approved by NSW Fair Trading.

Depending on the type of decision, you may need to notify NSW Fair Trading that the special resolution was passed at the meeting and seek approval of the change.

Voting at annual general meetings

If members at an AGM want to make a decision about a matter, a motion or an amendment, it is usual for each member to cast a vote — generally 'in favour' (for) or 'against.'

Check your association's constitution for any requirements about voting procedures. For example, rules 33 and 34 of the model constitution provide that:

- each member has one vote only, and
- if there is a tied vote (that is, an equal number of votes 'for' and 'against'), the chairperson of the meeting is entitled to exercise a second vote (sometimes called the 'casting vote')

Note that the model constitution also provides that a member can't vote unless they are at least 18 years old and have paid all amounts that are due to be paid by that member to the association (rule 34 of the model constitution).

For information about voting methods see 'voting methods' below.

Adjourning annual general meetings

Check your association's constitution for any special requirements about adjourning (rescheduling) AGMs.

The constitution of an incorporated association will usually require the chairperson to adjourn an AGM if there is no quorum present after a specified time. Rule 32 of the model constitution also provides that:

- if a majority of the members present at the meeting in which a quorum has been reached consent, the chairperson may adjourn the meeting to another time and place

- at the rescheduled meeting, the only business that may be dealt with is the unfinished business from the meeting that was adjourned, and
- if a meeting is adjourned for 14 days or more, then a notice of the rescheduled meeting must be given in accordance with the rules for notices of general meetings

Some associations' constitutions allow for an AGM to be adjourned in other circumstances as well. Check what your constitution says.

Voting methods

There are various ways in which votes can be taken at an AGM. The most common methods are voting by show of hands or by ballot (that is, a vote in writing). These and other methods (such as voting by voices) are discussed in more detail in a table of voting methods at the end of this part of the guide.

Check your association's constitution and policies about voting methods. Your constitution may require certain methods and not allow others. They may also require different methods of voting at different types of meetings.



Tip

The usual procedure for voting at an AGM is that the chairperson will:

- clearly state the motion or resolution to be put to the meeting
- take a vote from those present and entitled to vote
- determine the result, and
- announce the result of the vote

Voting on a special resolution is to be conducted at the general meeting, by postal or electronic ballot, or another manner as directed by NSW Fair Trading.



What is a ballot?

A 'ballot' is a method of voting in writing (rather than by a show of hands) on a motion and any amendments (including the election of an official) at a meeting.

It's usually the role of the chairperson to determine whether a ballot is required, to direct the conduct of the ballot and to supervise the counting of the written votes. The returning officer, who is appointed by the committee, conducts the ballot on behalf of the association. The way in which individual members voted in the ballot is not usually disclosed.

The returning officer:

- may be a member of the association
- may be a non-member of the association, and
- must not be a committee member.

The constitution may allow a member to request a ballot.

Commonly, a ballot may be requested by:

- a member who questions the result of a particular vote count (for example, if the AGM is large and there is a close vote on a show of hands), or
- (where voting by proxy is permitted under the constitution), a member who believes that any proxies held may alter the outcome of the vote (because a holder of several proxies has only one vote in a show of hands)

Sometimes a ballot must be conducted if a certain number of members request it. For example, rule 34(3)(c) of the model constitution provides that a ballot shall be held if the chairperson, or five or more members present at a meeting may request a ballot).

A ballot is usually confidential, in which case it is referred to as a 'secret ballot'. In a secret ballot, the name of the voter is not disclosed, compared to a normal ballot where the voter's name is usually written on the voting paper so the voter's right to vote can be checked (for example, that they do not have any outstanding debts owing to the association).

Contested elections at an AGM (that is, if there is more than one person nominated for a position) are often conducted by secret ballot.

Regulation 11 and Schedule 2 of the AI Regulation set out the requirements for conducting a postal or electronic ballot.

For more information about how to conduct a ballot, refer to the [table of voting methods \(Tool 16\)](#) at the end of this part of the guide.

Abstaining from voting and opposing

Some members may decide not to vote at all (that is, 'abstain from voting') and they may wish to have the secretary record their names in the minutes as having abstained.

Other members may oppose the motion and request that their opposition be noted.

What if a vote is tied?

If a vote is tied, some associations' constitutions provide that the chairperson has a second (or 'casting') vote to decide the matter. In this case, the chairperson will exercise this vote to maintain the existing situation (so that a controversial resolution will not be passed). Refer to your association's constitution for further information.

What if a member is unable to attend an annual general meeting and vote in person?

If a member of an association is unable to attend an AGM to cast their vote in person, that member may, depending on the constitution of their association, be able to vote by 'proxy'. See 'proxy voting' below.

As an alternative, an association may, if its constitution permits, allow direct voting so that members who will be absent from an AGM can cast their own vote. The vote can be cast by completing and lodging a voting form before that meeting. More information about direct voting, including how an association can amend its constitution to implement a system of direct voting is provided below.

Alternatively, a postal or electronic ballot can be conducted if an association's constitution permits a ballot to be conducted by post or electronic means. A postal or electronic ballot can only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the AI Regulation (see regulation 11 and Schedule 2 of the AI Regulation).



What is proxy voting?

If a member of an association is unable to attend an AGM and vote on an issue personally, that member may be able to appoint another person to cast a vote on their behalf (that is, 'vote by proxy') at the meeting.

Check your constitution to determine whether proxy voting is permitted. Although the model constitution expressly prohibits proxy voting at a general meeting, (rule 34 of the model constitution), it's quite common for proxy voting to be permitted. Care needs to be taken in managing the process of proxy voting to ensure proxies are properly completed and counted.

Schedule 1 of the AI Act provides that an association's constitution must address whether proxy voting is permitted at general meetings.



Note

When talking about proxies, it's important to know the following definitions:

- the 'donor' is the member of the association who appoints another person to vote on their behalf
- the 'proxy holder' or 'proxy' is the person who is appointed to vote on behalf of the absent member, and
- the 'proxy form' is the document by which the donor appoints the proxy

What are the legal requirements for proxy voting?

A member of an incorporated association has no general legal right to appoint a proxy (but see below, 'proxy voting' and 'powers of attorney'). The power or right to appoint a proxy can be given only by the association's constitution, so you should check if your constitution allows for proxy voting.

The AI Act requires the constitution of an incorporated association to specify whether members are allowed to vote by proxy (item 10 of Schedule 1 of the AI Act). Check your association's constitution carefully for any provisions about proxy voting.

The constitutions of some associations may specify a deadline for receiving proxy forms before the AGM as well as impose a limit to the number of proxies a member may hold. Having a deadline in your constitution ensures that the secretary doesn't have to receive and process multiple proxy forms at the meeting, which can slow the progress of the meeting.

The constitutions of some associations may also allow for one or more of the following:

- non-members to act as proxies
- a general proxy (which gives a member the right to appoint another to vote as they see fit on all aspects of the association's business for a certain period)
- a specific proxy (which allows a person to cast a vote only at a particular meeting in a particular way), and
- the chairperson to hold the general proxies of multiple members (and therefore enable the chairperson to exercise the proxy in any manner they see fit)



Tip

See the [flowchart for reviewing proxies \(Tool 17\)](#) at the end of this part of the guide.

Check the flowchart against your association's constitution and policies before relying on it. If your rules are different, adapt the tool to suit your circumstances.

What if the donor attends the annual general meeting themselves?

If the donor attends an AGM and they have appointed a proxy for that meeting – if the donor votes on an issue, the proxy holder may not vote on their behalf. The proxy holder may continue to act in accordance with the proxy form to vote on subsequent matters at the meeting (so long as the donor doesn't vote on those matters).

Is the chairperson required to exercise the proxies they may hold?

If the chairperson has been appointed a proxy holder by multiple members, the chairperson may be under no obligation to exercise those proxies unless specifically asked by the individual donors. It will depend on the wording of the document that appoints the Chairperson as the proxy.

It is good practice for the proxy form to set out whether the chairperson must vote in a particular way or whether the chairperson may (or may not) vote in a particular way on the resolution. If the chairperson may

vote but does not have to, this means they have a 'discretion' about exercising the proxy. If a donor appoints the chairperson as their proxy to vote on a resolution in a particular way, the chairperson must vote in that way.

cancelling a proxy

Generally, a donor may cancel (or 'revoke') a proxy before it is exercised by:

- giving both the proxy holder and the association a written notice of revocation (which becomes effective as soon as it is received and which, strictly, must be received by the association before the AGM at which the proxy was to be used)
- granting a subsequent and superseding (overriding) proxy to the same or another person, or
- resigning from or otherwise ceasing to be a member of the association

If a donor dies, the proxy automatically ends.

Check your association's constitution carefully for any provisions about revoking proxies. For example, some associations' constitutions require a donor wishing to cancel a proxy to give notice to the association by a certain deadline before the meeting.

If the donor has appointed a proxy for a specific AGM (see discussion of 'specific proxies' above), the appointment will only be valid for that meeting.



What is a power of attorney?

A person can appoint another person (or more than one) to have 'power of attorney' for them – that is, to make decisions on their behalf, either indefinitely or for a specified period. This must be done in writing and be properly signed and dated.

This is another way to enable a person to vote on behalf of a member who is not attending an AGM or does not wish to vote in person.



For more detailed information on powers of attorney, see the [NSW Trustee and Guardian's webpage](#).



Note

When talking about powers of attorney, it's important to know that:

- the 'donor' is the person who appoints another person to make decisions on their behalf
- the 'attorney' is the person who is appointed by the donor, and
- the 'power of attorney' is both the document by which the attorney is appointed, and the actual grant of power

The attorney may exercise the powers of the donor, and vote on their behalf at an AGM.

A donor may cancel (revoke) a power of attorney at any time in writing.

If a person says they have power of attorney to act on behalf of a member of your association, it's good practice to:

- ask that person for a written declaration that they have the powers they claim, and
- request to see, and then carefully read, the original or a certified copy of the power of attorney to:

- confirm that the power exists
- make a note of the extent of the power granted to the attorney, and
- make a note of the period (if any is specified) that the power operates

The attorney may sometimes appoint a proxy or be a proxy holder. Sometimes a power of attorney gives a person the power to act on the donor's behalf on all matters (this is a 'general' power of attorney). So, in this situation, the attorney would have the authority to appoint a proxy, or to be a proxy holder, if proxies are permitted under an association's constitution.



What is direct voting?

Direct voting is a method of voting which enables members to exercise their voting rights without having to either attend the AGM or give their right to vote to someone else (ie. a proxy or attorney).

With direct voting, if it is permitted under the association's constitution, members exercise their vote by submitting a binding voting form to the association before the AGM, in the approved manner provided for in the constitution.

Implementing direct voting

Direct voting is not available to members unless your association's constitution provides for it.

If your association's constitution doesn't allow for direct voting, and you would like to adopt a direct voting system, the association will need to change the constitution to allow for direct voting. You will need to consider how you want the procedure to work. For example, do you want your constitution to outline the form and process for direct voting, or leave it to the committee of management to determine this form and process in the future as it sees fit?

Why may direct voting be considered beneficial?

Direct voting may make it easier for members to vote (and have their vote counted) when they can't attend an AGM. In contrast to proxy voting (where a person gives another person their power to vote at an AGM, but does not necessarily oblige that person to attend the meeting and vote on their behalf), with direct voting a member can lodge their vote in writing before the AGM. Direct voting can therefore foster greater member participation in decision-making, may speed up the voting process at the AGM and may also avoid the situation where a proxy holder falls ill on the day of an AGM and cannot attend.

Direct voting does not necessarily replace the proxy system. It can sit alongside it. Direct voting simply provides an additional voting option to members who know they cannot attend an AGM.

We have provided [sample wording for allowing direct voting in your constitution at the end of this part of the guide \(Tool 18\)](#).



Note

Check the voting provisions in your association's constitution. If your association's constitution does not allow direct voting (as in the model constitution), your association's constitution will need to be amended and approval will need to be obtained from NSW Fair Trading, to adopt direct voting procedures.



Note

To change your constitution, a special resolution must be passed in accordance with the requirements of section 39 of the AI Act.

See above for more information on the specific requirements for passing a special resolution.

Minutes

The word 'minutes' has been used for centuries to mean a summary of the proceedings of an assembly or committee. Today, minutes are a formal written record of the matters discussed and decisions made at a meeting. They should be clear, concise and accurate.

One of the main legal tasks of the secretary of an incorporated association is to make sure that:

- minutes are taken of each meeting (including the AGM) of the association
- minutes are confirmed by the association as an accurate record of the meeting, and
- the minutes of all meetings are kept safely by the association for future reference

The legal requirements for preparing and keeping minutes of AGMs are set out under section 50 of the AI Act, regulation 15 of the AI Regulation and the association's constitution. Your association may also have policies and practices for taking and keeping minutes.

There are other laws which you should be aware of when preparing and distributing minutes, including defamation and privacy laws. These are discussed briefly in this part of the guide.

AI Act and Regulation requirements

Section 50 of the AI Act requires the association to keep minutes of all committee meetings and general meetings.

Regulation 15 of the AI Regulation requires that minutes and records are kept for no less than five years and provides for records and minutes to be kept in written or electronic format. If records and minutes are kept in electronic format, they must be convertible into hard copy so that they can be made available within a reasonable time to a person who is entitled to inspect them. If any part of the minutes is in a language other than English, a copy of the minutes in English must also be kept with the minutes.

Your association's constitution may also make provision for the keeping and inspection of minutes. Refer to your association's constitution for further information, however, remember that failure to keep minutes can incur a penalty under the AI Act.

In addition, an inspector from NSW Fair Trading may, by issuing a notice in writing, require the association, or any person who is involved in the association's activities (which includes the public officer) to give the inspector specified relevant documents or information of the association or to grant the inspector access to premises of the association (section 85 and 86 of the AI Act).

NSW Fair Trading may also apply for a search warrant (section 87 of the AI Act). NSW Fair Trading may choose to use these powers to make sure that the association has complied with the AI Act and Regulations. It's therefore extremely important that the secretary makes sure that accurate minutes are taken of the association's meetings, and that they are recorded and kept in a safe place.

Your association's constitution

Many associations have a rule in their constitution which requires the secretary to keep minutes of resolutions and proceedings of each AGM and of other general and committee meetings (see for example rule 18 of the model constitution).

It's good practice for the secretary to record, in the minutes of the AGM:

- the names of members attending the meeting
- details of any proxy forms to be used at the meeting and given to the Chairperson
- the documents and financial statements submitted to members



- the certificate signed by two members certifying the financial statements are true and fair view of the financial position of the associations
- details of any passed or failed resolutions, and
- any audited accounts and auditor's report required under the AI Act

Refer to your association's constitution for further details.

Your association's policies

Check your association's policies and practices about taking and keeping minutes. If you don't have any, your association may choose to create policies, using this guide for assistance.

| Preparing and keeping minutes | |
|---|--|
| Content of the minutes | <p>For detailed information about the usual matters to include in the minutes of meetings, see the checklist for content of minutes at the end of this part of the guide (Tool 19).</p> <p>Generally, the minutes should include:</p> <ul style="list-style-type: none"> • the day, date, time and place of the meeting • the time the meeting started • the names of those present and any apologies • that the chair announced a quorum was present and that the meeting was duly constituted (if this announcement was made) • a reference to minutes of the previous committee meeting and the signing of them as a correct record • details of every resolution put to members and whether it was passed with the appropriate majority • details of persons voting against a motion or abstaining from voting if those persons request that this be recorded • details of any appointments made, persons elected to office and any leave of absence granted to a member • an overview of discussions on decisions made • the date and time for the next meeting (if determined during the meeting), and • the time the meeting ended <p>Importantly, the minutes should record the motions moved and resolutions made at the AGM. For information about 'motions' and 'resolutions' see 'motions and resolutions'.</p> |
| Drafting the content – generally | <p>The format and style of minutes vary considerably among associations. Some minutes are very brief and precise and record the bare minimum of information. Other minutes include 'blow by blow' summaries of the debate. In exceptional circumstances, the minutes will include a transcript of everything that was said at an AGM. Check your association's constitution, policies and practices. It's good practice to ensure that a consistent approach is adopted at all meetings.</p> <p>Despite variety in the form of minutes, there are some commonly accepted drafting conventions – see conventions for drafting minutes at the end of this part of the guide (Tool 20). Minutes don't need to include everything that was said but must include adequate details of all formal business (such as motions and voting).</p> <p>Tip – The minutes are an official historical record of the association, so it's good practice to record in the minutes the name and position of office bearers (chairperson, secretary, treasurer) as well as names of members and any other people present (such as observers).</p> |



| | |
|--|--|
| <p>Drafting motions and resolutions</p> | <p>The exact wording of the motion should appear in the minutes. If there is a problem with the wording of a resolution (that is, a motion which is passed at the AGM), this will have to be corrected at a later meeting. Once the minutes have been confirmed, the secretary has no power to alter the motion to correct the mistake.</p> <p>The wording of the motion must comply with your association's constitution, including its purposes – it can't recommend any action outside the scope of your association's powers and activities.</p> <p>Tip – If a motion is proposed verbally at a meeting, the secretary (or public officer if acting as a secretary) may find it helpful to:</p> <ul style="list-style-type: none"> • write the motion down on a board or flip chart and show it to the meeting during the debate, or • require the motion to be given to them in writing by the member proposing it <p>This way, any corrections to the wording of the motion can be made before voting on the matter. It also gives the secretary a chance to draft the motion in a way which can be suitably recorded in the minutes.</p> <p>The motion must also be allowed to be made by the AGM, especially if the meeting has been called for a specific purpose.</p> <p>For each motion, the minutes should record:</p> <ul style="list-style-type: none"> • the names of people who move and second the original motion, and any amendments • the method of voting (for information about voting methods, see 'voting methods'), and • whether the motion was passed (in which case it becomes a resolution), rejected or was adjourned (that is, put off until another meeting) <p>See 'conventions for drafting minutes' at the end of this part of the guide (Tool 20).</p> <p>Tip – It's useful for the secretary to circulate draft minutes with an 'action list' to the people or sub-committees who have been given specific tasks at the AGM.</p> |
| <p>Drafting minutes of difficult meetings</p> | <p>Sometimes meetings can get heated, and the participants resort to personal attacks, walk-outs, threats and inappropriate remarks. In many instances, the chairperson may require such remarks to be withdrawn (so the remarks are not recorded). In other cases, it is sufficient to record that 'a robust discussion ensued' rather than a blow-by-blow account in the minutes. See 'conventions for drafting minutes' at the end of this part of the guide (Tool 20).</p> <p>Tip – For difficult meetings, the secretary could consider:</p> <ul style="list-style-type: none"> • asking the chairperson for specific help to draft the minutes (in any case, it is good practice for the secretary to always check the minutes they have drafted with the chairperson before distributing them to others), and • unless a motion was made or resolution passed, not including the controversial material altogether. The minutes will have to be approved at the next meeting and, if it is considered necessary to include more detail, it can be agreed on then |
| <p>Defamation</p> | <p>Sometimes a secretary will have to deal with potentially defamatory matters in the minutes of meetings. A chairperson should challenge any defamatory statements at the time they are made in a meeting and have them withdrawn. The statements will then not be recorded in the minutes.</p> <p>If an association has published defamatory statements in the minutes of an AGM, the defence of 'qualified privilege' may be available, however the association should seek specific legal advice.</p> <p>Generally, a 'defamatory statement' about a person is one that:</p> <ul style="list-style-type: none"> • exposes the person to hatred, contempt or ridicule |



- tends to lower them in the opinion of other people
- harms their reputation (for example in their profession), or
- causes them to be shunned or avoided by others



For more information, read [our fact sheet on defamation](#).



Note

The law of defamation is complex. If a secretary is concerned about any potential defamatory matters when drafting the minutes, they should seek legal advice before finalising and distributing the minutes to anyone.

Storing minutes

Minute books – Finalised minutes are often entered into a ‘minute book’. Until recently, a minute book was a securely bound book with sequentially numbered pages. The minutes were handwritten into the book to guard against fraud or tampering. While some small associations still use handwritten minute books, many associations create and store minutes electronically and distribute them by email.

However, it can be difficult to keep track of the ‘official’ version of the minutes when they are created and stored electronically. It is also relatively easy for someone to tamper with the minutes (or replace them with substitute minutes) if they are stored in a loose-leaf binder. For these reasons, you should take precautions to make sure the official minutes of meetings are secure, and easily identifiable.

Tip – Your association can take the following steps to keep the minutes more secure:

- lock the minutes document from editing and add a password to the document
- distribute the minutes electronically in PDF form rather than in an editable form
- print the minutes out and paste them into an official minute book (and number each page of the minute book consecutively)
- get the chairperson to sign each page of the minute book to confirm official minutes
- number each meeting sequentially (for example, ‘The Minutes of 2023 Annual General Meeting of XYZ Club Inc’)

Tip – Experience shows that it is best to write up the first draft of minutes as soon as possible after the AGM. Memory is fresh and the task can be done more quickly and efficiently than leaving it until just before the next meeting.



Note

Some types of proposed resolutions require written notice to be given before the meeting – see ‘giving notice of an annual general meeting’ in this guide.



Confirming and verifying minutes

It's good practice for the secretary of an incorporated association to:

- make sure the accuracy of the minutes is 'confirmed' at the next meeting, and
- make sure the chairperson of the AGM (or the chairperson of the next meeting) has 'verified' the accuracy of the confirmed minutes, for example by signing them

See the [flowchart for confirming and verifying minutes at the end of this part of the guide \(Tool 21\)](#). Check your association's constitution for any special provisions about confirming and verifying minutes.



Tool 13 – Checklist for notice of annual general meeting

| Order | Description | Done |
|-------|---|--------------------------|
| 1. | Check your association’s constitution, resolutions and policies for specific requirements, such as how much notice to give, what information should be included, and who it should be given to. | <input type="checkbox"/> |
| 2. | Content of notice: | |
| | • as its heading, the word ‘notice of annual general meeting’ | <input type="checkbox"/> |
| | • name, ABN and registration number of the association | <input type="checkbox"/> |
| | • date, time and place of meeting | <input type="checkbox"/> |
| | • nature of business to be discussed at meeting, including: | <input type="checkbox"/> |
| | • confirming minutes of the previous annual general meeting and any other general meetings held since then | <input type="checkbox"/> |
| | • receiving the financial statements and other reports on activities of the association in the last financial year | <input type="checkbox"/> |
| | • electing the members of the committee | <input type="checkbox"/> |
| | • if applicable, receiving the auditor’s report on the financial affairs of the association for the last financial year | <input type="checkbox"/> |
| | • if applicable, presenting the audited financial report to the meeting for adoption | <input type="checkbox"/> |
| | • if applicable, appointing an auditor | <input type="checkbox"/> |
| | • date of notice | <input type="checkbox"/> |
| | • directions to the meeting venue and disability access (optional) | <input type="checkbox"/> |
| | • secretary’s contact details (optional) | <input type="checkbox"/> |
| | • notice ‘authorised by xx’ (optional) | <input type="checkbox"/> |
| 3. | If relevant, the notice of annual general meeting may also include: | |
| | • the wording of motions or resolutions to be considered at meeting (if a special resolution is proposed, include the <i>exact</i> wording of the special resolution) | <input type="checkbox"/> |
| | • disclosure of interest of any committee member in the business to be dealt with at meeting (for example, a conflict of interest – see part 2 : Public Officer’s legal role, powers and duties in this guide) | <input type="checkbox"/> |
| | • if the constitution allows proxy voting, an explanation of how / when to appoint a proxy, and attach a proxy form | <input type="checkbox"/> |
| | • if the constitution allows direct voting, an explanation of how / when to vote directly before the meeting, and attach a direct voting form | <input type="checkbox"/> |

**4. The notice should also attach background information and documents, such as:**

- minutes of the last annual general meeting (and any other general meetings held since then, if required)
- reports from staff, committees or volunteers
- financial reports (for example, the financial statement)
- where appropriate, relevant background correspondence

5. Time for giving notice

- annual general meeting must be held within six months after the end of your association's financial year
- check your association's constitution, resolutions and policies for specific requirements (for example, 14 days before the meeting date).
- if a special resolution is proposed, you must give 21 days' notice before the meeting date (section 39(1)(a) of the AI Act)

6. How to give notice

- by post, in person, by email or fax – check your association's constitution, resolutions and policies for specific requirements (for example some constitutions may require notice to be included in a local paper)

7. Who to give notice to

- all members of the association (check the members register)

Tool 14 – Sample notice for annual general meeting



Note

This notice of annual general meeting is for associations that have their financial accounts audited by an independent auditor.

Not all incorporated associations are required to have their accounts audited – for more information see [part 7](#) of this guide: [Reporting to NSW Fair Trading](#).

XYZ Club Inc (Registration No A00003333)

ABN 00 123 456 789

Notice of Annual General Meeting

Notice is given that the Annual General Meeting of the XYZ Club Inc will be held on *[date]*, at *[time]* at *[address]*.

The ordinary business of the meeting will be:

1. To confirm the minutes of the previous annual general meeting and of any special general meeting held since that meeting;
2. To receive from the Committee reports upon the activities (including significant transactions) of the Association during the last preceding financial year;
3. To elect officers of the Association and the ordinary members of the committee; and
4. To receive and consider the financial statements submitted by the Association to members in accordance with section 43(1) or section 47(1) (as applicable) of the *Associations Incorporation Act 2009* (NSW).

The special business of the meeting will be:

5. To receive and consider the Auditor's Report and Audited Accounts on the financial affairs of the association for the last financial year.
6. To consider any other business.

I.N. Order, Secretary, *[date of notice]*

by authority of the Committee

Proxies (if applicable)

A member entitled to attend and vote at the annual general meeting may appoint a person to attend and vote at the meeting as the member's proxy. A proxy must be a member of XYZ Club Inc.

A proxy may be appointed by returning the completed proxy form (attached) to the secretary at the club's registered office at *[address]*, at least 24 hours before the commencement of the meeting.

Inquiries

All inquiries should be directed to the Secretary, Ms I.N. Order, XYZ Club Inc, 123 Frank Street, Sydney, telephone (02) 3333 0000, fax (02) 3300 3300, email in.order@xyz.org.au

**Attached**

- Minutes of Previous Annual General Meeting held on *[date]*
- Chairperson's Report
- Treasurer's Report
- Auditor's Report and Accounts
- Audited Financial Statements
- List of Nominees for Positions on the Committee
- Proxy Form

Tool 15 – Sample agenda for annual general meeting (with explanatory notes for the secretary)



Note

The agenda and notes here relate to formal requirements and procedures for an annual general meeting. However, for some associations, the annual general meeting is also a time to celebrate the association's achievements, and may include, for example:

- a guest speaker
- awards for volunteers or staff, or
- an audio-visual presentation of the association's activities

Annual General Meeting to be held in the XYZ clubhouse, at 123 Frank Street, Sydney, 1 November 2023 at 7.00pm

Agenda summary

- Chairperson's welcome
- Apologies & attendance
- Minutes of previous meeting
- Report from committee on transactions in previous year
- Election of committee members
- Annual Financial Statement (submitted to members under either sections 43 or 47 (as applicable) of the *Associations Incorporation Act 2009* (NSW))
- Special business
- General business
- Close

1. Business

The secretary (or public officer acting as a secretary) is responsible for either taking, or ensuring that another person (for example, an employee of the association) takes, accurate minutes of what is discussed and decided on at the meeting.

2. Chairperson's welcome

The chairperson, who normally acts as chair of the meeting, calls the meeting to order and welcomes any new members and guests.

3. Apologies & attendance

The chairperson asks the secretary whether any apologies (that is, the name of any person who is unable to attend and has asked that this be noted) have been received, then asks if any member has an apology to record. These apologies are recorded in the minutes. The secretary also records the names of the people present or circulates a book for them to record their own names (ask them to print their name clearly).

4. Minutes of the previous meeting

The secretary should have already prepared the minutes of the previous meeting. If the minutes have been distributed with the notice of meeting, the chairperson may ask the meeting if there is any objection to taking the minutes as read. Otherwise, the secretary may read the minutes to the meeting.

The meeting should confirm that the minutes are an accurate record of the previous meeting. It is usual for a member who was at the previous meeting to propose this motion and for another to 'second' the motion. The motion is simply, *'I move that the minutes be confirmed as a true and accurate record of the last*



meeting. All present may vote on the resolution, whether or not they were present at the last meeting. However, if the minutes are not correct in some aspect, a member may propose a motion to correct them. The members may vote on whether the minutes should be changed. This procedure is to agree on what was said at the previous meeting, not to re-open the debate or reverse previous decisions. The chairperson may sign a copy of the minutes (with any changes marked) and these are kept in the association's records.

5. Report from the committee on activities in the previous year

The committee (or office bearers, such as the chairperson or the treasurer) present reports on the association's activities in the previous financial year. For example, the chairperson may report on matters that the committee has dealt with in the previous year, as well as the association's significant achievements or milestones.

The treasurer's report usually includes details of receipts and expenditure for the previous financial year. This report may also show a comparison against a budget to date and other comments. If the financial affairs of the association are substantial, the treasurer should arrange for the report to be printed and distributed at the meeting (or, preferably, the report will already have been distributed with the notice of annual general meeting). The treasurer moves the adoption of the report. Then the members can discuss the report.

In large associations where complex activities are taking place, the detailed study of the budget and other financial matters has usually been delegated (by the committee) to a finance sub-committee. The treasurer will have presented a summary report to that sub-committee, and the report from that sub-committee is presented to the annual general meeting. The treasurer and members of the sub-committee should be prepared to answer questions at the meeting.

6. Election of committee members

If nominations for positions on the committee have been received by the secretary before the meeting, the chairperson (or secretary) reads the nominations aloud. If there are fewer nominations than there are positions available on the committee, the chairperson may call for any additional nominations at the meeting.

If there is only one candidate for a position, the chairperson will state that the candidate has been elected (without a vote being taken). However, if there are more nominations than there are positions available on the committee, or if there is any opposition to a nomination (or if the association's constitution requires), a ballot is taken (usually, a secret ballot). For further information about ballots and other voting methods, see the table of voting methods below).

7. Annual Financial Statements (submitted to members under either section 43 or 47 of the *Associations Incorporation Act 2009 (NSW)*)

The committee will have already prepared the financial statements of the association containing the details required under either section 43 or 47 of the *Associations Incorporation Act 2009 (NSW)* (**AI Act**) with the treasurer (or others with financial reporting skills). The section of the AI Act applicable to the association will depend on whether it is a 'tier one' or 'tier two' association, based on their total annual revenue or total current assets. For more information about which tier your association falls into, see [part 7 of this guide: Reporting to NSW Fair Trading](#).

If the association is a 'tier one' association, its committee must submit the financial statements for that financial year to members at the first AGM. The financial statements must be a true and fair view of the association's affairs (see section 43 and 44 of the AI Act and associated Australian Accounting Standards). The committee must also submit an auditor's report for those statements.

If the association is a 'tier two' association, its committee must submit the financial statements for that financial year to members at the first AGM (see section 47 and 48 of the AI Act). The financial statements must be a true and fair view of the financial position and performance of the association. However, the committee is not required to submit an auditor's report in relation to those statements.

If the financial statements have been distributed with the notice of meeting, the chairperson may ask the meeting if there is any objection to taking the financial statements as read. Otherwise, the secretary may



distribute copies of the statements to the meeting, allow time for reading, and then the treasurer will usually summarise the key points.

It is good practice for the meeting to pass a resolution approving the financial statements as an accurate record of the association's financial position in its last financial year (and authorising the public officer to lodge the association's annual statement with NSW Fair Trading after the meeting). It is common for a member of the committee to propose this motion and for another to second the motion. The motion can be: 'I move that the financial statements be confirmed as a true and fair record of the financial position of the incorporated association during and at the end of its last financial year, and that the public officer submit the annual statement to NSW Fair Trading within one month of the date of this meeting.' Then a vote may be taken. However, if a member has any concerns about the financial statements or considers that its details are not correct in some aspect, a member may propose a motion to correct them. The members may vote on whether the financial statements should be changed.

The chairperson (or other committee member) must sign a copy of the financial statements considered by members at the meeting (with any changes marked).

8. Special business

Special business consists of matters placed on the agenda by the committee. Special business may also be a proposed special resolution or some other important matter to be discussed. Note: there may be particular procedures for giving members notice of special business under your association's constitution, and there are special notice requirements under the AI Act for some matters (such as proposed special resolutions).

9. General business

At this stage of the meeting, any member may raise a question or an issue which has not yet been dealt with. These are usually minor matters, such as setting the date of the next meeting (which may be a regular yearly date, such as the first Monday in May, or another agreed date) or votes of congratulations, appreciation or farewells.

However, if a new resolution is proposed by a member, it should not be considered at that meeting because proper notice has not been given to all members. If additional matters of important business are raised at the meeting, it is best for the association to convene a further meeting (with sufficient notice to members) to consider the issues properly and vote on any resolutions. This is to avoid a situation where a member who didn't attend the meeting complains that they would have attended (and voted on the resolution) if they were aware it would be proposed.

Members who wish to raise complex issues should advise the chairperson of their intentions before the meeting and provide a written copy of the motion they intend to move.

10. Close

It is usual for the chairperson to close the meeting and thank members for attending. The chairperson may invite everyone to stay for refreshments after the close of the meeting.

Tool 16 – Table of voting methods

This table sets out methods for voting. The most common methods are:

- voting by show of hands
- voting by voice, and
- voting by ballot (in person, postal or electronic)

| Method – Voting by show of hands | |
|---|---|
| How to conduct the vote | Chairperson requests those voting in favour of the motion to raise a hand. The procedure is repeated for those voting against the motion. |
| How to count the vote | <p>Chairperson requests those voting in favour of the motion to raise a hand. The procedure is repeated for those voting against the motion.</p> <p>If the outcome of the vote is clear, it's unnecessary to count the hands. However, it's good practice to count the hands if the result of the vote will be close, or the result is likely to be challenged. It may also be necessary to count the hands if:</p> <ul style="list-style-type: none"> • the association's constitution requires a specific percentage majority for a motion to be carried, or • an issue must be determined by a certain minimum proportion of the members (for example, a special resolution) |
| Comments | <p>Voting by show of hands is difficult to administer if there are a large number of people voting at the meeting. In these circumstances, the chairperson may ask for help (usually from the secretary) to count the votes. The chairperson may also appoint 'tellers' (usually one from each voting 'side' or perspective) and use those people (independently of each other) to determine the count on each vote. The tellers will help the chairperson ensure that no person raises two hands or votes for both 'sides' of the motion.</p> <p>If necessary (that is, if a record is required), the chairperson can make a list of the names of people voting.</p> |
| Method – Voting by standing | |
| How to conduct the vote | A similar method to voting by show of hands. The members stand for the motion that they favour. |
| How to count the vote | Usually, chairperson (perhaps with help of secretary) counts the people standing. Chairperson states whether the motion has been passed. Secretary records the result in the minutes. |
| Comments | <p>Voting by standing can make the counting process easier and reduces the possibility of a vote being counted twice.</p> <p>If necessary, the chairperson can make a list of the names of people voting.</p> |
| Method – Voting by voice (or by applause) | |
| How to conduct the vote | Chairperson says, 'All those in favour of the motion say 'Aye'' (or 'Yes'). After noting the volume of sound, chairperson continues, 'Those against say 'No'. |



| | |
|------------------------------|---|
| | <p>Voting by applause is similar, except that members clap instead of saying 'Aye' or 'No.'</p> <p>Voting by applause is usually for a vote of thanks.</p> |
| How to count the vote | <p>Chairperson determines which of the 'Ayes' or the 'Nos' (or claps) made the more noise and states the conclusion by saying, 'The 'Ayes' (or the 'Nos') have it'. Secretary records the result in the minutes.</p> |
| Comments | <p>A problem with voting by voice or applause is a lack of documentation of individual votes. A written record of votes is useful if the decision is later disputed or if (as in the case of a special resolution) a three-quarters majority is required.</p> <p>So, if the particular matter to be voted on is contentious or if a special resolution is required, it is better to conduct a vote by show of hands, by standing, or better still, by division or a ballot (see below).</p> |

Method – Voting by division

| | |
|--------------------------------|--|
| How to conduct the vote | <p>Chairperson places the motion before the meeting, saying 'All those in favour, the 'Ayes', will pass to the right of the chairperson; those against, the 'No's', will pass to the left of the chairperson.'</p> |
| How to count the vote | <p>To record votes, members stand and walk past one side or other of chairperson, depending upon their vote. As each person passes, chairperson (or secretary) records their name.</p> |
| Comments | <p>Voting by division takes longer than the methods discussed above. However, it has the advantage of being accurate and straightforward to administer, as well as involving a more objective written record.</p> |

Method – Voting by ballot (in person)

| | |
|--------------------------------|---|
| How to conduct the vote | <p>Secretary prepares voting paper containing all relevant details of the matter being voted on (for example, if the ballot is to change the constitution of the association, the text of the proposed special resolution). Secretary distributes the papers to all the people at the meeting who are entitled to vote.</p> <p>Secretary keeps a written record of:</p> <ul style="list-style-type: none"> names of the people to whom they distributed the voting papers, and how many voting papers were distributed to each person (this is because, for example, a proxy holder may vote on behalf of several people) <p>Chairperson explains to those voting the manner of voting required by the voting paper (for example, the ballot may call for a 'Yes' or 'No' vote).</p> <p>People who are entitled to vote record their votes in writing on the voting paper. They usually also record their name on the paper.</p> <p>Tellers (people who count the votes) collect the papers. Scrutineers (people who examine the papers) generally supervise the process (tellers and scrutineers can be the same people and may be appointed by resolution at the meeting or by the secretary).</p> <p>If any votes are doubtful the scrutineer consults with the chairperson, who makes a ruling.</p> |
|--------------------------------|---|



| | |
|--|---|
| <p>How to count the vote</p> | <p>Chairperson checks that all voting papers distributed have now been collected.</p> <p>Tellers and scrutineers count votes and inform chairperson of the result (usually in writing) as soon as it has been determined. Chairperson announces the result to the meeting.</p> <p>If a large number of people are voting (and therefore the counting could take some time), chairperson can usually adjourn the business to after voting papers have been collected and checked.</p> |
| <p>Comments</p> | <p>Voting by ballot takes longer to administer than other methods, but the precautions that form part of the procedure are necessary to ensure a correct count.</p> <p>The advantages of ballot voting are that:</p> <ul style="list-style-type: none"> • the votes are made in writing • all people entitled to vote have an opportunity to do so, (because, if the constitution allows for proxies, proxies are issued additional ballot voting papers), and • members with more than one vote each (that is, differential voting rights) have a say in proportion to their voting entitlement (which may help prevent an overbearing or noisy minority from influencing the vote). |
| <p>Method – Voting by postal or electronic ballot (see Regulation 11 and Schedule 2 of the AI Regulation)</p> | |
| <p>How to conduct the vote</p> | <p>The committee:</p> <ul style="list-style-type: none"> • decides on the wording of the matter to be voted on • fixes the dates for sending or giving access to ballot papers and for closing the ballot, and • appoints a returning officer (who need not be a member of the association but must not be a committee member) <p>The returning officer prepares:</p> <ul style="list-style-type: none"> • the roll of name and addresses for those entitled to vote, and • the ballot paper containing instructions for completing and returning the paper, the closing date of the ballot and the question to be determined (for example, if the ballot is to change the constitution of the association, the text of the proposed special resolution) <p>The returning officer distributes the ballot paper to those on the voting roll within the required notice period (14 days before the closing date of the ballot, or 21 days before if a special resolution is proposed, or a longer period as determined by the association's constitution).</p> <p>A clear record should be kept of names of the people to whom they distributed the voting papers, and how many voting papers were distributed to each person (this is because, for example, a proxy holder may vote on behalf of several people).</p> |
| <p>How to count the vote</p> | <p>Once the ballot is closed, the returning officer counts the valid votes (rejecting any 'informal' votes) and prepares and signs a statement of the results of the ballot to be provided to the committee.</p> <p>The committee enters the results of the ballot in the minute book and the chairperson announces the results of the ballot at the next general meeting of members.</p> |



If the ballot was for a special resolution, the committee must notify the members of the ballot results in writing as soon as possible.

The returning officer is to keep all ballot papers, rolls and other records relating to the ballot for at least eight weeks, or for a longer period as determined by the committee or the association's constitution.

Comments

Electronic voting includes voting by email, accessing a voting website or other electronic means.

A returning officer may appoint a person (who would also be eligible to be a returning officer) to assist them in their duties.

If a ballot paper is not completed in accordance with the instructions set out in the paper, the vote may be 'informal' and may be rejected by the returning officer.

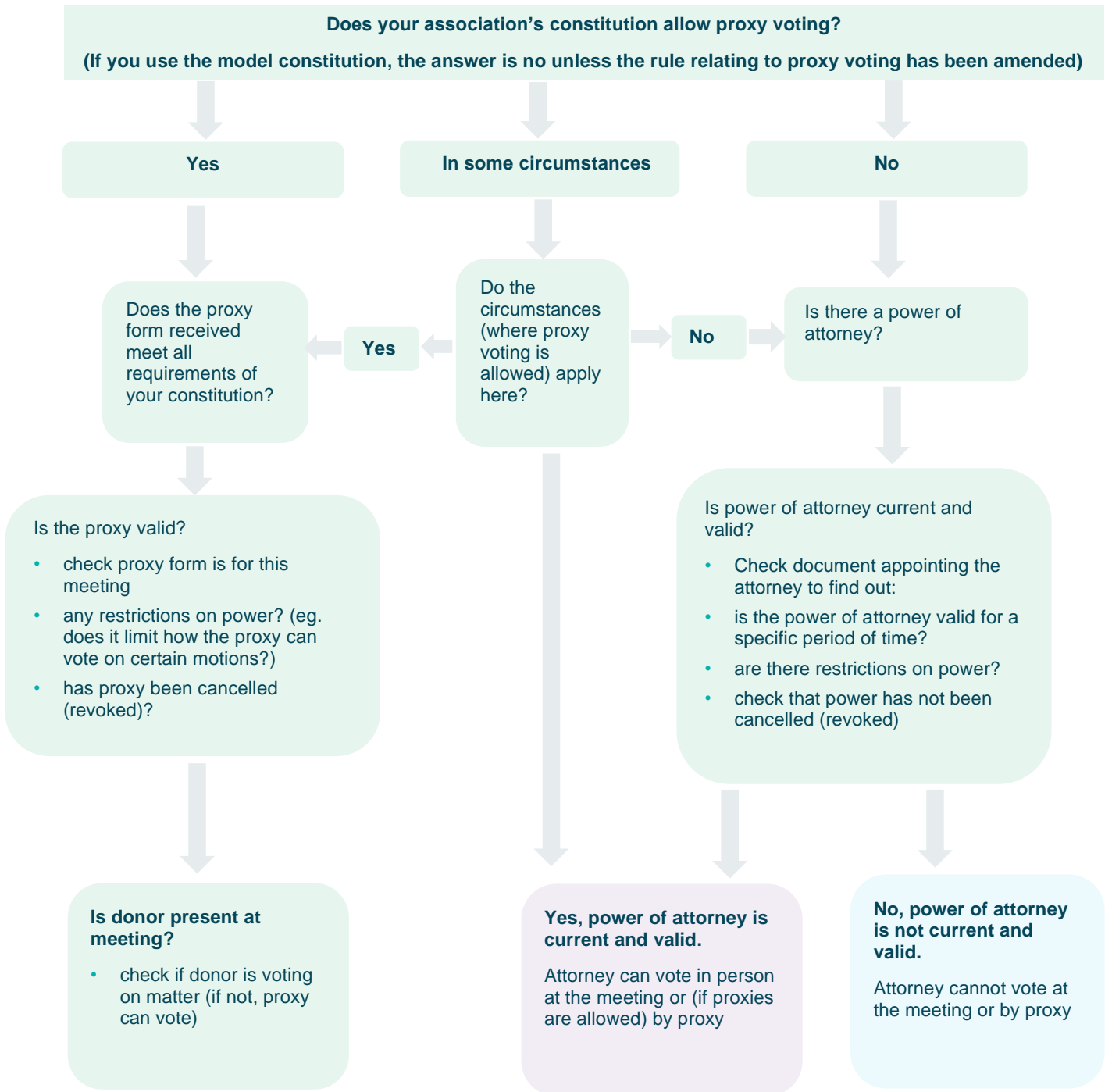
Voting by ballot takes longer to administer than other methods, but the precautions that form part of the procedure are necessary to ensure a correct count.

The advantages of ballot voting are:

- the votes are made in writing
- all people entitled to vote have an opportunity to do so, (because, if the constitution allows for proxies or direct, postal or electronic voting, proxies are issued additional ballot voting papers and 'direct, postal or electronic votes' are counted), and
- members with more than one vote each (that is, differential voting rights) have a say in proportion to their voting entitlement (which may help prevent an overbearing or noisy minority from influencing the vote)



Tool 17 - Flowchart for reviewing proxies





Tool 18 – Sample wording for allowing direct voting in your constitution

Below is a sample clause which could be included in an association's constitution to allow 'direct voting' by members of the association.

Read the wording carefully. Consider whether this procedure is suitable for your association.

Note that the wording gives the committee of management a **discretion** to allow direct voting at a general meeting – in other words, members do not have an **automatic** right to direct voting at every meeting.

You may like this wording, or you may need to adapt the clause or use different wording altogether. This will depend on your association's needs. If necessary, seek legal advice about changes to your constitution.

'The committee may determine that at any general meeting of the Association, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution.

If the committee determines that votes may be cast by direct vote, the committee may specify the form, method and manner of casting a direct vote and the time by which a direct vote must be received by the Association in order for the vote to be valid.'



Tool 19 – Checklist for content of minutes

It's good practice to include the following in the minutes of a meeting:

| Order | Description | Done |
|-------|--|--------------------------|
| 1. | Name of your association and heading, for example, 'Annual General Meeting' | <input type="checkbox"/> |
| 2. | Date, time, place and opening time | <input type="checkbox"/> |
| 3. | Name of chairperson | <input type="checkbox"/> |
| 4. | Names of members present (and their status if office holders) and other people present, such as observers (or reference to separate attendance register) | <input type="checkbox"/> |
| 5. | Names of non-members who are attending (if any) | <input type="checkbox"/> |
| 6. | Names of those people who have sent apologies (for not attending) | <input type="checkbox"/> |
| 7. | That the quorum was present and the meeting was duly constituted | <input type="checkbox"/> |
| 8. | Confirmation of previous meeting's minutes | <input type="checkbox"/> |
| 9. | Record of motions, resolutions and amendments (and whether passed with the appropriate majority) | <input type="checkbox"/> |
| 10. | Names of the people who move and second motions, and those who abstain from voting (if requested to be recorded) | <input type="checkbox"/> |
| 11. | Short summaries of the debates on motions | <input type="checkbox"/> |
| 12. | The method of voting on motions etc. (for example, show of hands, ballot) and the numbers of votes for, against and abstaining | <input type="checkbox"/> |
| 13. | The details of any proxy voting or direct voting | <input type="checkbox"/> |
| 14. | Results of voting (for example, passed, rejected or adjourned, etc.) | <input type="checkbox"/> |
| 15. | Titles (and any relevant details) of documents or reports tabled | <input type="checkbox"/> |
| 16. | (If relevant) cross reference to previous minutes or policies of the association | <input type="checkbox"/> |
| 17. | Committee minutes should approve or ratify all the association's expenditure | <input type="checkbox"/> |
| 18. | Details of next meeting | <input type="checkbox"/> |
| 19. | Closing time | <input type="checkbox"/> |
| 20. | List of tasks arising from the minutes and name of person responsible for each | <input type="checkbox"/> |
| 21. | After minutes have been confirmed at the next meeting, signature of chairperson | <input type="checkbox"/> |

Tool 20 – Conventions for drafting minutes



Note

The table below is in two parts:
the first part deals with drafting **minutes** of discussion at meetings,
the second part deals with drafting **motions** discussed at meetings.

Conventions for drafting minutes of discussions in meetings

Use simple sentences and simple words

- This helps people understand what was discussed (especially if they were not at the meeting).
Do not write: 'Mr UB Sporty extrapolated that this fine sporting institution's solar watt 500 water heating appliance with the white duco slimline control panel was performing consistently below its engineered benchmarks.'
Do write: 'Mr UB Sporty reported that the club's hot water system needed urgent repairs.'

Use active, rather than passive, voice

- In the 'active' voice, the subject of the sentence performs the action stated by the verb. In the 'passive' voice, the subject of the sentence is acted upon. Generally, the passive voice can be more difficult for a reader to understand.
Do not write (passive voice): 'A computer was used by the secretary to write these minutes.'
Do write (active voice): 'The secretary used a computer to write the minutes.'
- However, it is acceptable to use the passive voice if:
 - you want to soften an unpleasant message
 - you don't know who did a particular thing recorded in the minutes, or
 - you want to shift the reader's attention away from the person who did something to other information**Do write** (passive voice) **in some circumstances:** 'Complaints were put in the suggestion box.'
(ie. you do not want to specify who actually made the complaints)

Use only one tense

- It is usually best to use the past tense in minutes.
Do write: 'Ms L Little reported that she had ...' and 'The committee considered that the hot water system was'

Avoid terms such as 'he said' or 'she stated' unless you quote their actual words

- This is to avoid 'putting words into a person's mouth.'
Do not write: 'Mr S Fry said: 'I got a letter from the Council about this. I reckon the Council is being stupid.''
Do write: 'Mr S Fry reported that he had received a letter from the Council. He spoke critically of the Council's position on this issue.'



Avoid personal descriptions or attributes

- This is to make sure that the minutes are as 'objective' or 'impartial' as possible – the minutes should not include the minute-writer's own personal opinions or reflections.

Do not write: 'The chairman announced happily...', 'The treasurer meanly said...' or 'The club representative slammed the report.'

Be very careful not to defame anyone when recording matters that include confidential details

- See discussion of 'Defamation' and 'Confidential matters' in this part of the guide.

Do not write: 'Ms L Little reported that the builder engaged to renovate the club house has a history of stealing from associations and said he was a disgrace to his profession.'

Do write: 'Concern was expressed about the suitability of the builder for the task of renovating the club house.'

Conventions for drafting motions discussed at meetings

Start the motion with the word 'that'

- This is so all resolutions of the meeting are in the same format.
- Before the word 'that', imagine inserting the words, 'The meeting passed a resolution...'

Do write: That the treasurer's recommendation be adopted.'

Use the verb 'be' rather than the word 'is'

- This is to be grammatically correct when the motion starts with the word 'that' (see above).

Do not write: 'That the newspaper release is adopted.'

Do write: 'That the newspaper release be adopted.'

Express the motion in the positive

- This means that a 'yes' vote from the members results in the proposal being approved or supported.

Do not write: 'That the doors be not shut during the meeting.'

Do write: 'That the doors be open during the meeting.'

If you can't express the motion in one sentence, split it up into carefully written parts

- Carefully construct a composite motion (one with a number of separate parts) so that the chairperson can split it up to enable the meeting to deal with each of its parts separately.

Do not write: 'That in addition to any other motions proposed this meeting resolve to thank the members of the Town Hall including Ms T Bag for providing the refreshments and Mr B Room for making the accommodation available and instruct the secretary to send letters of thanks to Ms T Bag and Mr B Room with a copy to Mr S Visor.'

Do write: 'That the meeting register its appreciation for Town Hall members generally, and specifically ask the secretary to:

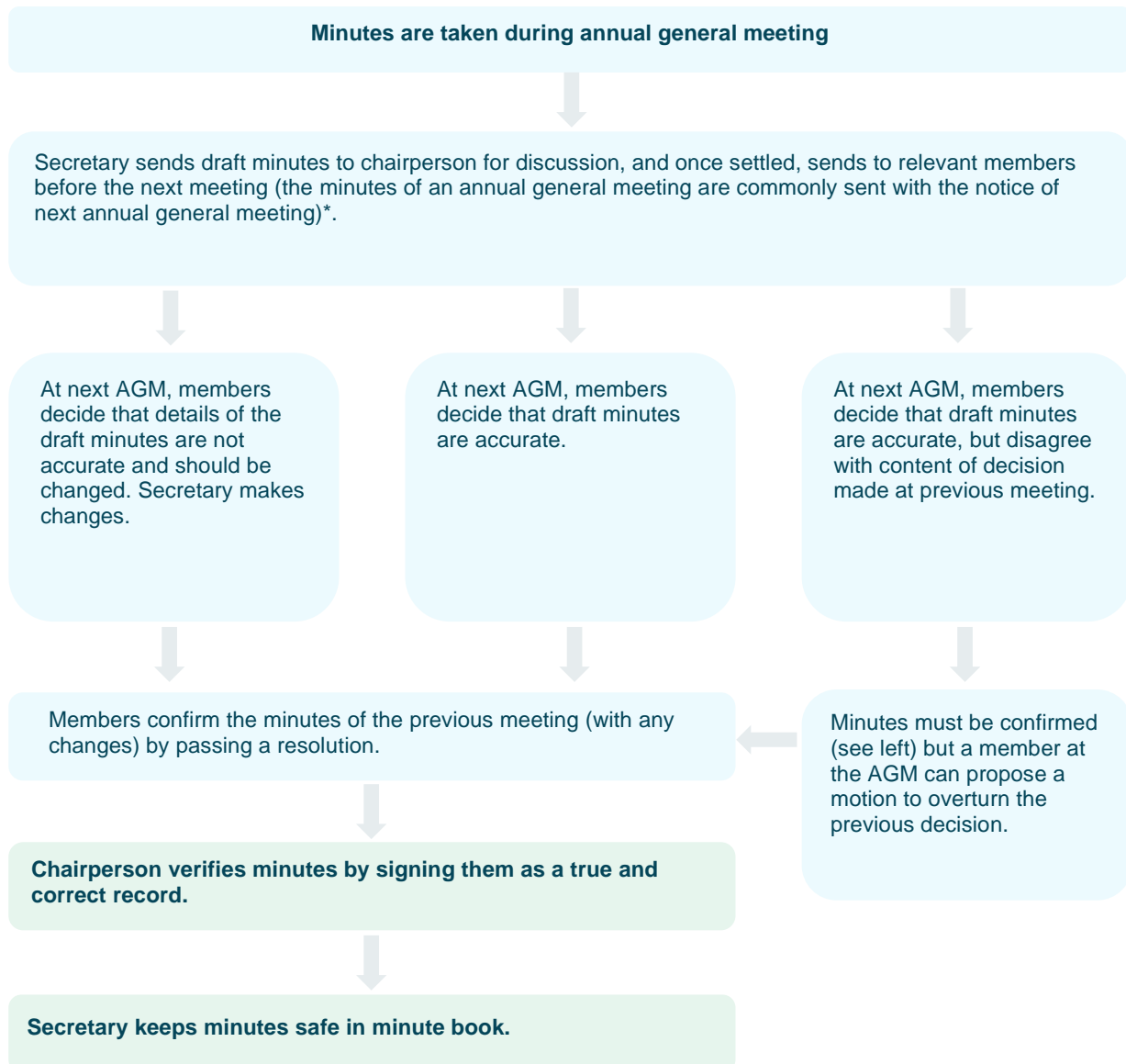
(a) send a letter of thanks to:

(i) Ms T Bag for providing the refreshments, and

(ii) Mr B Room for making the accommodation available, and

(b) send a copy of these letters to Mr S Visor.

Tool 21 – Flowchart for confirming and verifying minutes



Note

If the minutes weren't sent out before the next meeting, allow time for people to read them or the secretary should read them aloud at the meeting.



Part 5

Special General Meetings

Special General Meetings

This part of the guide covers preparing for, conducting and minuting special general meetings (SGMs) of an incorporated association in New South Wales.

Summary of key points

| | |
|--|---|
| <p>What is a special general meeting?</p> | <p>The <i>Associations Incorporation Act 2009 (NSW)</i> (AI Act) doesn't define a special general meeting (SGM), however a definition is set out in the model constitution which is contained in Schedule 3 to the <i>Associations Incorporation Regulation 2022 (NSW)</i> (AI Regulation).</p> <p>An SGM is a general meeting that is not an annual general meeting (AGM), and the expression 'general meeting' may mean either an AGM or an SGM, depending on the context in which it is used.</p> <p>The provisions of the AI Act and the AI Regulation that deal with general meetings apply equally to an SGM and an AGM and your association's constitution will also set out procedures to be followed at general meetings, including SGMs.</p> <p>Note – don't confuse a special resolution with a special general meeting.</p> <p>A special resolution is required by the AI Act for matters such as changes to the name, constitution or objects of an association and may be required for other matters by the association's constitution. A special resolution can be proposed for any general meeting, the AGM or an SGM convened especially for that purpose. The AI Act, including section 39, sets out rules that apply to special resolutions and the constitution may contain other requirements.</p> <p>An SGM is any general meeting that is not the AGM and the rules applicable to an AGM apply equally to an SGM, except as detailed in this part of the guide.</p> |
| <p>What is a notice of meeting and notice of motion?</p> | <p>A notice of meeting is a written notice that a meeting is to take place at a specified time.</p> <p>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 next meeting.</p> |
| <p>What are the legal requirements for notices of special general meetings?</p> | <p>Laws regulate the content of the notice, the time and method of giving it, who the notice is to be given to, and what to do if the SGM (or motion) is adjourned to another time and place. SGMs are referred to in this part of the guide as any general meeting of members that is not an AGM.</p> <p>For information on AGMs see part 4 of this guide: Annual General Meetings.</p> |
| <p>Giving notice of a special general meeting</p> | <p>This part of the guide sets out the requirements for notices of SGMs of the association's members. A sample notice and checklist tools are provided.</p> |



| | |
|---|--|
| Procedures for a special general meeting | At an SGM, matters must be considered by members in a certain way. A sample agenda, with guidance for the secretary, is provided at the end of this part of the guide. |
| Voting methods | There is a range of ways in which people who are entitled to vote at a meeting can do so. A variety of voting methods are set out in a tool at the end of this part of the guide. |
| What are 'minutes'? | Minutes are a written record of what was discussed and decided at a meeting. One of the key legal tasks of the secretary of an incorporated association is to make sure that accurate minutes are made of the association's SGMs, and that these are kept in a safe place. The AI Act, AI Regulation and an association's constitution set out legal requirements for the minutes of the association. Those requirements are discussed in this part of the guide. |
| Preparing and keeping minutes | This part of the guide sets out what should be included in the minutes and how they should be kept. It also includes tips and tools for drafting minutes, including 'action lists' which summarise people's responsibilities arising from an SGM. |
| Confirming and verifying minutes | The secretary should ensure, at each SGM, that the members pass a resolution confirming the minutes of the previous meeting, and the chairperson signs a copy of the confirmed minutes. This part of the guide explains this procedure and has a tool at the end of this part to help you. |

What is a special general meeting?



What is a special general meeting?

An SGM is a meeting of the members of an incorporated association which is not an AGM and which is convened using the procedures in the association's constitution. An association will have its own constitution and procedures for giving members notice of an SGM.

SGMs are used to address matters that are not dealt with at an AGM or matters that should not wait until the next AGM, and are normally convened to address one or more matters. This could include an appeal by a member against a decision of the committee (see rule 8 of the model constitution) if an association's constitution includes such a rule. All voting members of an association must be provided notice of an SGM and can vote on any resolutions of an SGM.

An SGM must be convened in accordance with the procedures provided in an association's constitution. For example, see rule 29 of the model constitution.

What is a notice of meeting and notice of motion?



What is a notice of meeting?

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

A notice of meeting should set out information (such as the date, time, place, and what is proposed to be considered at the meeting) so that those entitled to attend the meeting know what it's about and can decide whether to attend.

The contents of a notice of meeting may vary significantly from association to association, depending on the type of association and how formal the SGM is.

In some cases, there are notice requirements under the AI Act before certain resolutions can be passed at a meeting (see 'notice of a special general meeting of members' below).



Note

SGMs are referred to in this part of the guide as any general meeting of members that is **not** an AGM.

For information on AGMs see, [part 4 of this guide: Annual General Meetings](#).



What is a notice of motion?

A 'notice of motion' is a notice, given by a member of the association, which proposes that a decision or action be discussed and voted on at the next meeting. Often, the member gives a notice of motion to the secretary in accordance with the requirements of the association's constitution. The motion is then included as an item of business for the next meeting (usually under a heading such as 'motions on notice').

A notice of motion gives the other members an opportunity to consider the member's motion before the meeting takes place and is generally only given if the matter proposed by the member is an important decision for the association. A notice of motion may also be required by your association's constitution or policies.



Note

The secretary of an incorporated association is usually responsible for preparing and giving notice of meetings under the association's constitution.

This is an important job. If a notice of meeting is not correctly prepared and given, the meeting may be invalid, and decisions made at it may be void (of no legal effect).

Giving notice of special general meetings

For any general meeting, including SGMs, there are legal requirements about:

- when the notice must be given
- the content of the notice
- how notice must be given
- who the notice must be given to, and
- what to do if the meeting is adjourned

You need to consider any requirements imposed by:

- the AI Act
- the AI Regulation
- the law developed by the courts (that is, 'judge-made law')
- your association's constitution, and
- any policies your association has about this issue



Tip

Make sure you have the most up-to-date version of your association's constitution, including any changes that the association's members and NSW Fair Trading have approved.

If you are unsure which constitution applies to you and whether the copy you have is up to date, contact NSW Fair Trading and request a copy of your association's constitution and purposes.

The [checklist for notice of special general meeting at the end of this part of the guide \(Tool 22\)](#) will help you to prepare a notice for an SGM.

When to give notice of a special general meeting

The constitution of an incorporated association must set out the time within which notices of SGMs (and notices of motion) are to be given, published or circulated.

Many associations have a rule (like rule 30 of the model constitution) that members should receive notice of an SGM at least 14 days (or 21 days if a special resolution is proposed) before the meeting. In addition, section 39 of the AI Act provides that a special resolution may only be passed at a meeting of which 21 or more days' notice was given to members.

Also, many associations have a rule (like rule 29 of the Model Constitution) that the committee may decide the specific date, time and place to hold an SGM.



Tip

Check your constitution to see what it says — your association may have adopted the model constitution, or it may have changed the model constitution to suit its circumstances.

Your association may have also supplemented its constitution with policies about the time for giving notice of an SGM. You should check whether any such policies exist and if so, whether they specify extra requirements.

How to measure time for giving notice

Calculating the number of days' notice can be confusing. First, check whether your association has its own constitutional rule about measuring time. The model constitution does not have any provisions about measuring time.

If your constitution does not address measuring time, it's good practice when counting days to exclude both:

- the day on which the notice is sent, and
- the day on which the meeting is to be held



Example

Most associations have a rule that a notice of general meeting should be sent to members at least 14 days before the meeting is held. If a notice is personally delivered to a member on **1 January**, you would count 14 days from 2 January. That makes **16 January** the earliest date for holding the meeting.

The model constitution contains rules relating to the service of notices, including provisions about the permitted methods of giving notice, and when notice is taken to have been given for each permitted method (see rule 41 of the model constitution).

Check your association's constitution for requirements about the service of notices.



Tip

When calculating the number of days' notice that needs to be given, allow a couple of extra days, especially if the notice is sent by post.

What information should be in a notice of a special general meeting?

A notice of an SGM should:

- be sufficiently clear and detailed so that members understand what is proposed to be discussed at the meeting and can then decide whether to attend
- be a full and fair disclosure of the matters to be discussed at the meeting, and
- not mislead any member of the association

To meet these requirements, it's desirable that an association's constitution specifies what details must be included in a notice of a general meeting, including an SGM.

As a minimum, the notice should include the date, time and place of the SGM and the nature of the business proposed to be dealt with (rule 30 of the model constitution). Where the SGM is to consider a special resolution, the notice must include the terms of the special resolution and a statement to the effect that the resolution is a special resolution.

For an example of a notice of an SGM, see the [sample notice for special general meeting at the end of this part of the guide \(Tool\)](#).



Note

If your association uses the model constitution or has a rule like rule 30(3) of the model constitution, the only matters that can be discussed and voted on at an SGM are the ones set out in the notice of meeting. This means that the secretary must be very careful to include in the notice of SGM all items of business to be dealt with. Additional things can't be addressed at the meeting.

Check your association's constitution and procedures, as they may have different requirements.



Tip

Although agendas for AGMs will include a catch-all item such as 'any other business' or 'general business', this is not allowed for SGMs that have adopted a rule such as rule 30(3) of the model constitution.

Therefore, the SGM should not pass resolutions on matters which have not been notified to members in the notice of the meeting. If additional matters of business are attempted to be raised at the meeting, the chairperson should arrange to convene a further meeting (with at least 14 or 21 days' notice, as applicable, to members) to consider the issues properly, and vote on any resolutions.

Your association may also have policies about the content of notices of SGMs. For example, it may be your association's policy to specify who authorised the notice.

The notice of an SGM is usually sent together with any relevant documents which provide background information on the specific matters to be discussed at the SGM, including the text of any proposed resolutions, and an explanation of why they are being proposed.

See the [checklist for notice of special general meeting \(Tool 22\)](#) and the [sample notice for annual general meeting \(Tool 23\)](#) at the end of this part of the guide.

How to give notice of a special general meeting

The constitution of an incorporated association must set out the way notices of general meetings, including SGMs (and notices of motion) are to be given, published or circulated (item 9 of Schedule 1 of the AI Act).

Many associations have a provision in their constitution that a notice of a general meeting may be:

- provided in person
- sent by post to each member's address, or
- sent by fax, email or other form of electronic transmission

Check your association's constitution. The way in which a notice must be given varies depending on the type of association and the formality of meetings. Some associations' constitutions require a notice to be posted to each member, others may require notice by an advertisement in a local newspaper, and others may place a notice in their regular newsletter or on a club notice board.

Extra requirements apply if a motion that requires a special resolution to pass will be put at your SGM (notice must be given to members no later than 21 days before the date of the meeting).

Your association may also have supplemented its constitution with policies about how to give notice of an SGM.

**Tip**

When giving a notice of an SGM, it's good practice to give each member of the association an individual notice (rather than, for example, only putting up a notice on the club notice board). This prevents a claim by a member that they were unaware of an SGM.

With large associations this may be expensive. Therefore, some association's constitutions may allow for other methods of providing notice to members (for example, by email).

Who should be given notice of a special general meeting?

Unless your constitution provides otherwise, you should give notice of an SGM to all members listed on the association's register of members (the secretary usually has responsibility for maintaining the members register, but check your constitution – see [part 3](#) of this guide: Registers, Records and Official Documents).

Rule 30 of the model constitution requires that notice be given to each member. However, some associations may choose not to use the model constitution and instead specify in their constitution that only paid-up (financial) members or some other special membership class are required to receive notice of any general meeting, including an SGM. Your association may also have 'life members', who may or may not need to be notified. Check your association's constitution and policies about who should be given notice of a general meeting, including an SGM.

What if a special general meeting (or a motion) is adjourned to a later date?

Sometimes, an SGM may be adjourned to a later date – for example, if there are not enough members at the meeting to make decisions for the association (see 'How many people need to be at a special general meeting' below).

And sometimes, even though the meeting goes ahead, a motion – of which notice has been given – may need to be adjourned to a future date for the SGM to be reconvened.

In such cases, you will need to consider whether a new notice of SGM (or notice of motion) is required. For example, rule 32 of the model constitution states that if a meeting is adjourned for 14 days or more, a fresh notice must be served. Check your association's constitution for any specific provisions about this.

**Note – why have extra requirements for special resolutions?**

The policy reason for having extra requirements for a notice of a meeting proposing a special resolution is that special resolutions are used to make important decisions under the AI Act.

It's important to give members more time and information about the matter, so they can consider it carefully before the meeting.

Notice of SGM where motion requiring special resolution will be put to members – extra requirements

There are extra notice requirements if particular decisions are proposed to be made at an SGM. One of these situations is where a motion requiring a 'special resolution' will be put to members.

Special resolutions are required under the AI Act for an association to make certain decisions, including:

- changing its name
- changing its objects
- changing its constitution
- changing its official address
- amalgamating (joining) with another registered association
- amalgamating with another registered association, or

- voluntarily winding up or cancelling the registration of the association and distributing assets.

The association's constitution may indicate other situations that require a special resolution.

See 'Procedures for a special general meeting' below for information about passing a special resolution at an SGM (and then seeking approval from NSW Fair Trading, where applicable).

When to give notice of a proposed special resolution

A notice of a meeting that will include a motion requiring a special resolution to pass must be given to all members who are entitled to vote at least 21 days before the meeting (section 39 of the AI Act).

Otherwise, the resolution cannot be passed as a special resolution at the meeting.

What information should be included in the notice?

To pass a special resolution at an SGM, section 39 of the AI Act and rule 30 of the model constitution require the notice to:

- specify the date, time and place of the SGM
- set out the actual wording of the proposed special resolution in full, and
- state that it is intended to propose the resolution as a special resolution

Check your association's constitution carefully for any extra requirements about notices of proposed special resolutions.

For an example of a notice with a proposed special resolution, see the [sample notice for special general meeting at the end of this part of the guide \(Tool\)](#).

How should notice be given?

See discussion above 'How to give notice of a special general meeting'.

Who should be given notice?

The AI Act requires a notice of any general meeting proposing a special resolution to be given to all members of the association who are entitled under the association's constitution to vote on the resolution (section 39 of the AI Act).

Check whether your association has classes of members who are, or are not, eligible to vote on the matter.

Notice of proposal to amalgamate the association with another association

If the motion requiring special resolution is proposing to amalgamate (or, 'join') an association with other associations (one or more), the notice should:

- specify the date, time and place of the SGM
- state that it is intended to propose the resolution as a special resolution
- include the proposed name and official address of the amalgamated organisation
- nominate the first public officer of the amalgamated organisation
- include the terms of the amalgamation
- include a copy of the proposed constitution and objects (purposes) of the amalgamated organisation, and
- authorise an application for registration of the amalgamated association

An application to amalgamate can only be approved by NSW Fair Trading (section 7 of the AI Act), if the application includes the relevant details required under the AI Act and the AI Regulation.

There may be other matters that you need to address in the notice of proposal to amalgamate. You may need to seek legal advice to ensure the notice has been drafted correctly.

**Tip**

If a special resolution is proposed for an SGM, your association must comply with the notice requirements in section 39 of the AI Act. Otherwise, the resolution can't be passed as a special resolution at the SGM.

Check whether your association has classes of members who are, or are not, eligible to vote on the matter.

What if a notice of a special general meeting might be invalid (defective)?

If there is a defect with a notice of SGM (for example, it didn't contain the details required by the AI Act or was sent without providing sufficient notice), the notice may be 'invalid'. If this happens, any actions taken and decisions made at the subsequent meeting may be void (that is, of no legal effect).

If a member of your association alleges that a notice of an SGM is invalid, it can be difficult to work out whether the alleged defect is something that would make the meeting void. The answer will depend on the seriousness of the alleged defect.

Is it possible to waive any defects in a notice?

If you have realised that your notice of SGM was defective, there are steps you can take to fix the defect. If all the members entitled to attend the SGM (not just those who attend) agree to 'waive' a defect in the notice (that is, essentially to ignore it), the invalidity may be overcome. The courts have long recognised this as a way of 'curing' defects in a notice. However, waiving a defect can prove difficult for an SGM that is large or more formal.

A defective notice of an SGM that includes a proposed special resolution is unlikely to be cured by a waiver. If 21 clear days' notice has not been given, you should seek legal advice. You may need to hold the meeting again or confirm the resolution at a future SGM.

Is it possible to overcome alleged defects in any other way?

One method of overcoming any alleged defects in a notice is to continue to hold the (possibly) invalid SGM (if those present agree) and to keep records of the decisions made at the meeting. At the next validly convened general meeting, a motion can be put adopting the decisions made at that earlier (possibly) invalid SGM.

Of course, until that subsequent meeting validates the decisions of the previous (invalid) SGM, the decisions of that previous meeting will have no legal standing or effect. This approach is therefore usually taken only if there is likely to be no dispute about the previous decisions.

**Tip**

If there is ever any concern about the validity of any notice, you should seek legal advice.

Procedures for a special general meeting

Procedures for SGMs of incorporated associations in New South Wales can vary considerably, depending on the type of association, who is attending and what is being discussed. An SGM of a large association is usually very formal.

Generally, the larger the group, the more formal the SGM procedures (so that order is maintained, and the meeting can deal with its business efficiently).

The person who chairs the SGM (usually called the chairperson or president) guides the style. As long as the legal requirements are met, the chairperson may run the SGM in as relaxed or formal a style as the particular situation allows.

You need to consider any requirements imposed by the AI Act, the AI Regulation and your association's constitution when establishing meeting procedures.



Tip

Some customs and practices are intentionally designed to promote efficiency of time and effort, to focus on certain key meeting issues, or for other strategic purposes. For example, an association may table certain reports and take them as read (that is, the SGM does not deal in detail with the report, but members may ask questions).

Each association also develops its own customs, practices and 'culture' over time. These may not be formally reflected in the constitution. So, it's important to ask about your association's policies and procedures (written and unwritten), as well as the constitution, to find out how your association usually conducts meetings.

What is the role of the secretary?

For all general meetings, including SGMs, the secretary is usually responsible for the following tasks:

- preparing and distributing any reports or documents to people who are invited to the meeting and dealing with any correspondence
- assisting in and recording the outcome of any votes taken, and
- taking minutes of the meeting, including the names of the members present and any apologies (or arranging for someone else to take them)

The constitution and special general meetings

Check your association's constitution for the requirements (if any) about SGMs including:

- the agenda for the meeting
- the 'quorum' for the meeting (that is, the minimum number of members who must be present)
- how resolutions are passed
- voting methods, and
- how meetings can be adjourned

Each of these matters is discussed in more detail below.

Agenda for a special general meeting

The agenda for any general meeting including an SGM, should include all business to be considered at the meeting (this should be included in the notice of meeting – see 'What information should be in the notice of special general meeting?' above).

Some items of business are usually listed on the meeting agenda and dealt with at every general meeting, such as:

- attendance and apologies, and
- confirming the minutes of the last meeting

As the meeting will usually be convened to consider and decide a particular matter, the agenda should clearly set out the issues to be determined.

How many people need to be at a special general meeting?

Before you can deal with any business at an SGM, there must be a minimum number of the association's members present. This number is called the 'quorum'.

Your association's constitution must specify the quorum for SGMs and other general meetings (item 10 of Schedule 1 of the AI Act).

Rule 31 of the model constitution provides that the quorum is five members present and entitled to vote. However, in larger associations, it's more common for the constitution to stipulate a minimum percentage of the total membership and not an actual number of members.

Check your association's constitution for the quorum number and whether they may be present by proxy.

What happens if there is no quorum?

If there is no quorum at an SGM, your association's constitution should set out what will happen. For example, rule 31 of the model constitution provides that:

- no item of business may be conducted at the meeting unless a quorum of members entitled to vote is present when the meeting is considering that item, and
- if, within half an hour after the time set for the start of the meeting, a quorum is not present, then either:
 - if the meeting has been convened at the request of members, the meeting is to be dissolved, or
 - in any other case, the meeting is adjourned (rescheduled) to the same day in the following week at the same time and at the same place, (unless the chairperson specifies a different venue when adjourning the meeting, or unless written notice of a change of venue is given to members prior to the new date for the meeting)

Rule 31 of the model constitution also provides that if, at the adjourned meeting, a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least three) are to constitute a quorum. In that situation, the rescheduled AGM will be able to deal with the items of business, so long as that amended minimum number of members (three members under rule 31) are present.

Check your association's constitution for information relating to what happens if there is no quorum for a general meeting.

Motions and resolutions

The words 'motion' and 'resolution' are often (incorrectly) used as if they mean the same thing. They don't – they have separate, but related, meanings.



What is a motion?

A motion is a proposal that a member puts at a meeting in order that some action be done, or decision made about an issue.

The technical procedure is – a member moves the motion, and then another member seconds the motion.

Sometimes, members may wish to change the wording of the motion. If they do – a member moves an amendment to the motion, and then another member seconds the amendment.



Example

The XYZ Club calls a general meeting at which a motion is put forward by a member 'that this meeting approve the lodgement of a zoning application for the association's Club House with the City Council'. Another member seconds the motion.

Then the meeting can vote to approve or pass the motion (or not).



Example

The XYZ Club meeting votes to approve the motion 'that this meeting approve the lodgement of a zoning application for the association's Club House with the City Council'.

The motion then becomes a resolution that legally binds the XYZ Club and its members. If necessary, the association can change or cancel its decision by passing another resolution to override the previous one.

A motion typically relates to a procedural aspect of the meeting – for example, someone may move a motion that the minutes of the last meeting be confirmed or that a ballot be conducted to decide a question you should refer to your association's constitution for any additional requirements.



What is a resolution?

A resolution is a decision of the meeting to approve or 'pass' a resolution and is the result of a motion (or an amended motion) put before, and approved by, the members at the meeting. Once the resolution is passed, the meeting has made a binding decision.

There are two main types of resolutions:

- **ordinary resolutions** (often simply called a 'resolution'), and
- **special resolutions**

The requirements for passing ordinary and special resolutions are different and are discussed in more detail below. For information about drafting motions and resolutions, see 'preparing and keeping minutes' below.

How is an ordinary resolution passed?

How is an ordinary resolution passed?

Section 38 of the AI Act provides that an ordinary resolution will be passed by an association at a general meeting (or in a postal or electronic ballot conducted by the association) if it is supported by more than 50% of the votes cast by the members of the association who, under the association's constitution, are entitled to vote on the proposed resolution.

For example, if there were 20 members voting on a resolution, you would need 11 (or more) members voting in favour to pass the resolution.

The conduct of postal or electronic ballots is outlined at Schedule 2 of the AI Regulation.

Check your association's constitution for any requirements for passing resolutions (either ordinary or otherwise), in particular, as to whether voting by proxy is permitted and the type of resolution that may be voted on by means of a postal or electronic ballot.

As discussed above, special resolutions are required under the AI Act for certain important decisions, such as changing the association's name, objects or constitution. Your association's constitution may specify other situations, or types of decisions, which require a special resolution.

A special resolution must be passed in accordance with the requirements in section 39 of the AI Act.

How is a special resolution passed?

To pass a special resolution at any general meeting, including an SGM, the AI Act requires that:



- not less than 21 days' notice of the special resolution must have been given to members (section 39(1)(a) of the AI Act)
- the notice must contain the complete wording of the proposed resolution and a statement to the effect that the resolution is intended to be passed as a special resolution (see 'Notice of a proposed special resolution' above)
- not less than three quarters (that is, 75% or more) of members who are both:
 - entitled to vote, and
 - who actually do vote at the meeting, either in person, by post, electronically or by proxy if allowed
 must vote 'in favour of' (for) the special resolution (section 39(1)), or
- where permitted by the constitution, a postal or electronic ballot is conducted by the association (section 39(1)(b) of the AI Act), and
- any additional requirements in the association's constitution about passing special resolutions must be met

Your association's constitution can impose additional requirements (for example, a requirement to include certain extra information about the proposed special resolution in the notice of meeting) but can't reduce or increase the 75% provision.

If it would be too difficult or impracticable for your association to pass a special resolution in the way required by section 39(1)(a) or (b) of the AI Act, you can ask NSW Fair Trading for approval to pass a special resolution in another way (section 39(1)(c) of the AI Act). NSW Fair Trading may grant approval if, for example, the association needs to pass a motion to wind up (end) the association but there is a problem with the association's records, and it is difficult to identify all the members of the association.



Note

Some decisions passed by special resolution (for example, changing the association's constitution) are not official under the AI Act until they have been approved by NSW Fair Trading. Depending on the type of decision, you may need to notify NSW Fair Trading of the special resolution and seek approval for the change.

Voting at special general meetings

If members at an SGM want to make a decision about a matter, a motion or an amendment, it is usual for each member to cast a vote — generally 'in favour' (for) or 'against'.

Check your association's constitution for any requirements about voting procedures. Rules 33 and 34 of the model constitution provide that:

- each member has only one vote, and
- if there is a tied vote (that is, an equal number of votes 'for' and 'against'), the chairperson may vote again to decide the matter (sometimes called the 'casting vote')

Note that the model constitution also provides that a member can't vote unless they have paid all amounts that are due to be paid by that member to the association. Underage members, (those under the age of 18) are also not generally permitted to vote (rule 34 of the model constitution).

For information about voting methods see 'Voting methods' below.

Adjourning special general meetings

Check your association's constitution for any provisions about adjourning (rescheduling) SGMs.

The constitution of an incorporated association will usually require the chairperson to adjourn an SGM if there is no quorum present after a specified time. For example, rule 32 of the model constitution also provides that:

- if a majority of the members present at the meeting in which a quorum has been reached consent, the chairperson may adjourn the meeting to another time and place
- at the rescheduled meeting, the only business that may be dealt with is the unfinished business from the meeting that was adjourned, and
- if a meeting is adjourned for 14 days or more, then a notice of the rescheduled meeting must be given in accordance with the constitution for notices of general meetings

Some associations' constitutions allow for a general meeting, including an SGM to be adjourned in other circumstances as well. You need to check what your constitution says.

Voting methods

There are various ways in which votes can be taken at an SGM. The most common methods are voting by show of hands or by poll (that is, a vote in writing). These and other methods (such as voting by voices) are discussed in more detail in the [table of voting methods at the end of this part of the guide \(Tool 24\)](#).

Check your association's constitution and policies about voting methods. Your constitution may require certain methods and not allow others. They may also require different methods of voting at different types of meetings.



Tip

The usual procedure for voting at an SGM is that the chairperson will:

- clearly state the motion to be put to the meeting
- take a vote from those present and entitled to vote
- determine the result, and
- announce the result of the vote

Voting on a special resolution should be conducted as required or permitted by your association's constitution.



What is a ballot?

A 'ballot' is a method of voting in writing (rather than by a show of hands) on a motion and any amendments (including the election of an official) at a meeting.

It's usually the role of the chairperson to determine whether a ballot is required, but the returning officer (appointed by the committee) is to direct the conduct of the ballot and to supervise the counting of the written votes. The way in which individual members voted in the ballot is not usually disclosed. In many associations the constitution may allow a member to request a ballot.

Often, a ballot may be requested by:

- a member who questions the result of a particular vote count (for example, if the AGM is large and there is a close vote on a show of hands), or

- (when voting by proxy is permitted under the constitution), a member who believes that any proxies held may alter the outcome of the vote (because a holder of several proxies has only one vote in a show of hands)

Sometimes a ballot must be conducted if a certain number of members request it (see for example clause 34(3)(c) of the model constitution provides that a ballot shall be held if five members present at a meeting may request a ballot).

A ballot is usually confidential, in which case it is referred to as a 'secret ballot'. In a secret ballot, the name of the voter is not disclosed, compared to a normal ballot where the voter's name is usually written on the voting paper so the voter's right to vote can be checked (for example, that they do not have any outstanding debts owing to the association).

Regulation 11 and Schedule 2 of the AI Regulation set out the requirements for conducting a postal or electronic ballot.

For more information about how to conduct a ballot, see the [table of voting methods at the end of this part of the guide \(Tool 24\)](#).

Abstaining from voting and opposing

Some members may decide not to vote at all (that is, 'abstain from voting') and they may wish to have the secretary record their names in the minutes as having abstained.

Other members may oppose the motion and request that their opposition be noted.

What if a vote is tied?

If a vote is tied, most associations' constitutions say that the chairperson has a second (or 'casting') vote to decide the matter. This is the position in the rule 33(2) of the model constitution. Often, the chairperson will exercise this vote to maintain the existing situation (so that a controversial resolution will not be passed).

What if a member is unable to attend a special general meeting and vote in person?

If a member of an association is unable to attend an SGM to cast their vote in person, that member may, depending on the constitution of their association, vote by 'proxy'. See 'Proxy voting' below.

As an alternative, an association may, if its constitution permits, allow direct voting so that members who will be absent from an SGM can cast their own vote. The vote can be cast by completing and lodging a voting form prior to that meeting. More information about direct voting, including how an association can amend its constitution to implement a system of direct voting is provided below.

Alternatively, a postal or electronic ballot can be conducted if an association's constitution permits a ballot to be conducted in this format. A postal or electronic ballot can only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the AI regulation (see Regulation 11 and Schedule 2 of the AI Regulation).



What is proxy voting?

If a member of an association is unable to attend an SGM and vote on an issue personally, if your constitution permits it, that member may be able to appoint another person to cast a vote on their behalf (that is, 'vote by proxy') at the meeting.

Check your constitution to determine whether proxy voting is permitted. Although the model constitution expressly prohibits proxy voting at a general meeting, (rule 34 of the model constitution), it's quite common for proxy voting to be permitted. Care needs to be taken in managing the process of proxy voting to ensure proxies are properly completed and counted.

Schedule 1 of the AI Act provides that an association's constitution is to address whether proxy voting is permitted at general meetings.



Note

When talking about proxies, it's important to know the following definitions:

- the 'donor' is the member of the association who appoints another person to vote on their behalf
- the 'proxy holder' or 'proxy' is the person who is appointed to vote on behalf of the absent member, and
- the 'proxy form' is the document by which the donor appoints the proxy

What are the legal requirements for proxy voting?

A member of an incorporated association has no general legal right to appoint a proxy (but see below, 'Proxy voting and powers of attorney'). The power or right to appoint a proxy can be given only by the association's constitution, so you should check if your constitution allows for proxy voting.

The AI Act requires the constitution of an incorporated association to specify whether absent members are allowed to vote by proxy (item 10 of Schedule 1 of the AI Act). It should also set out any requirements, restrictions and procedures. Check your association's constitution carefully for any provisions about proxy voting.

The constitutions of some associations specify a deadline for receiving proxy forms before a general meeting, including an SGM. Having a deadline in your constitution ensures that the secretary does not have to receive and process multiple proxy forms at the meeting, which can slow the progress of the meeting.

The constitution of some associations may also allow:

- non-members to act as proxies
- a general proxy (which gives a member the right to appoint another to vote as they see fit on all aspects of the association's business for a certain period of time)
- a specific proxy (which allows a person to cast a vote only at a particular meeting in a particular way), or
- the chairperson to hold the general proxies of multiple members (and therefore enable the chairperson to exercise the proxy in any manner they see fit)



Tip

See the [flowchart for reviewing your association's proxy policies at the end of this part of the guide \(Tool 25\)](#).

Check the flowchart against your association's constitution and policies before relying on it. If your constitution is different, adapt the tool to suit your circumstances.

What if the donor attends the special general meeting themselves?

If the donor attends an SGM for which they have appointed a proxy, if the donor then votes on an issue, the proxy holder may not vote on their behalf. The proxy holder may continue to act in accordance with the proxy form to vote on subsequent matters (so long as the donor does not vote).

Is the chairperson required to exercise the proxies they may hold?

If the chairperson has been appointed a proxy holder by multiple members, the chairperson may be under no obligation to exercise those proxies unless specifically asked by the individual donors. It will depend on the wording of the document that appoints the chairperson as proxy.

It is good practice for the proxy form to set out whether the chairperson **must** vote in a particular way or whether the chairperson **may** (or may not) vote in a particular way on the resolution. If the chairperson **may** vote but does not have to, this means they have a 'discretion' about exercising the proxy. If a donor

appoints the chairperson as their proxy to vote on a resolution in a particular way, the chairperson must vote in that way.

cancelling a proxy

Generally, a donor may cancel (or 'revoke') a proxy before it is exercised by:

- giving both the proxy holder and the association a written notice of revocation (which becomes effective as soon as it is received and which, strictly, must be received by the association before the SGM at which the proxy was to be used)
- granting a subsequent and superseding (overriding) proxy to the same or another person, or
- resigning from the association

If a donor dies, the proxy automatically ends.

Check your association's constitution carefully for any provisions about revoking proxies. For example, some associations' constitutions require a donor wishing to cancel a proxy to give notice to the association by a certain deadline before the meeting.

If the donor has appointed a proxy for a specific SGM, the appointment will only be valid for that meeting.



What is a power of attorney?

A person can appoint another person (or more than one) to have 'power of attorney' for them – that is, to make decisions on their behalf, either indefinitely or for a specified period. This must be done in writing and be properly signed and dated.

This is another way to enable a person to vote on behalf of a member who is not attending an SGM or does not wish to vote in person.



For more detailed information on powers of attorney, see the [NSW Trustee and Guardian's webpage](#).



Note

When talking about powers of attorney, it is important to know that:

- the 'donor' is the person who appoints another person to make decisions on their behalf
- the 'attorney' is the person who is appointed by the donor, and
- the 'power of attorney' is both the document by which the attorney is appointed, and the actual grant of power

The attorney may exercise the powers of the donor, and vote on their behalf at an SGM.

A donor may cancel (revoke) a power of attorney at any time in writing.

If a person says they have power of attorney to act on behalf of a member of your association, it's good practice to:

- ask that person for a written declaration that they have the powers they claim, and
- request to see, and then carefully read, the original or a certified copy of the power of attorney to:
 - confirm that the power exists

- make a note of the extent of the power granted to the attorney, and
- make a note of the period (if any is specified) that the power operates

The attorney may sometimes appoint a proxy or be a proxy holder. Sometimes a power of attorney gives a person the power to act on the donor's behalf on all matters (this is a 'general' power of attorney). So, in this situation, the attorney would have the authority to appoint a proxy, or to be a proxy holder, if proxies are permitted under an association's constitution.



What is direct voting?

Direct voting is a method of voting which enables members to exercise their voting rights without having to either attend the SGM or give their right to vote to someone else (ie. a proxy or attorney).

With direct voting, if it's permitted under the association's constitution, members exercise their vote by submitting a binding voting form to the association before the SGM, in the approved manner provided for in the constitution.

Implementing direct voting

Direct voting is not available to members unless your association's constitution provides for it.

If your association's constitution does not allow for direct voting, and you would like to adopt a direct voting system, you will need to change the constitution to implement direct voting. You will need to consider how you want the procedure to work. For example, do you want your constitution to outline the form and process for direct voting, or leave it to the committee to determine this form and process in the future as it sees fit?

Why may direct voting be considered beneficial?

Direct voting may make it easier for members to vote (and have their vote counted) when they can't attend an SGM. In contrast to proxy voting (where a person gives another person their power to vote at an SGM – but does not necessarily oblige that person to attend the meeting and vote on their behalf), with direct voting a member can lodge their vote in writing before the SGM. Direct voting can therefore foster greater member participation in decision-making, may speed up the voting process at the SGM and may also avoid the situation where a proxy holder falls ill on the day of an SGM and cannot attend.

Direct voting does not necessarily replace the proxy system. It can sit alongside it. Direct voting simply provides an additional voting option to members who know they cannot attend an SGM.

Sample wording of a new rule to allow direct voting (Tool 26) is provided at the end of this part of the guide.



Note

Check the voting provisions in your association's constitution. If your association's constitution does not allow direct voting (as in the model constitution), your association's constitution will need to be amended and approval will need to be obtained from NSW Fair Trading, to adopt direct voting procedures.



Note

To change your constitution, a special resolution must be passed in accordance with the requirements of section 39 of the AI Act and NSW Fair Trading must approve any changes before they take effect. See above for more information on the specific requirements for passing a special resolution.

Minutes

The word 'minutes' has been used for centuries to mean a summary of the proceedings of an assembly or committee. Today, minutes are a formal written record of the matters discussed and decisions made at a meeting. They should be clear, concise and accurate.

One of the main legal tasks of the secretary of an incorporated association is to make sure that:

- minutes are taken of each meeting (including the SGM) of the association
- minutes are confirmed by the association as an accurate record of the meeting, and
- the minutes of all meetings are kept safely by the association for future reference

The legal requirements for preparing and keeping minutes of SGMs come from section 50 of the AI Act, regulation 15 of the AI Regulation and the association's constitution. Your association may also have policies and practices for taking and keeping minutes.

There are other laws which you should be aware of when preparing and distributing minutes, including defamation and privacy laws. These are discussed briefly in this part of the guide.

AI Act and Regulation requirements

Section 50 of the AI Act requires the association to keep minutes of the proceedings of all committee meetings and general meetings.

Regulation 15 of the AI Regulation requires that minutes and records are kept for no less than five years and provides for records and minutes to be kept in written or electronic format. If records and minutes are kept in electronic format, they must be convertible into hard copy so that they can be made available within a reasonable time to a person who is entitled to inspect them. If any part of the minutes is in a language other than English, a copy of the minutes in English must also be kept with the minutes.

Your association's constitution may also make provisions for the keeping and inspection of minutes. Refer to your association's constitution for further information, however it is important to remember that failure to keep minutes can incur a penalty under the AI Act.

In addition, an inspector from NSW Fair Trading may, by issuing a notice in writing, require the association, or any person who is involved in the association's activities (which includes the public officer) to give the inspector specified relevant documents or information of the association or to grant the inspector access to premises of the association (section 85 and 86 of the AI Act).

NSW Fair Trading may also apply for a search warrant (section 87 of the AI Act). NSW Fair Trading may choose to use these powers to make sure that the association has complied with the AI Act and Regulation.

It is therefore extremely important that the secretary makes sure that accurate minutes are taken of the association's SGMs, and that they are recorded and kept in a safe place.

Your association's constitution

Many associations have a rule, like rule 18 of the model constitution, which requires the secretary to keep minutes of resolutions and proceedings of each SGM.

Rule 43 of the model constitution requires the association to make SGM minutes available to members to inspect and make copies. See [part 3 of this guide: Public Officer's legal role, powers and duties](#) for more information about the responsibility to store and provide access to minutes.

Check your association's constitution.

Your association's policies

Check your association's policies and practices about taking and keeping minutes. If you don't have any, your association may choose to create policies, using this guide for assistance.

Preparing and keeping minutes

Content of the minutes

For detailed information about the usual matters to include in the minutes of meetings, see the checklist for contents of minutes at the end of this part of the guide.

Generally, the minutes should include:

- the day, date, time and place of the meeting
- the time the meeting started
- the names of those present and any apologies
- that the chair announced a quorum was present and that the meeting was duly constituted (if this announcement was made)
- a reference to minutes of the previous committee meeting and the signing of them as a correct record
- details of every resolution put to members and whether it was passed with the appropriate majority
- details of persons voting against a motion or abstaining from voting if those persons request that this be recorded
- details of any appointments made, persons elected to office and any leave of absence granted to a member
- an overview of discussions on decisions made
- the date and time for the next meeting (if determined during the meeting), and
- the time the meeting ended

Importantly, the minutes should record the motions moved and resolutions made at the SGM.

See our [checklist for content of minutes at the end of this part of the guide \(Tool 27\)](#).



Note

Some types of proposed resolutions require written notice to be given before the meeting – see 'Notice of an SGM of members'.

Drafting the content – generally

The format and style of minutes vary considerably among associations. Some minutes are very brief and precise and record the bare minimum of information. Other minutes include 'blow by blow' summaries of the debate. In exceptional circumstances, the minutes will include a transcript of everything that was said at an SGM. Check your association's constitution, policies and practices. It's good practice to ensure that a consistent approach is adopted at all meetings.

Despite variety in the form of minutes, there are some commonly accepted drafting conventions – see '[Conventions for drafting minutes](#)' at the end of this part of the guide (Tool 28). Minutes don't need to include everything that was said but must include adequate details of all formal business (such as motions and voting).

Tip – The minutes are an official historical record of the association, so it's good practice to record in the minutes the name and position of office bearers (chairperson, secretary, treasurer) as well as names of members and any other people present (such as observers).

Drafting motions and resolutions

The exact wording of the motion should appear in the minutes. If there is a problem with the wording of a resolution (that is, a motion which is passed at the SGM), this



will have to be corrected at a later meeting. Once the minutes have been confirmed, the secretary has no power to alter the motion to correct the mistake.

The wording of the motion must comply with your association's constitution, including its purposes – it can't recommend any action outside the scope of your association's powers and activities.

Tip – If a motion is proposed verbally at a meeting, the secretary (or public officer if acting as a secretary) may find it helpful to:

- write the motion down on a board or flip chart and show it to the meeting during the debate, or
- require the motion to be given to them in writing by the member proposing it

This way, any corrections to the wording of the motion can be made before voting on the matter. It also gives the secretary a chance to draft the motion in a way which can be suitably recorded in the minutes.

The wording of the motion must comply with your association's constitution, including its purposes — it can't recommend any action outside the scope of your association's powers and activities. The motion must also be allowed to be made by the SGM, especially if the meeting has been called for a specific purpose.

For each motion, the minutes should record:

- the names of people who move and second the original motion and any amendments
- the method of voting (for information about voting methods, see 'voting methods'), and
- whether the motion was passed (in which case it becomes a resolution), rejected or was adjourned (that is, put off until another meeting)

See '[Conventions for drafting minutes](#)' at the end of this part of the guide (Tool 28).

Tip – It's useful for the secretary to circulate draft minutes with an 'action list' to the people or sub-committees who have been given specific tasks at the AGM.

Drafting minutes of difficult meetings

Sometimes meetings can get heated, and the participants resort to personal attacks, walk-outs, threats and inappropriate remarks. In many instances, the chairperson may require such remarks to be withdrawn (so the remarks are not recorded). In other cases, it is sufficient to record that 'a robust discussion ensued' rather than a blow-by-blow account in the minutes. See '[Conventions for drafting minutes](#)' at the end of this part of the guide (Tool 28).

Tip – For difficult meetings, the secretary could consider:

- asking the chairperson for specific help to draft the minutes (in any case, it is good practice for the secretary to always check the minutes they have drafted with the chairperson before distributing them to others), and
- unless a motion was made or resolution passed, not including the controversial material altogether. The minutes will have to be approved at the next meeting and, if it is considered necessary to include more detail, it can be agreed on then

Defamation

Sometimes a secretary will have to deal with potentially defamatory matters in the minutes of meetings. A chairperson should challenge any defamatory statements at the time they are made in a meeting and have them withdrawn. The statements will then not be recorded in the minutes.

If an association has published defamatory statements in the minutes of an SGM, the defence of 'qualified privilege' may be available, however the association should seek specific legal advice.

Generally, a 'defamatory statement' about a person is one that:

- exposes the person to hatred, contempt or ridicule



- tends to lower them in the opinion of other people
- harms their reputation (for example in their profession), or
- causes them to be shunned or avoided by others



For more information, read [our fact sheet on defamation](#).



Note

The law of defamation is complex. If a secretary is concerned about any potential defamatory matters when drafting the minutes, they should seek legal advice before finalising and distributing the minutes to anyone.

Storing minutes

Minute books – Finalised minutes are often entered into a ‘minute book’. Until recently, a minute book was a securely bound book with sequentially numbered pages. The minutes were handwritten into the book to guard against fraud or tampering. While some small associations still use handwritten minute books, many associations create and store minutes electronically and distribute them by email.

However, it can be difficult to keep track of the ‘official’ version of the minutes when they are created and stored electronically. It is also relatively easy for someone to tamper with the minutes (or replace them with substitute minutes) if they are stored in a loose-leaf binder. For these reasons, you should take precautions to make sure the official minutes of meetings are secure, and easily identifiable.

Tip – Your association can take the following steps to keep the minutes more secure:

- lock the minutes document from editing and add a password to the document
- distribute the minutes electronically in PDF form rather than in an editable form
- print the minutes out and paste them into an official minute book (and number each page of the minute book consecutively)
- get the chairperson to sign each page of the minute book to confirm official minutes
- number each meeting sequentially (for example, ‘The Minutes of 2023 Annual General Meeting of XYZ Club Inc’)

Tip – Experience shows that it is best to write up the first draft of minutes as soon as possible after the AGM. Memory is fresh and the task can be done more quickly and efficiently than leaving it until just before the next meeting.

Confirming and verifying minutes

It’s good practice for the secretary of an incorporated association to:

- make sure the accuracy of the minutes is ‘confirmed’ at the next meeting, and
- make sure the chairperson of the SGM (or the chairperson of the next meeting) has ‘verified’ the accuracy of the confirmed minutes, for example by signing them

See the [flowchart for confirming and verifying minutes at the end of this part of the guide \(Tool 29\)](#). Check your association’s constitution for any special provisions about confirming and verifying minutes.



Tool 22 – Checklist for notice of special general meeting

| Order | Description | Done |
|-------|--|--|
| 1 | Check your association’s constitution, resolutions and policies for specific requirements, such as how much notice to give, what information should be included, and who it should be given to. | <input type="checkbox"/> |
| 2. | Content of notice: | |
| | <ul style="list-style-type: none"> • as its heading, the word 'notice of special general meeting' • name, ABN and registration number of the association • type of meeting (that is, a general meeting of the association’s members) • date, time and place of meeting • nature of business to be discussed at meeting • any business that a member has requested (to the secretary in writing - including by fax or email) to be discussed at meeting (a notice of motion) • date of notice • directions to the meeting venue and disability access (optional) • the secretary’s contact details (optional) • notice ‘authorised by xx’ (optional) | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 3. | If relevant, the notice of special general meeting may also include: | |
| | <ul style="list-style-type: none"> • the text of motions or resolutions to be considered at meeting (if a special resolution is proposed, include the exact wording of the resolution) • any comments by the committee on the business to be dealt with at the meeting • disclosure of the interest of any management committee member in the business to be dealt with at meeting (for example, a potential conflict of interest – see part 2: Public Officer’s legal role, power and duties) • if the constitution allows proxy voting, an explanation of how / when to appoint a proxy, and attach a proxy form • if the constitution allows direct voting, an explanation of how / when to vote directly before the meeting, and attach a direct voting form | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 4. | The notice should also attach background information and documents (as appropriate), such as: | |
| | <ul style="list-style-type: none"> • minutes of the last general meeting (if relevant) • where appropriate, relevant background correspondence | <input type="checkbox"/> <input type="checkbox"/> |
| 5. | Time for giving notice | |



- check your association's constitution, resolutions and policies for specific requirements (for example, 14 days before the meeting date)
- if a special resolution is proposed, you must give 21 days' notice before the meeting date (section 39 of the AI Act)

6. How to give notice

- by post, in person, by email or fax – check your association's constitution, resolutions and policies for specific requirements (for example, notice in local paper)

7. Who to give notice to

- usually all members of the association (check the members register)

Tool 23 – Sample notice for special general meeting



Note

SGMs are referred to in this part as all general meetings other than the AGM. A SGM is usually convened for a particular purpose – in the example below, to consider and vote on a special resolution to change the association's name.

XYZ Club Inc (Registration No A00003333)

ABN 00 123 456 789

Notice of Special General Meeting

Notice is given that a Special General Meeting of the members of XYZ Club Inc will be held on [date], at [time] at [address].

The meeting will be for the purpose of considering and, if thought appropriate, passing the following special resolution:

That the name of XYZ CLUB INC. be changed to ZYX CLUB INC.

Note: This is proposed as a special resolution and must be passed by three quarters of the members who are present at the meeting and entitled to vote on the resolution, and who do vote, in accordance with section 39 of the *Associations Incorporation Act 2009* (NSW).

Comment by Management Committee: The Management Committee unanimously believes that a change of the club's name is in the best interests of all members. This is to prevent the club from being mistaken for another well-known club in the eyes of the public.

T. Bag, Secretary, [date of notice]

by authority of the Management Committee

Proxies (if applicable)

A member entitled to attend and vote at the special general meeting may appoint a person to attend and vote at the meeting as the member's proxy. A proxy must be a member of XYZ Club Inc.

A proxy may be appointed by returning the proxy form (attached) to the secretary at the club's registered office at [address], at least 24 hours before the commencement of the meeting.

Inquiries

All inquiries should be directed to the Secretary, Ms T Bag, XYZ Club Inc, 123 Frank Street, Sydney, telephone (02) 3333 0000, fax (02) 3300 3300, email t.bag@xyz.org.au

Attached

- Proxy Form



Tool 24 – Table of voting methods

This table sets out methods for voting. The most common methods are:

- voting by show of hands
- voting by voice, and
- voting by ballot (in person, postal or electronic)

| Method – Voting by show of hands | |
|---|---|
| How to conduct the vote | Chairperson requests those voting in favour of the motion to raise a hand. The procedure is repeated for those voting against the motion. |
| How to count the vote | <p>Chairperson requests those voting in favour of the motion to raise a hand. The procedure is repeated for those voting against the motion.</p> <p>If the outcome of the vote is clear, it's unnecessary to count the hands. However, it's good practice to count the hands if the result of the vote will be close, or the result is likely to be challenged. It may also be necessary to count the hands if:</p> <ul style="list-style-type: none"> • the association's constitution requires a specific percentage majority for a motion to be carried, or • an issue must be determined by a certain minimum proportion of the members (for example, a special resolution) |
| Comments | <p>Voting by show of hands is difficult to administer if there are a large number of people voting at the meeting. In these circumstances, the chairperson may ask for help (usually from the secretary) to count the votes. The chairperson may also appoint 'tellers' (usually one from each voting 'side' or perspective) and use those people (independently of each other) to determine the count on each vote. The tellers will help the chairperson ensure that no person raises two hands or votes for both 'sides' of the motion.</p> <p>If necessary (that is, if a record is required), the chairperson can make a list of the names of people voting.</p> |
| Method – Voting by standing | |
| How to conduct the vote | A similar method to voting by show of hands. The members stand for the motion that they favour. |
| How to count the vote | Usually, chairperson (perhaps with help of secretary) counts the people standing. Chairperson states whether the motion has been passed. Secretary records the result in the minutes. |
| Comments | <p>Voting by standing can make the counting process easier and reduces the possibility of a vote being counted twice.</p> <p>If necessary, the chairperson can make a list of the names of people voting.</p> |
| Method – Voting by voice (or by applause) | |
| How to conduct the vote | Chairperson says, 'All those in favour of the motion say 'Aye'' (or 'Yes'). After noting the volume of sound, chairperson continues, 'Those against say 'No'. |



| | |
|------------------------------|---|
| | <p>Voting by applause is similar, except that members clap instead of saying 'Aye' or 'No.'</p> <p>Voting by applause is usually for a vote of thanks.</p> |
| How to count the vote | <p>Chairperson determines which of the 'Ayes' or the 'Nos' (or claps) made the more noise and states the conclusion by saying, 'The 'Ayes' (or the 'Nos') have it'. Secretary records the result in the minutes.</p> |
| Comments | <p>A problem with voting by voice or applause is a lack of documentation of individual votes. A written record of votes is useful if the decision is later disputed or if (as in the case of a special resolution) a three-quarters majority is required.</p> <p>So, if the particular matter to be voted on is contentious or if a special resolution is required, it is better to conduct a vote by show of hands, by standing, or better still, by division or a ballot (see below).</p> |

Method – Voting by division

| | |
|--------------------------------|--|
| How to conduct the vote | <p>Chairperson places the motion before the meeting, saying 'All those in favour, the 'Ayes', will pass to the right of the chairperson; those against, the 'No's', will pass to the left of the chairperson.'</p> |
| How to count the vote | <p>To record votes, members stand and walk past one side or other of chairperson, depending upon their vote. As each person passes, chairperson (or secretary) records their name.</p> |
| Comments | <p>Voting by division takes longer than the methods discussed above. However, it has the advantage of being accurate and straightforward to administer, as well as involving a more objective written record.</p> |

Method – Voting by ballot (in person)

| | |
|--------------------------------|---|
| How to conduct the vote | <p>Secretary prepares voting paper containing all relevant details of the matter being voted on (for example, if the ballot is to change the constitution of the association, the text of the proposed special resolution). Secretary distributes the papers to all the people at the meeting who are entitled to vote.</p> <p>Secretary keeps a written record of:</p> <ul style="list-style-type: none"> names of the people to whom they distributed the voting papers, and how many voting papers were distributed to each person (this is because, for example, a proxy holder may vote on behalf of several people) <p>Chairperson explains to those voting the manner of voting required by the voting paper (for example, the ballot may call for a 'Yes' or 'No' vote).</p> <p>People who are entitled to vote record their votes in writing on the voting paper. They usually also record their name on the paper.</p> <p>Tellers (people who count the votes) collect the papers. Scrutineers (people who examine the papers) generally supervise the process (tellers and scrutineers can be the same people and may be appointed by resolution at the meeting or by the secretary).</p> <p>If any votes are doubtful the scrutineer consults with the chairperson, who makes a ruling.</p> |
|--------------------------------|---|



| | |
|--|---|
| <p>How to count the vote</p> | <p>Chairperson checks that all voting papers distributed have now been collected.</p> <p>Tellers and scrutineers count votes and inform chairperson of the result (usually in writing) as soon as it has been determined. Chairperson announces the result to the meeting.</p> <p>If a large number of people are voting (and therefore the counting could take some time), chairperson can usually adjourn the business to after voting papers have been collected and checked.</p> |
| <p>Comments</p> | <p>Voting by ballot takes longer to administer than other methods, but the precautions that form part of the procedure are necessary to ensure a correct count.</p> <p>The advantages of ballot voting are that:</p> <ul style="list-style-type: none"> • the votes are made in writing • all people entitled to vote have an opportunity to do so, (because, if the constitution allows for proxies, proxies are issued additional ballot voting papers), and • members with more than one vote each (that is, differential voting rights) have a say in proportion to their voting entitlement (which may help prevent an overbearing or noisy minority from influencing the vote). |
| <p>Method – Voting by postal or electronic ballot (see Regulation 11 and Schedule 2 of the AI Regulation)</p> | |
| <p>How to conduct the vote</p> | <p>The committee:</p> <ul style="list-style-type: none"> • decides on the wording of the matter to be voted on • fixes the dates for sending or giving access to ballot papers and for closing the ballot, and • appoints a returning officer (who need not be a member of the association but must not be a committee member) <p>The returning officer prepares:</p> <ul style="list-style-type: none"> • the roll of name and addresses for those entitled to vote, and • the ballot paper containing instructions for completing and returning the paper, the closing date of the ballot and the question to be determined (for example, if the ballot is to change the constitution of the association, the text of the proposed special resolution) <p>The returning officer distributes the ballot paper to those on the voting roll within the required notice period (14 days before the closing date of the ballot, or 21 days before if a special resolution is proposed, or a longer period as determined by the association's constitution).</p> <p>A clear record should be kept of names of the people to whom they distributed the voting papers, and how many voting papers were distributed to each person (this is because, for example, a proxy holder may vote on behalf of several people).</p> |
| <p>How to count the vote</p> | <p>Once the ballot is closed, the returning officer counts the valid votes (rejecting any 'informal' votes) and prepares and signs a statement of the results of the ballot to be provided to the committee.</p> <p>The committee enters the results of the ballot in the minute book and the chairperson announces the results of the ballot at the next general meeting of members.</p> |



If the ballot was for a special resolution, the committee must notify the members of the ballot results in writing as soon as possible.

The returning officer is to keep all ballot papers, rolls and other records relating to the ballot for at least eight weeks, or for a longer period as determined by the committee or the association's constitution.

Comments

Electronic voting includes voting by email, accessing a voting website or other electronic means.

A returning officer may appoint a person (who would also be eligible to be a returning officer) to assist them in their duties.

If a ballot paper is not completed in accordance with the instructions set out in the paper, the vote may be 'informal' and may be rejected by the returning officer.

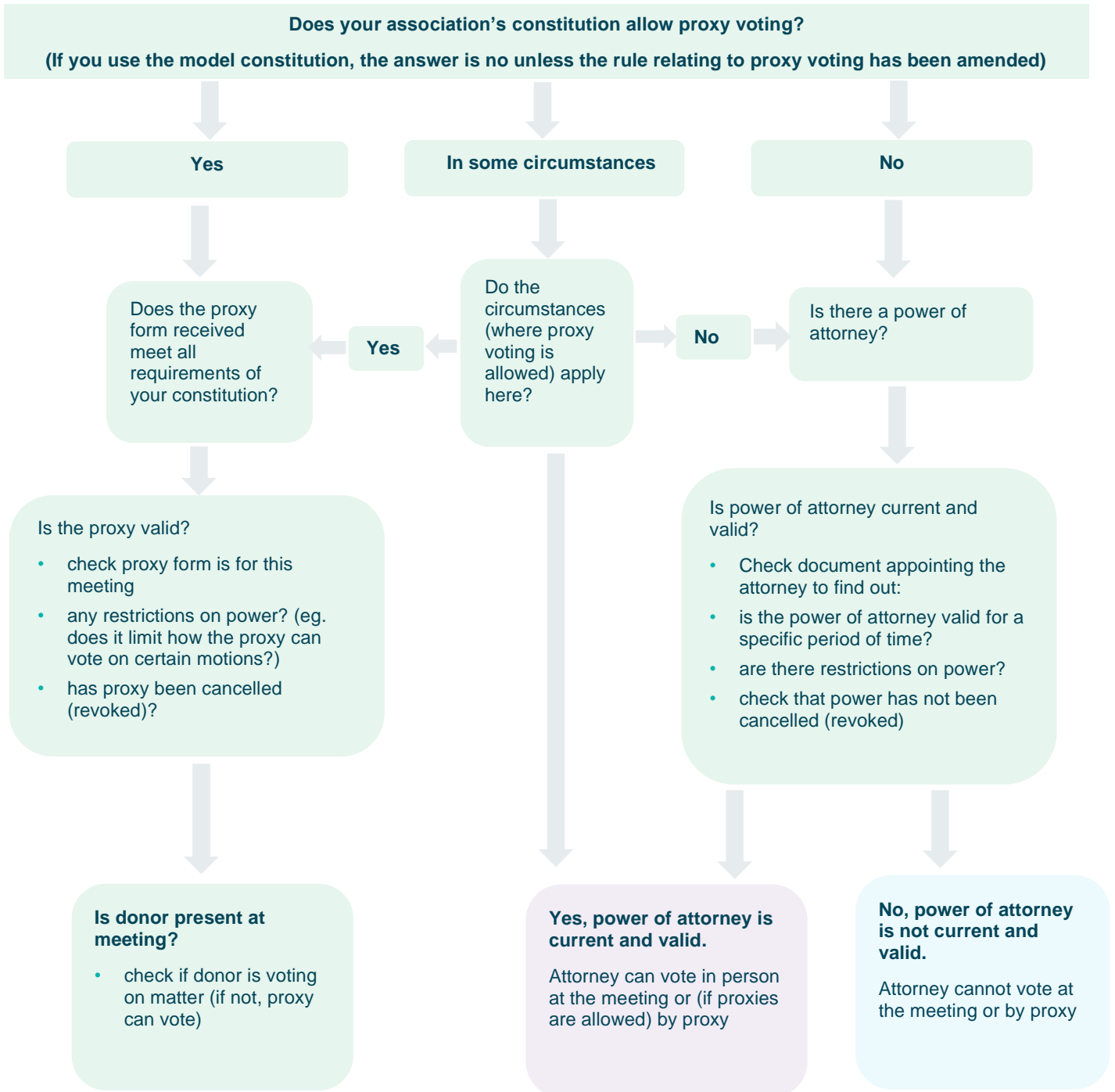
Voting by ballot takes longer to administer than other methods, but the precautions that form part of the procedure are necessary to ensure a correct count.

The advantages of ballot voting are:

- the votes are made in writing
- all people entitled to vote have an opportunity to do so, (because, if the constitution allows for proxies or direct, postal or electronic voting, proxies are issued additional ballot voting papers and 'direct, postal or electronic votes' are counted), and
- members with more than one vote each (that is, differential voting rights) have a say in proportion to their voting entitlement (which may help prevent an overbearing or noisy minority from influencing the vote)



Tool 25 - Flowchart for reviewing proxies





Tool 26 – Sample wording for allowing direct voting in your constitution

Below is a sample clause which could be included in an association's constitution to allow 'direct voting' by members of the association. Read the wording carefully. Consider whether this procedure is suitable for your association.

Note that the wording gives the committee of management a **discretion** to allow direct voting at a general meeting – in other words, members do not have an **automatic** right to direct voting at every meeting.

You may like this wording, or you may need to adapt the clause or use different wording altogether. This will depend on your association's needs. If necessary, seek legal advice about changes to your constitution.

'The committee may determine that at any general meeting of the Association, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution.

If the committee determines that votes may be cast by direct vote, the committee may specify the form, method and manner of casting a direct vote and the time by which a direct vote must be received by the Association in order for the vote to be valid.'



Tool 27 – Checklist for content of minutes

It's good practice to include the following in the minutes of a meeting:

| Order | Description | Done |
|-------|--|--------------------------|
| 1. | Name of your association and heading, for example, 'Annual General Meeting' | <input type="checkbox"/> |
| 2. | Date, time, place and opening time | <input type="checkbox"/> |
| 3. | Name of chairperson | <input type="checkbox"/> |
| 4. | Names of members present (and their status if office holders) and other people present, such as observers (or reference to separate attendance register) | <input type="checkbox"/> |
| 5. | Names of non-members who are attending (if any) | <input type="checkbox"/> |
| 6. | Names of those people who have sent apologies (for not attending) | <input type="checkbox"/> |
| 7. | That the quorum was present and that the meeting was duly constituted | <input type="checkbox"/> |
| 8. | Confirmation of previous meeting's minutes | <input type="checkbox"/> |
| 9. | Record of motions, resolutions and amendments (and whether passed with the appropriate majority) | <input type="checkbox"/> |
| 10. | Names of the people who move and second motions, and those who abstain from voting (if requested to be recorded) | <input type="checkbox"/> |
| 11. | Short summaries of the debates on motions | <input type="checkbox"/> |
| 12. | The method of voting on motions etc. (for example, show of hands, ballot) and the numbers of votes for, against and abstaining | <input type="checkbox"/> |
| 13. | The details of any proxy voting or direct voting | <input type="checkbox"/> |
| 14. | Results of voting (for example, passed, rejected or adjourned, etc.) | <input type="checkbox"/> |
| 15. | Titles (and any relevant details) of documents or reports tabled | <input type="checkbox"/> |
| 16. | (If relevant) cross reference to previous minutes or policies of the association | <input type="checkbox"/> |
| 17. | Committee minutes should approve or ratify all the association's expenditure | <input type="checkbox"/> |
| 18. | Details of next meeting | <input type="checkbox"/> |
| 19. | Closing time | <input type="checkbox"/> |
| 20. | List of tasks arising from the minutes and name of person responsible for each | <input type="checkbox"/> |
| 21. | After minutes have been confirmed at the next meeting, signature of chairperson | <input type="checkbox"/> |

Tool 28 – Conventions for drafting minutes



Note

The table below is in two parts:

- the first part deals with drafting **minutes** of discussion at meetings,
- the second part deals with drafting **motions** discussed at meetings

Conventions for drafting minutes of discussions in meetings

Use simple sentences and simple words

- This helps people understand what was discussed (especially if they were not at the meeting).

Do not write: ‘Mr UB Sporty extrapolated that this fine sporting institution’s solar watt 500 water heating appliance with the white duco slimline control panel was performing consistently below its engineered benchmarks.’

Do write: ‘Mr UB Sporty reported that the club’s hot water system needed urgent repairs.’

Use active, rather than passive, voice

- In the ‘active’ voice, the subject of the sentence performs the action stated by the verb. In the ‘passive’ voice, the subject of the sentence is acted upon. Generally, the passive voice can be more difficult for a reader to understand.

Do not write (passive voice): ‘A computer was used by the secretary to write these minutes.’

Do write (active voice): ‘The secretary used a computer to write the minutes.’

- However, it is acceptable to use the passive voice if:
 - you want to soften an unpleasant message
 - you don’t know who did a particular thing recorded in the minutes, or
 - you want to shift the reader’s attention away from the person who did something to other information

Do write (passive voice) **in some circumstances:** ‘Complaints were put in the suggestion box.’
(ie. you do not want to specify who actually made the complaints)

Use only one tense

- It is usually best to use the past tense in minutes.

Do write: ‘Ms L Little reported that she had’ and ‘The committee considered that the hot water system was’

Avoid terms such as ‘he said’ or ‘she stated’ unless you quote their actual words

- This is to avoid ‘putting words into a person’s mouth.’

Do not write: ‘Mr S Fry said: ‘I got a letter from the Council about this. I reckon the Council is being stupid.’’

Do write: ‘Mr S Fry reported that he had received a letter from the Council. He spoke critically of the Council’s position on this issue.’



Avoid personal descriptions or attributes

- This is to make sure that the minutes are as 'objective' or 'impartial' as possible – the minutes should not include the minute-writer's own personal opinions or reflections.

Do not write: 'The chairman announced happily...', 'The treasurer meanly said...' or 'The club representative slammed the report.'

Be very careful not to defame anyone when recording matters that include confidential details

- See discussion of 'Defamation' and 'Confidential matters' in this part of the guide.

Do not write: 'Ms L Little reported that the builder engaged to renovate the club house has a history of stealing from associations and said he was a disgrace to his profession.'

Do write: 'Concern was expressed about the suitability of the builder for the task of renovating the club house.'

Conventions for drafting motions discussed at meetings

Start the motion with the word 'that'

- This is so all resolutions of the meeting are in the same format.
- Before the word 'that', imagine inserting the words, 'The meeting passed a resolution...'

Do write: That the treasurer's recommendation be adopted.'

Use the verb 'be' rather than the word 'is'

- This is to be grammatically correct when the motion starts with the word 'that' (see above).

Do not write: 'That the newspaper release is adopted.'

Do write: 'That the newspaper release be adopted.'

Express the motion in the positive

- This means that a 'yes' vote from the members results in the proposal being approved or supported.

Do not write: 'That the doors be not shut during the meeting.'

Do write: 'That the doors be open during the meeting.'

If you can't express the motion in one sentence, split it up into carefully written parts

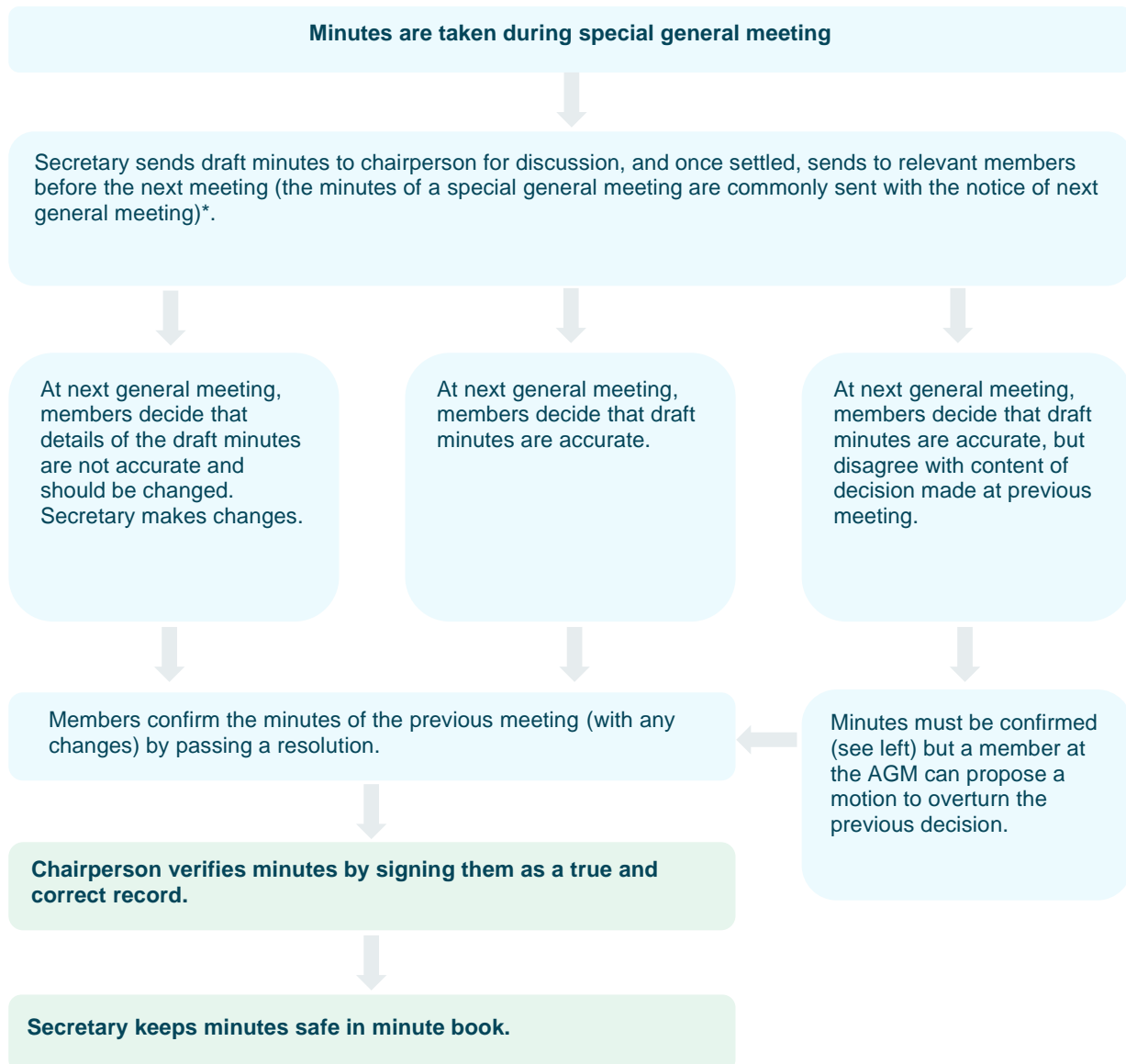
- Carefully construct a composite motion (one with a number of separate parts) so that the chairperson can split it up to enable the meeting to deal with each of its parts separately.

Do not write: 'That in addition to any other motions proposed this meeting resolve to thank the members of the Town Hall including Ms T Bag for providing the refreshments and Mr B Room for making the accommodation available and instruct the secretary to send letters of thanks to Ms T Bag and Mr B Room with a copy to Mr S Visor.'

Do write: 'That the meeting register its appreciation for Town Hall members generally, and specifically ask the secretary to:

- (a) send a letter of thanks to:
 - (i) Ms T Bag for providing the refreshments, and
 - (ii) Mr B Room for making the accommodation available, and
- (b) send a copy of these letters to Mr S Visor.

Tool 29 – Flowchart for confirming and verifying minutes



Note

If the minutes weren't sent out before the next meeting, allow time for people to read them or the secretary should read them aloud at the meeting.



Part 6

Committee meetings



Committee meetings

This part of the guide covers preparing for, conducting and minuting committee meetings of an incorporated association in New South Wales.

Summary of key points

| | |
|---|--|
| What is a committee meeting? | A committee meeting is a meeting of the association's committee. Sometimes these are called board meetings. |
| What is a notice of committee meeting? | A notice of committee meeting is a written notice that a committee meeting is to take place at a specified time and place. |
| Giving notice of a committee meeting | This part of the guide sets out the requirements for notices of committee meetings of the association. A sample notice and checklist tools are provided. |
| Procedures for a committee meeting | The legal requirements and common procedures at meetings of the committee are set out in this part of the guide. |
| Voting methods | There is a range of ways in which votes at committee meetings are taken. A variety of voting methods are set out in a tool in this part of the guide. |
| What are 'minutes'? | Minutes are a written record of what was discussed and decided at a meeting. One of the key legal tasks of the secretary of an association is to make sure that accurate minutes of committee meetings are taken, and that these are kept in a safe place. The AI Act, AI Regulation and an association's constitution contain requirements for the minutes of meetings of the association. Those requirements are discussed in this part of the guide. |
| Preparing and keeping minutes | This part of the guide sets out what should be included in the minutes and how they should be kept. It also contains tips and tools for drafting minutes, including 'action lists' which summarise people's responsibilities arising from a committee meeting. |
| Confirming and verifying minutes | The secretary should ensure at each committee meeting that the members pass a resolution confirming the minutes of the previous committee meeting, and that the chairperson signs a copy of the confirmed minutes. This part of the guide explains this procedure and has a tool to help you. |

What is a committee meeting?

A committee meeting (sometimes called a board meeting) is a meeting of the association's governing body. Committee meetings are usually less formal than general meetings, so the notice requirements are often less formal. In fact, many committee meetings of small associations are held in a relaxed way around a kitchen table with cups of coffee.

Many associations' constitutions specify that the committee:

- must meet a certain number of times per year, and
- can convene additional committee meetings as they see fit

The committee should meet as often as is necessary to properly manage the affairs of the association.

Some associations' constitutions allow the committee (and any subcommittees) to specify their own notice requirements for their meetings. Usually, the committee or a subcommittee will do this by passing a resolution to adopt the requirements.

The AI Act also permits, where your association's constitution allows, committee meetings to be held at two or more venues using any technology that gives each committee member reasonable opportunity to participate (see section 30 of the AI Act).



Tip

Make sure you have the most up-to-date version of your constitution, including any changes that the association's members and NSW Fair Trading have approved.

If you are unsure which rules apply to you and whether the copy you have is up to date, contact NSW Fair Trading and request a copy of your association's rules and purposes.

What is a notice of meeting?



What is a notice of meeting?

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

A notice of meeting should set out information (such as the date, time, place, and what is proposed to be considered at the meeting) so that those entitled to attend the meeting know what it's about.

This notice may be delivered orally or in writing (see for example rule 22(1) of the model constitution) however your association's constitution may provide a specific means of delivery and most associations will require written notice to be given.

The contents of a notice of meeting may vary significantly from association to association, depending on the type of association and how formal the committee's processes are.

Giving notice of a committee meeting

The [checklist for notice of committee meeting at the end of this part of the guide \(Tool 30\)](#) will help you to prepare a notice for a committee meeting.

When to give notice of a committee meeting

Your association's constitution may set out when members of the committee should receive notice of a committee meeting. For example, rule 22(1) of the model constitution says that committee members should receive the notice at least 48 hours before the time appointed for the meeting.



Tip

Even if your rules don't require it, it's good practice to give at least one week's notice of a committee meeting, so that members have time to read the papers and prepare properly.

In many associations, the dates of all committee meetings for the year are set at the first meeting of the year. This helps people to plan their availability. If urgent matters arise, additional meetings with shorter notice can be arranged.

Your association's constitution may have special notice requirements for a committee meeting which is being held for a particular purpose.

What information should be included in a notice of committee meeting?

A notice of committee meeting should specify the general nature of the business to be dealt with at that meeting and only that business may be transacted (see rule 22(3) of the model constitution). Urgent business may also be discussed at the meeting, provided that all members present at the meeting unanimously agree to treat such business as urgent (see rule 22(3) of the model constitution).

The AI Act also requires that all notices include the name of the association to be clearly legible (section 41 of the AI Act). Check your association's constitution and policies for any special requirements. See the checklist for notice of committee meeting at the end of this part of the guide for the types of details that are usually included in a notice of committee meeting.

A notice of committee meeting is usually sent together with documents which provide background information on the matters to be discussed at the meeting, such as:

- the minutes of the last meeting
- reports prepared by staff, volunteers or subcommittees
- financial reports, and
- important correspondence



Tip

It may be helpful to categorise the documents sent to committee members, to help them prepare for the meeting effectively. For example, you may wish to mark documents as 'for information only', 'for discussion', or 'for action'.

How to give notice of a committee meeting

Your association's constitution and policies may also specify how a notice of a committee meeting is to be given. For example, rule 41 of the model constitution provides different methods for the delivery of notices which includes in person, by post or electronic transmission.

Most associations have rules like those for giving notice of a general meeting (see, Giving notice of a special general meeting in [part 5](#) of this guide: Special General Meetings).

Who should be given notice of a committee meeting?

Rule 22 of the model constitution requires that the secretary give each committee member notice of a committee meeting.

If the association's constitution or the committee permits, it would be good practice to give notice to the Chief Executive Officer (if you have one), and any other person you wanted to ask to the meeting, such as an accountant or auditor, if they are not members of the committee themselves). Check your association's constitution and policies for any special requirements.

What if a committee meeting is adjourned to a later date?

If a meeting is adjourned (usually due to the quorum not being present), you may need to provide further notice of the date, time and place of the adjourned meeting.

Check your association's constitution for any specific provisions about this. If in doubt, it is best to send out a new notice. In the model constitution if a quorum cannot be reached at a committee meeting, the meeting will stand adjourned to the same place and time the following week (rule 23(3)).

Subcommittee meetings

In larger associations, subcommittees may be established (usually by instrument in writing) to consider and make recommendations to the committee on the direction of areas of operation of the association. Subcommittees, such as finance or audit subcommittees, are usually created under an association's constitution, but don't have to be. For example, the rules may give the committee the power to set the 'terms of reference' or scope of a subcommittee as it sees fit and decide which members will form the subcommittee.

The committee may also delegate certain powers and functions to the subcommittee. Generally, a subcommittee acting with a delegated power can make any decisions necessary to exercise that power, and an exercise of that power will have the same effect as if it were exercised by the main committee. Check your association's constitution for information about the role and powers of subcommittees in your association.

Although the committee 'delegates' power to the subcommittee to look at certain matters within its terms of reference, the ultimate responsibility for the governance of the association still sits with the committee.

Your association's constitution may deal with how notice of a subcommittee meeting is to be given and what is to be included in the notice. Generally, subcommittee meetings are notified more informally than committee meetings and members of the subcommittee are free to raise any item of business related to the terms of reference at the meeting. For example, the model constitution gives the power to call and conduct meetings to the subcommittees to exercise as they see fit (see rule 21(3)).

Procedure for committee meetings

The AI Act requires the constitution of your association to set out the procedure at committee meetings (Item 7(e) of Schedule 1 of the AI Act).

Many associations' constitutions specify that the committee:

- must meet a certain number of times per year (at least three times per year in the model constitution), and
- may hold additional meetings

Your association's constitution may set out a procedure for committee meetings that includes some of the procedures for general meetings. However, generally, the procedure for committee meetings is less formal than for general meetings – mainly because of the smaller number of people involved and the need to meet more often.

Nevertheless, the committee should be careful to:

- clearly record their decisions and actions (usually this is the secretary's task)
- note any conflicts of interest (see [part 2 of this guide: Public Officer's legal role, powers and duties](#)) and details of how the meeting dealt with voting on contracts or matters to which these conflicts of interest relate (see section 31 of the AI Act)
- carefully consider the association's financial position, and
- approve or ratify any expenditure for the association

Check your association's constitution, policies and practices for any special requirements.

How many people need to be at a committee meeting?

The AI Act requires the rules of your association to provide for the quorum (minimum number of people) at committee meetings (item 7(e) of Schedule 1 of the AI Act). Many associations have a rule (like rule 23 in the model constitution), which provides that:

- any three members of the committee constitute a quorum for a meeting of the committee
- no business can be conducted unless a quorum is present, and
- if a quorum is not present within half an hour of the time appointed for the meeting, then:
 - the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week, and
 - if at the adjourned meeting a quorum is not present the meeting is to be dissolved

Check your association's constitution.

Adjourning committee meetings

Your association's constitution may include specific provisions about how and when committee meetings can be adjourned (for example, see above for where there is no quorum). However, there may also be other circumstances where adjourning the meeting is appropriate. Check your association's constitution.

Subcommittee meetings

Subcommittee meetings (which may involve fewer people than committee meetings) are usually conducted on a less formal basis than committee meetings. However, each subcommittee should take care to record clearly their conclusions, actions and recommendations.

The secretary is usually responsible for ensuring that records of subcommittee meetings are properly maintained by the association. If the secretary is not present at a subcommittee meeting, they should arrange for someone else to take minutes, and for that person to give a copy of the minutes to the secretary.

Voting at committee meetings

There are various ways in which votes can be taken at a committee meeting. The most common methods are voting by show of hands or by poll (that is, a vote in writing).

Check your association's constitution and policies about voting methods. Your constitution may require certain methods and not allow others.

Abstaining from voting

Some committee members may decide not to vote at all (that is, 'abstain from voting') and they may wish to have the secretary record their names in the minutes as having abstained.

In circumstances where a committee member has an interest in a matter, that member is not permitted to participate in discussions about or vote on the matter (see section 31 of the AI Act), unless the committee otherwise determines. For more information on conflict of interests – see [part 2 of this guide: Public Officer's legal role, powers and duties](#).

Other members may oppose the motion and request that their opposition be noted.

What if a vote is tied?

If a vote is tied, it's normal for the person presiding over the committee meeting to cast a second and determinative vote (see rule 24(2) of the model constitution).

What if a committee member is unable to attend a committee meeting and vote in person?

If a committee member is unable to attend a committee meeting to cast their vote in person, that member may, depending on the rules of their association, transfer their voting rights to another committee member (commonly called a proxy). For more information about forms of 'absentee' voting, see Voting methods in [part 5 of this guide: Special General Meetings](#).

An association may, under its constitution, permit direct voting to allow committee members who will be absent from a committee meeting to cast their own vote by completing and lodging a voting form before that meeting. The Model Constitution doesn't explicitly permit direct voting at committee meetings. For more information about direct voting, including how an association can amend its rules to implement a system of direct voting, see, Voting methods in [part 5 of this guide: Special General Meetings](#).

Minutes

The word 'minutes' has been used for centuries to mean a summary of the proceedings of an assembly or committee. Today, minutes are a formal written record of the matters discussed and the decisions made at a meeting. They should be clear, concise and accurate.

Generally, one of the main tasks of the secretary of an incorporated association is to make sure that:

- minutes are taken of each meeting (including committee meetings) of the association
- minutes are confirmed as an accurate record of the meeting, and
- the minutes of all meetings are kept safely by the association for future reference

The legal requirements for preparing and keeping minutes of committee meetings come from section 50 of the AI Act, regulation 15 of the AI Regulation and the association's constitution. Your association may also have other policies and practices for taking and keeping minutes.

There are other laws which you should be aware of when preparing and distributing minutes, including defamation and privacy laws. These are discussed briefly in this part of this guide.

AI Act and Regulation requirements

Section 50 of the AI Act requires the association to keep minutes of the proceedings of all committee meetings and general meetings.

Regulation 15 of the AI Regulation requires that minutes and records are kept for no less than five years and provides for records and minutes to be kept in written or electronic format. If records and minutes are kept in electronic format, they must be convertible into hard copy so that they can be made available within a reasonable time to a person who is entitled to inspect them. If any part of the minutes is in a language other than English, a copy of the minutes in English must also be kept with the minutes.

Your association's constitution may also make provision for the keeping and inspection of minutes. Refer to your association's constitution for further information, however it is important to remember that failure to keep minutes can incur a penalty under the AI Act.

In addition, NSW Fair Trading may issue a notice on the association requiring the production of documents connected with the affairs of the association (section 85(1)(b) of the AI Act). Any request for documents may include minutes of meetings held by the association. NSW Fair Trading may use these powers to make sure that your association is complying with the AI Act and Regulations. It is therefore extremely important that the secretary makes sure that accurate minutes are taken of committee meetings and that they are kept in a safe place.

Your association's constitution

Section 50 of the AI Act requires associations to keep minutes of proceedings at committee and general meetings. The constitution of your association may also provide additional rules about preparing and keeping accurate minutes of meetings.

For example, under the rule 18 of the model constitution, the secretary must make sure that minutes are taken at all meetings. The minutes must record who was at the meeting and the proceedings at the committee meeting (rule 18(2) of the model constitution). Minutes of the meeting must generally be signed by the chairperson of the meeting or the chairperson of the next meeting (see for example rule 18(3) of the model constitution).

Your association's constitution must contain rules about who can gain access to committee meeting minutes, if permitted (Item 15 of Schedule 1 of the AI Act). The model constitution provides an example of how an association's constitution may address the inspection of minutes. Rule 43 of the model constitution requires that documents, including minutes of committee and general meetings, are to be open for inspection free of charge by any member of the association at any reasonable hour of the day. Check your association's constitution for rules on what documents can be inspected, by who and how these documents may be accessed.

Your association's policies

Check your association's policies and practices about taking and keeping minutes. If you don't have any, your association may choose to create policies, using this guide for assistance.



Preparing and keeping minutes

| | |
|--|--|
| <p>Content of the minutes</p> | <p>For detailed information about the usual matters to include in the minutes of meetings, see the checklist for contents of minutes at the end of this part of the guide (Tool 31).</p> <p>Generally, the minutes should include:</p> <ul style="list-style-type: none"> • the day, date, time and place of the meeting • the time the meeting started • the names of those present and any apologies • that the chair announced a quorum was present and that the meeting was duly constituted (if this announcement was made) • a reference to minutes of the previous committee meeting and the signing of them as a correct record • details of every resolution put to members and whether it was passed with the appropriate majority • details of persons voting against a motion or abstaining from voting if those persons request that this be recorded • details of any appointments made, persons elected to office and any leave of absence granted to a member • an overview of discussions on decisions made • the date and time for the next meeting (if determined during the meeting), and • the time the meeting ended <p>Importantly, the minutes should record the motions moved and resolutions made at the committee meeting.</p> |
| <p>Drafting the content - generally</p> | <p>The format and style of minutes vary considerably among associations. Some minutes are very brief and precise and record the bare minimum of information. Other minutes include 'blow by blow' summaries of the debate. Check your association's constitution, policies and practices.</p> <p>Despite variety in the form of minutes, there are some commonly accepted drafting conventions – see the conventions for drafting minutes at the end of this part of the guide.</p> <p>Tip – The minutes are an official historical record of the committee and the association, so it is good practice to record in the minutes the name and position of all committee members and office bearers (chairperson, secretary, treasurer) present.</p> |
| <p>Drafting motions and resolutions</p> | <p>The exact wording of the motion should appear in the minutes. If there is a problem with the wording of a resolution (that is, a motion which is passed at the committee meeting), this will have to be corrected at a later meeting. Once the minutes have been confirmed, the secretary has no power to alter the motion to correct the mistake.</p> <p>The wording of the motion must comply with your association's constitution, including its purposes — it cannot recommend any action outside the scope of your association's powers and activities. The motion must also be allowed to be made by the committee meeting, especially if the meeting has been called for a specific purpose.</p> <p>Tip – If a motion is proposed verbally at a meeting, the secretary may find it helpful to:</p> <ul style="list-style-type: none"> • write the motion down on a board or flip chart and show it to the meeting during the debate, or |



- require the motion to be given to them in writing by the member proposing it

This way, any corrections to the wording of the motion can be made before voting on the matter it also gives the secretary a chance to draft the motion in a way which can be suitably recorded in the minutes.

For each motion, the minutes should record:

- the names of people who move and second the original motion and any amendments
- the method of voting (for information about voting methods, see 'Voting methods' in this part of the guide), and
- whether the motion was passed (in which case it becomes a resolution), rejected, or adjourned (that is, put off until another meeting).

See the ['Conventions for drafting minutes' at the end of this part of the guide \(Tool 32\)](#).

Tip – It's useful for the secretary to circulate draft minutes with an 'action list' to the people or subcommittees who have been given specific tasks at the committee meeting.

Drafting minutes of difficult meetings

Sometimes committee meetings get heated, and the participants resort to personal attacks, walk-outs, threats and inappropriate remarks. In many instances, the chairperson may require such remarks to be withdrawn (therefore the remarks are not recorded). In other cases, it is sufficient to record that 'a robust discussion ensued' rather than a blow-by-blow account in the minutes.

See the ['Conventions for drafting minutes' at the end of this part of the guide \(Tool 32\)](#).

Tip – For difficult meetings, the secretary could consider:

- asking the chairperson for specific help to draft the minutes (in any case, it is good practice for the secretary to always check the minutes they have drafted with the chairperson before distributing them to others)
- unless a motion was made or resolution passed, omitting the controversial material altogether. The minutes will have to be approved at the next meeting and, if it is considered necessary to include more detail, it can be agreed on then, and
- marking the minutes as 'confidential' to make it clear that access to them is intended to be limited

Defamation

Sometimes a secretary will have to deal with potentially defamatory matters in the minutes of committee meetings. A chairperson should challenge any defamatory statements at the time they are made in a committee meeting and have them withdrawn. The statements will then not be recorded in the minutes.

If an association has published defamatory statements in the minutes of a meeting, the defence of 'qualified privilege' may be available. However, the association should seek specific legal advice.

Generally, a 'defamatory statement' about a person is one that:

- exposes the person to hatred, contempt or ridicule
- tends to lower them in the opinion of other people
- harms their reputation (for example in their profession), or
- causes them to be shunned or avoided by others



For more information, read [our fact sheet on defamation](#).



Note

The law of defamation is complex. If a secretary is concerned about any potential defamatory matters when drafting the minutes, they should seek legal advice before finalising and distributing the minutes to anyone.

Storing minutes

While some small associations still use handwritten minute books, many associations create and store minutes electronically and distribute them by email.

However, it can be difficult to keep track of the 'official' version of the minutes when they are created and stored electronically, and it is relatively easy for someone to tamper with the minutes (or replace them with substitute minutes) if they are stored in a loose-leaf binder. For these reasons you should take precautions to make sure the official minutes of meetings are secure, and easily identifiable.

Tip – Your association can take the following steps to keep the minutes more secure:

- lock the minutes document from editing and add a password to the document
- distribute the minutes electronically in PDF form rather than in an editable form
- print the minutes out and paste them into an official minute book (and number each page of the minute book consecutively)
- get the chairperson to sign each page of the minute book to confirm official minutes
- number each meeting sequentially (for example, 'Minutes of Committee Meeting No. 3 of 2023 of XYZ Club Inc')

Tip – Experience shows that it is best to write up the first draft of minutes as soon as possible after the committee meeting. Memory is fresh and the task can be done more quickly and efficiently than leaving it until just before the next meeting. To this end, notes can also be taken during the meeting.

Confirming and verifying minutes

It's good practice for the secretary of an incorporated association to:

- make sure that the accuracy of the minutes is 'confirmed' at the next committee meeting, and
- make sure that the chairperson of the meeting (or the chairperson of the next meeting) has 'verified' the accuracy of the confirmed minutes, for example by signing them

An example of how an association may deal with confirming and verifying minutes is given in the model constitution rule 18(3), where the chairperson of that meeting or the chairperson of the next meeting must sign the minutes. Except for rule 18(3) of the model constitution, the AI Act and Regulation do not prescribe any obligations or procedures for confirming and verifying minutes. However, you should check the constitution of your association for any special provisions about confirming and verifying minutes.

See the [flowchart for confirming and verifying minutes at the end of this part of the guide \(Tool 33\)](#).



Tool 30 – Checklist for notice of committee meeting

Use this checklist to prepare a notice of meeting of the committee or other governing body of the association.



Note

Committee meetings are usually less formal than general meetings and the committee may be able to make its own notice procedures under the association's constitution (for example, notices may be allowed to be provided by email).

| Order | Description | Done |
|-------|--|--------------------------|
| 1. | Check your association's constitution, resolutions and policies for specific requirements, such as how much notice to give, what information should be included, and who it should be given to | <input type="checkbox"/> |
| 2. | Content of notice: | |
| | • the full name of the association | <input type="checkbox"/> |
| | • type of meeting (that is, committee meeting) | <input type="checkbox"/> |
| | • date, time and place of meeting | <input type="checkbox"/> |
| | • if necessary, nature of business to be discussed at meeting (for example, if it is a 'special' meeting, why meeting is being held) | <input type="checkbox"/> |
| | • date of notice | <input type="checkbox"/> |
| | • directions to the meeting venue and disability access (optional) | <input type="checkbox"/> |
| | • secretary's contact details (optional) | <input type="checkbox"/> |
| | • notice 'authorised by xx' (optional) | <input type="checkbox"/> |
| 3. | If relevant, the notice may also include: | |
| | • the wording of motions or resolutions to be considered at meeting | <input type="checkbox"/> |
| | • disclosure of the interest of any committee member in the business to be dealt with at meeting (for example, a conflict of interest – see part 2 of this guide: Public Officer's legal role, powers and duties) | <input type="checkbox"/> |
| 4. | The notice should attach relevant background information and documents, such as: | |
| | • minutes of the last committee meeting | <input type="checkbox"/> |
| | • reports from staff, subcommittees or volunteers | <input type="checkbox"/> |
| | • financial reports | <input type="checkbox"/> |

**5. Time for giving notice:**

- check your association's constitution, resolutions and policies for specific requirements. The model constitution requires a minimum of 48 hours' notice of a committee meeting or an alternative period where committee members unanimously agree (rule 22(1)).
- if none, the time of service must be 'reasonable' in the circumstances – good practice is at least one week
- Note whether your constitution has rules on how days are calculated (for example does the calculation of days only include business days)

6. How to give notice:

- check your association's constitution, resolutions and policies for specific requirements, including use of technology. Note the AI Act permits the use of technology at committee meetings where your association's constitution has also provided for this (see section 30(2) of the AI Act)

7. Who to give notice to:

- all committee members and all Office Bearers
- usually also the Chief Executive Officer and the public officer (if they are not also committee members themselves)
- in special circumstances, others (for example, any invited guests, a member who is to be disciplined)



Tool 31 – Checklist for content of minutes

It's good practice to include the following in the minutes of a meeting:

| Order | Description | Done |
|-------|---|--------------------------|
| 1. | Name of your association and heading, ie, 'Committee Meeting' | <input type="checkbox"/> |
| 2. | Date, time, place and opening time | <input type="checkbox"/> |
| 3. | Name of chairperson | <input type="checkbox"/> |
| 4. | Names of office holders present and other people present, if relevant, such as observers (or reference to separate attendance register) | <input type="checkbox"/> |
| 5. | Names of those people who have sent apologies (for not attending) | <input type="checkbox"/> |
| 6. | That the quorum was present and that the meeting was duly constituted | <input type="checkbox"/> |
| 7. | Confirmation of previous minutes | <input type="checkbox"/> |
| 8. | Record of motions, resolutions and amendments (and whether passed with the appropriate majority) | <input type="checkbox"/> |
| 9. | Names of the people who move and second motions, and those who abstain from voting (if requested to be recorded) | <input type="checkbox"/> |
| 10. | Short summaries of the debates on motions | <input type="checkbox"/> |
| 11. | The method of voting on motions etc. (for example, show of hands, poll) and the numbers of votes for, against and abstaining | <input type="checkbox"/> |
| 12. | Results of voting (for example, passed, rejected or adjourned, etc.) | <input type="checkbox"/> |
| 13. | Titles (and any relevant details) of documents or reports tabled | <input type="checkbox"/> |
| 14. | (If relevant) cross references to previous minutes or policies of the association | <input type="checkbox"/> |
| 15. | Committee minutes should approve or ratify all the association's expenditure | <input type="checkbox"/> |
| 16. | Details of next meeting | <input type="checkbox"/> |
| 17. | Closing time | <input type="checkbox"/> |
| 18. | List of tasks arising from the minutes and name of person responsible for each | <input type="checkbox"/> |
| 19. | Chairperson may sign the minutes to verify their content and this may occur after minutes have been confirmed at the next meeting | <input type="checkbox"/> |

Tool 32 – Conventions for drafting minutes



Note

The table below is in two parts:

the first part deals with drafting **minutes** of discussion at meetings,
the second part deals with drafting **motions** discussed at meetings

Conventions for drafting minutes of discussions in meetings

Use simple sentences and simple words

- This helps people understand what was discussed (especially if they were not at the meeting).

Do not write: ‘Mr UB Sporty extrapolated that this fine sporting institution’s solar watt 500 water heating appliance with the white duco slimline control panel was performing consistently below its engineered benchmarks.’

Do write: ‘Mr UB Sporty reported that the club’s hot water system needed urgent repairs.’

Use active, rather than passive, voice

- In the ‘active’ voice, the subject of the sentence performs the action stated by the verb. In the ‘passive’ voice, the subject of the sentence is acted upon. Generally, the passive voice can be more difficult for a reader to understand.

Do not write (passive voice): ‘A computer was used by the secretary to write these minutes.’

Do write (active voice): ‘The secretary used a computer to write the minutes.’

- However, it is acceptable to use the passive voice if:
 - you want to soften an unpleasant message
 - you don’t know who did a particular thing recorded in the minutes, or
 - you want to shift the reader’s attention away from the person who did something to other information

Do write (passive voice) **in some circumstances:** ‘Complaints were put in the suggestion box.’

(ie. you do not want to specify who actually made the complaints)

Use only one tense

- It is usually best to use the past tense in minutes.

Do write: ‘Ms L Little reported that she had’ and ‘The committee considered that the hot water system was’

Avoid terms such as ‘he said’ or ‘she stated’ unless you quote their actual words

- This is to avoid ‘putting words into a person’s mouth.’

Do not write: ‘Mr S Fry said: ‘I got a letter from the Council about this. I reckon the Council is being stupid.’

Do write: ‘Mr S Fry reported that he had received a letter from the Council. He spoke critically of the Council’s position on this issue.’



Avoid personal descriptions or attributes

- This is to make sure that the minutes are as 'objective' or 'impartial' as possible – the minutes should not include the minute-writer's own personal opinions or reflections.

Do not write: 'The chairman announced happily...', 'The treasurer meanly said...' or 'The club representative slammed the report.'

Be very careful not to defame anyone when recording matters that include confidential details

- See discussion of 'Defamation' and 'Confidential matters' in this part of the guide.

Do not write: 'Ms L Little reported that the builder engaged to renovate the club house has a history of stealing from associations and said he was a disgrace to his profession.'

Do write: 'Concern was expressed about the suitability of the builder for the task of renovating the club house.'

Conventions for drafting motions discussed at meetings

Start the motion with the word 'that'

- This is so all resolutions of the meeting are in the same format.
- Before the word 'that', imagine inserting the words, 'The meeting passed a resolution...'

Do write: That the treasurer's recommendation be adopted.'

Use the verb 'be' rather than the word 'is'

- This is to be grammatically correct when the motion starts with the word 'that' (see above).

Do not write: 'That the newspaper release is adopted.'

Do write: 'That the newspaper release be adopted.'

Express the motion in the positive

- This means that a 'yes' vote from the members results in the proposal being approved or supported.

Do not write: 'That the doors be not shut during the meeting.'

Do write: 'That the doors be open during the meeting.'

If you can't express the motion in one sentence, split it up into carefully written parts

- Carefully construct a composite motion (one with a number of separate parts) so that the chairperson can split it up to enable the meeting to deal with each of its parts separately.

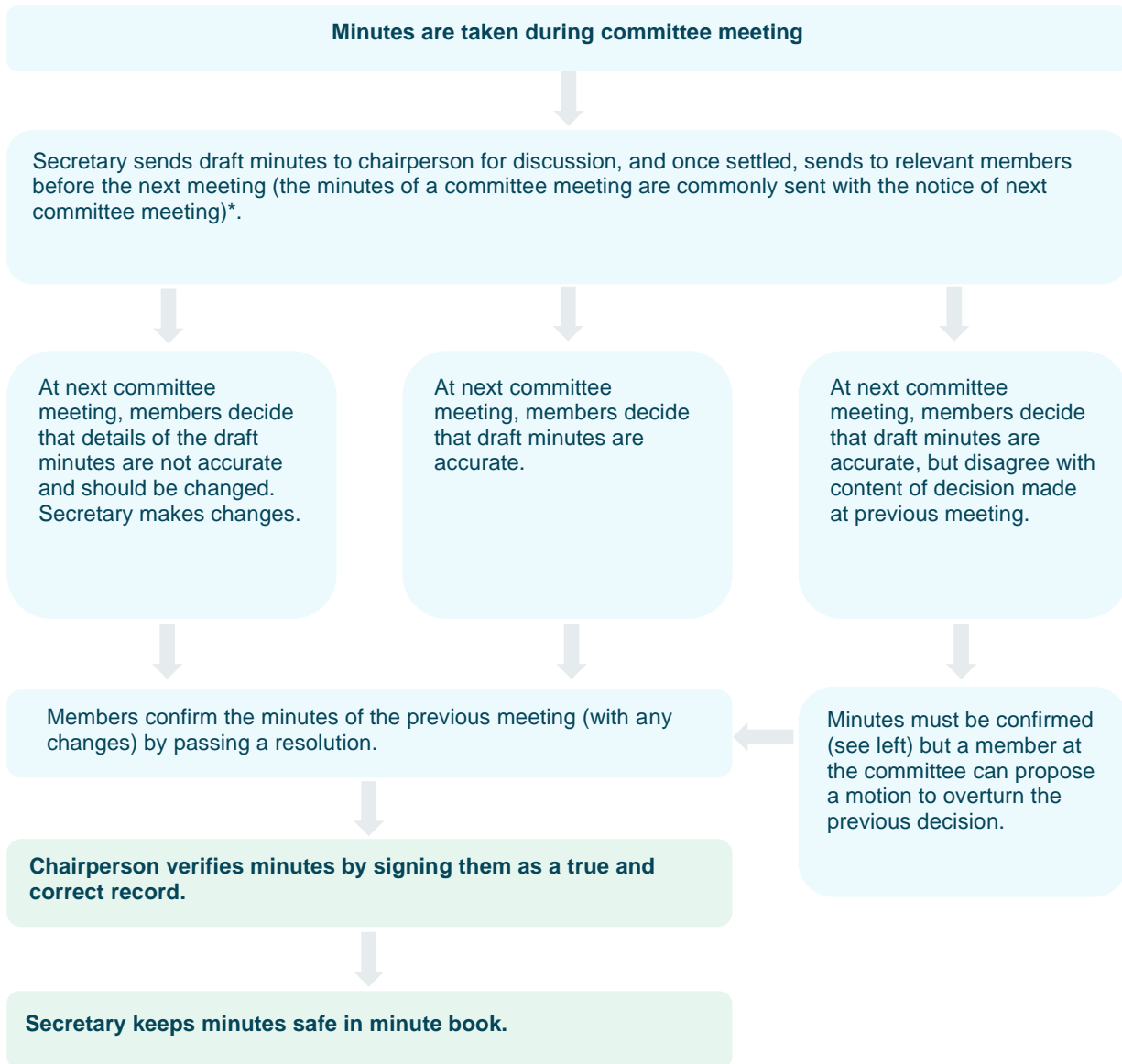
Do not write: 'That in addition to any other motions proposed this meeting resolve to thank the members of the Town Hall including Ms T Bag for providing the refreshments and Mr B Room for making the accommodation available and instruct the secretary to send letters of thanks to Ms T Bag and Mr B Room with a copy to Mr S Visor.'

Do write: 'That the meeting register its appreciation for Town Hall members generally, and specifically ask the secretary to:

- (a) send a letter of thanks to:
 - (i) Ms T Bag for providing the refreshments, and
 - (ii) Mr B Room for making the accommodation available, and
- (b) send a copy of these letters to Mr S Visor.

Tool 33 – Flowchart for confirming and verifying minutes

This flowchart provides an example method of confirming and verifying minutes. Some of these steps are not required under the AI Act however they reflect good governance and good practice in maintaining accurate minutes. Consult your association's constitution, policies and procedures to check what is required for your association.



Note

If minutes were not sent out before the next meeting, allow time for people to read them or the secretary should read them aloud at the meeting.



Part 7

Reporting to NSW Fair Trading

Reporting to NSW Fair Trading

This part of the guide covers the obligations of an incorporated association in New South Wales to report to NSW Fair Trading, part of the NSW Department of Customer Service.



Caution – associations registered as charities with the ACNC

If you are a NSW incorporated association that is also registered as a charity with the Australian Charities and Not-for-profit Commission (**ACNC**), this part of the guide may not apply to you.

NSW incorporated associations that are also registered charities with the ACNC no longer need to:

- lodge an annual summary of financial affairs with NSW Fair Trading, or
- pay the summary of financial affairs lodgement fee to NSW Fair Trading

Charities must lodge the association's Annual Information Statement (and financial statements if required) with the ACNC for each financial year. The ACNC will then send the information it has collected to NSW Fair Trading.

Incorporated associations in NSW still need to notify NSW Fair Trading of changes to their name, address or contact details or rules. Refer to [the ACNC website](#) for a comprehensive summary of when to contact the ACNC or Fair Trading.

The exemption does **not** apply to charities that form part of an ACNC approved reporting group or have certain details withheld from the ACNC Charity Register. For more information, visit the ACNC website's pages on [group reporting](#) and [withholding information](#).

For further information see [our resources on reporting](#), refer to the [NSW Fair Trading website](#), or to the [ACNC website](#).

Summary of key points

| | |
|--|--|
| <p>What are the requirements for reporting to Fair Trading?</p> | <p>An incorporated association's committee must report to NSW Fair Trading about certain matters, including the association's financial affairs. The requirements for reporting to NSW Fair Trading are set out in the AI Act and the AI Regulation.</p> <p>What documents the association must lodge with NSW Fair Trading depends on which revenue category, or 'tier', an association falls into.</p> |
| <p>Accounting requirements</p> | <p>An incorporated association must maintain financial records that are correct, true and fair. These records form the basis for the association's financial statements. Accounting requirements depend on the 'tier' that an association</p> |



| | |
|---|---|
| | falls into. An incorporated association's committee must make sure the association's financial statements (and the financial statements for any trust for which the association acts as trustee) are prepared as soon as practical after each financial year end and submitted to the association's annual general meeting (AGM). |
| Preparing and lodging financial statements | Each year, the association must submit its financial statements to the association's members at the AGM. The financial statements must include certain information and be presented to the AGM before lodging the required forms and financial documents with NSW Fair Trading. The requirements for preparing and lodging the financial documents to NSW Fair Trading depend on which 'tier' the association falls into. |
| Can Fair Trading refuse to register documents? | In some circumstances NSW Fair Trading can refuse to register documents. This may occur when NSW Fair Trading considers that a document lodged includes false or misleading information that is material to the form or context. This part of the guide explains the process if NSW Fair Trading refuses to register a document. |

The tier classification of associations

An association's financial reporting requirements depend on which tier it falls into. The tier classifications are based on an association's gross receipts (total revenue) or current assets for the last financial year, calculated in accordance with the AI Regulation.

Under the AI Regulation:

- 'gross receipts' are equal to the total revenue recorded in the association's income and expenditure statement, and
- 'current assets' are equal to the assets (including amounts held in banks, stocks and debentures) held by the association, excluding real property and depreciable assets

Tier 1 associations

Tier 1 associations have more rigorous financial reporting requirements than Tier 2 associations.

A Tier 1 association is an association with an annual total revenue of more than \$250,000 or current assets of more than \$500,000.

Its financial statements must be audited by a certified auditor before they are submitted at the AGM. In addition, the financial statements must be prepared according to the Australian Accounting Standards set by the Australian Accounting Standards Board (**Accounting Standards**) and include:

- details of any mortgages, charges and other securities affecting any property owned by the association, and
- a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee

Tier 1 associations with total revenue of less than \$2 million in a financial year do not have to comply fully with the Accounting Standards. However, their financial statements must satisfy a particular set of requirements set out in 'Class Order11/01 financial reporting requirements' and include:

- a statement of income and expenditure that sets out appropriately classified individual sources of income and items of expenditure incurred in the operation of the association
- a balance sheet at the end of the financial year that sets out current and non-current assets and liabilities
- statements of movements in the equity section of the balance sheet, being movements in retained surplus or accumulated loss and movements in any reserves
- notes to the financial accounts which include, as a minimum, a statement of accounting policies appropriate to the association's transactions
- details of any mortgages, charges and other securities affecting any property owned by the association



- a separate income and expenditure statement and balance sheet for each trust for which the association is trustee, and
- a consolidated statement of income and expenditure and a consolidated balance sheet, which consolidates its investments in any subsidiaries, as defined by the Accounting Standards, except for any trusts for which it acts a trustee

Tier 1 associations not covered by the Class Order 11/01 must prepare full financial statements, including a statement of cash flows and all notes to the financial accounts in accordance with the Accounting Standards.

Financial statements must be audited in time for submission to the association's AGM. The auditor's report must:

- be prepared in accordance with the Australian Auditing Standards, and
- state whether the association has kept the financial records necessary to prepare financial statements in accordance with the Australian Accounting Standards



Find further information on the Australian Auditing Standards on the [Auditing and Assurance Standards Board website](#) and the [NSW Fair Trading 'Financial reporting and audit exemptions' page](#).



Note

Unless the auditor has satisfied the requirements of a Class Order 10/2 exemption (relating to auditor independence), an audit may not be carried out by any person who, within the last two years, is or has been:

- a member of the association
- an employee or provider of professional services to the association (other than audit services)
- a committee member, or
- the association's public officer



Caution

If the committee doesn't prepare the financial statements and audit them as required, NSW Fair Trading may issue the association a penalty notice setting out the penalty amount.

If the penalty amount is not paid, a court may consider the offence and impose a further penalty.

Tier 2 associations

A Tier 2 association is any association which is not a Tier 1 association. It will have gross receipts of \$250,000 or less in a financial year and it will have current assets of less than \$500,000, or Fair Trading may declare it not to be a Tier 1 association.

Tier 2 associations must prepare financial statements that 'give a true and fair view of the association's affairs' (section 47(2) of the AI Act). The financial statements must include:

- an income and expenditure statement and a balance sheet setting out the appropriately classified individual sources of income and individual expenses incurred in the operation of the association



- a balance sheet at the end of the financial year, that sets out current and non-current assets and liabilities of the association
- details of any mortgages, charges and other securities affecting any property owned by the association, and
- a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee

Under the AI Act, a Tier 2 association is not required to audit or review its financial statements independently. However, Fair Trading can require that an association audit all or part of its financial records, and lodge an auditor's report (stating that the association's financial records have been properly kept and give a true and fair view of the association's affairs) with them (section 51 of the AI Act).



Caution

If the committee doesn't prepare the financial statements and audit them as required, NSW Fair Trading may issue the association a penalty notice setting out the penalty amount.

If the penalty amount is not paid, a court may consider the offence and impose a further penalty.

NSW Fair Trading declaration that an association is not a Tier 1 association

Fair Trading may declare an association is not a Tier 1 association for the purposes of financial reporting requirements (Section 42(2) of the AI Act). Fair Trading may make this declaration if an association's total revenue for the last financial year was negligible, but its current assets are more than \$500,000 (ie. it would be a Tier 1 association if Fair Trading didn't declare it wasn't) (section 42(3)).

Exemption from financial reporting

On application, NSW Fair Trading may exempt an association or any class of associations from preparing and auditing financial statement requirements under the AI Act (Section 53 of the AI Act).

The association must pay a fee with the application. NSW Fair Trading may put conditions or a time limit on an exemption (section 53(2) of the AI Act). NSW Fair Trading has not provided any guidance on when it may grant an exemption.



Caution

If your association hasn't lodged financial documents as required under the AI Act in the last three financial years, NSW Fair Trading may cancel your association's registration (section 76(1)(h) of the AI Act), and the association's property will vest in NSW Fair Trading.

The AI Act requirements

Depending on the association's tier, its committee must lodge the documents listed below with NSW Fair Trading each year.

Documents Tier 1 associations must lodge

A Tier 1 association must lodge the following with Fair Trading:

- a summary of the association's financial affairs for the previous financial year (in the prescribed form: 'Annual summary of financial affairs – Tier 1' form A12-T1)
- the association's audited financial statements and any trusts it administered for that year
- the auditor's report for those statements (signed and dated)



- a document setting out the terms of any resolution passed at the association's AGM concerning the financial statements for that year and the auditor's report, and
- payment of the prescribed lodgement fee (and late fee if applicable)

**Note**

If your association passed a resolution about the financial statements or the auditor's report at the AGM (for example, approving the financial statements with some modifications), a copy of the terms of this resolution must be lodged with NSW Fair Trading.

Documents Tier 2 associations must lodge

A Tier 2 association must lodge the following with NSW Fair Trading:

- a summary of the association's financial affairs for the previous financial year (in the prescribed form: 'Annual summary of financial affairs – Tier 2' form A12-T2), and
- payment of the prescribed lodgement fee (and late fee if applicable)

Time to lodge documents

The documents must be lodged within:

- one month after the AGM, if it falls after the end of a financial year, or
- seven months after the end of the association's financial year

whichever is earlier, or within such time as NSW Fair Trading may allow

The association must pay a prescribed fee when it lodges the documents. An association may also apply for an extension of time to lodge documents by filing the prescribed application form and paying the application fee.

See also the [flowchart for preparing and lodging financial documents at the end of this part of the guide \(Tool 34\)](#).

**Caution**

If the committee doesn't lodge the documents in time, NSW Fair Trading may issue the association a penalty notice setting out a penalty amount. If the penalty amount is not paid, a court may consider the offence and impose a further penalty.

Other NSW Fair Trading reporting requirements

The committee is also required to report to NSW Fair Trading, and lodge relevant documents or forms, in certain situations. These include:

- within 28 days after a new public officer is appointed or when the association's address changes
- getting approval from NSW Fair Trading for changes to the association, after members have passed a special resolution to:
 - change the association's name (section 10(1) of the AI Act)
 - change the association's objects or constitution (section 10(1)), or
 - voluntarily cancel the association's registration (section 72(1))
- getting approval from NSW Fair Trading for an extension of time within which to hold an AGM (section 37(2)(b))



Caution

This part of the guide deals with NSW Fair Trading reporting requirements only.

Your association may also have responsibilities to report to other institutions and government agencies (for example, under funding agreements or tax laws) about changes to its governing documents (rules or constitution), or changes to the people who are authorised to act on behalf of the association.

For example, associations should notify the Australian Tax Office of a change to their Public Officer (see [part 2 of this guide: Appointing and Removing a Public Officer](#)).

Accounting requirements

An incorporated association must maintain financial records that:

- correctly record and explain its financial transactions and financial position, and
- in the case of a Tier 1 association, are sufficient so that the association may prepare financial statements in accordance with the Accounting Standards (section 50 of the AI Act)

These financial records form the basis for an association's financial statements submitted to members at the AGM, and the financial documents lodged with Fair Trading. The treasurer or financial officer of the association is generally responsible for overseeing and reporting on the association's financial affairs.

In addition to the AI Act's requirement that Tier 1 association financial statements be audited, the association's rules or constitution or contracts (such as funding agreements) may include particular accounting or auditing requirements. For example, the rules or constitution of a Tier 2 association may require the association's accounts to be audited each year, even if this is not a requirement of the AI Act.

What is the purpose of an audit?

The purpose of an audit is to confirm that an association (in this case, generally, a Tier 1 association) has prepared its financial statements in line with relevant accounting standards. As part of the audit process, the auditor must be satisfied (and declare in their report) that the association's financial statements are true, fair and free from any serious error.

This is in contrast to a review of financial statements, which is less detailed and less formal than an audit and is normally cheaper than a full audit. Also, the qualification standards for professionals to conduct an audit are higher than a review.



Note – why can't anyone be a reviewer or auditor?

As a matter of good practice (and to reassure members, funders and those dealing with your association that the auditor is not biased), a reviewer or auditor should be as independent as possible from those connected with the association. This is the policy reason behind these requirements in the AI Act.

An auditor must be an independent person

If your association requires an audit of its financial statements (ie. it's a Tier 1 association or Fair Trading has directed it to conduct an audit), your auditor must be an independent person with the correct qualifications.

A certified auditor (that is, a person qualified to review a Tier 1 association's financial records) is:

- a registered company auditor, or a firm of registered company auditors
- a person who is a member of, and holds a public practice certificate issued by, [CPA Australia](#), the [Institute of Public Accountants](#) or [Chartered Accountants ANZ](#)

- the Auditor-General of the Commonwealth of Australia or of a state or territory, or
- any other person approved by NSW Fair Trading as an auditor for this purpose (section 52(1)(b) of the AI Act)

Unless NSW Fair Trading approves in writing, an auditor can't be a person who has at any time in the past two years been a member of the association being audited, or an employee of, or provider of professional services (other than audit services) to, the association or to a committee member or public officer of the association.

NSW Fair Trading will provide approval if:

- the audit is conducted in accordance with the code of conduct relating to independence in APES 110 Code of Ethics for Professional Accountants issued by the Accounting Professional and Ethics Standards Board, and
- the auditor's report includes an auditor's independence declaration (see Class Order 10/02 Auditor independence)



Note

The AI Act and AI Regulation require associations to keep certain documents, including financial records for five years (section 50(1) of the AI Act and section 14(1)(b) of the AI Regulation). See [part 3](#) of this guide: [Registers, Records and Official Documents](#).

Preparing and lodging financial statements

Financial statements (submitted to the members at the AGM)

Depending on how your association is run, financial statements may be prepared by the secretary, treasurer or other member of the association's committee or staff. The financial statements must be presented to members of the association at the AGM to give members the opportunity to consider the statements before they are lodged with NSW Fair Trading. This is also important so that members can check the financial dealings and position of the association.

Your association's financial statements must include certain details required by the AI Act (section 43(2) and 47(2)). These are set out in the flowchart for preparing and lodging financial documents at the end of this part of the guide.

Overall, the financial statements must 'give a true and fair view' of the financial position of your association during and at the end of its last financial year.

At the AGM, the association, depending on its tier, must submit the following to members:

- financial statements (Tier 1 and Tier 2), and
- the auditor's report for those statements (Tier 1, and Tier 2 if directed by Fair Trading)

See also [part 4](#) of this guide: [Annual General Meetings](#).



Caution

If an association fails to submit its financial statements at the AGM, NSW Fair Trading may issue the association a penalty notice setting out a penalty amount.

If the penalty amount is not paid, a court may consider the offence and impose a further penalty.

The AGM chairperson (or the chairperson of the next meeting) must sign off the minutes of the AGM and state that the financial statements (and auditor's report if applicable) were submitted to members at the AGM as required under the AI Act.

For more details about actions which must be taken after the AGM, see the [flowchart for preparing and lodging financial documents at the end of this part of the guide \(Tool 34\)](#).

Also check your association's rules or constitution to see if there are any other requirements.

For more information about the timing of AGMs under the AI Act, see 'Giving Notice of an annual general meeting' in [part 4 of this guide: Annual General Meetings](#).

Caution

The AI Act and the AI Regulation require an association to keep:

- the financial statements (as submitted to members at the AGM) for at least five years after the date it was submitted to members (section 50(1)(a) of the AI Act), and
- minutes of the proceedings of committee and general meetings (section 50(1)(b) of the AI Act)

In addition, an association must keep a register of committee members, a record of disclosures of interest by committee members, and a register of members.

Lodging documents with NSW Fair Trading

Lodgement by Tier 1 associations

Tier 1 associations may lodge the Annual summary of financial affairs, reports, documents of AGM resolutions and the prescribed payments by email, mail or in person.



For more information, see the [NSW Fair Trading webpage Tier 1 associations financial reporting](#).

Lodgement by Tier 2 associations

Tier 2 associations may lodge the Annual summary of financial affairs and the prescribed payments by email, mail or in person. Details are listed on the Fair Trading website.



For more information, see the [NSW Fair Trading webpage Tier 2 associations financial reporting](#).

The lodgement of documents is detailed in the [flowchart for preparing and lodging financial documents at the end of this part of the guide \(Tool 34\)](#).



Caution

Documents submitted to members of an association at a general meeting and lodged with NSW Fair Trading should give a true and accurate picture of your association. It is an offence under Part 5A of the *Crimes Act 1900* to:

- knowingly make a statement that is false or misleading in a relevant detail, or
- knowingly leave out any matter or thing from the document, which makes the document misleading in a relevant detail

This is a serious matter under the law and the penalties for these offences are significant.

Can NSW Fair Trading refuse to register documents?

NSW Fair Trading can refuse to register or receive documents lodged by an association for a number of reasons (see section 99 of the AI Act), including:

- the document doesn't comply with requirements of the AI Act
- the document is missing details or contains an error and as such has not been completed properly
- the document includes information that is false or misleading in a material way
- the document contains information contrary to law, or
- the document has been submitted electronically in a form that is not accessible by NSW Fair Trading

If NSW Fair Trading refuses to register a document for any of these reasons, it may ask that the association:

- alter the document appropriately
- replace it with a fresh document, or
- lodge a supplementary document in the approved form (if the document was incomplete)

Disputing Fair Trading's decision

Right to request reasons for a decision

If you are unhappy with a decision by NSW Fair Trading, you can write to NSW Fair Trading and ask for the reasons for the decision.

You must do this within 28 days of the decision being given to you in writing, or within a reasonable time in any other case.

NSW Fair Trading should respond to your request, in writing, within another 28 days.

Internal review

You also have the right to apply to NSW Fair Trading for a review of the decision.

Your application must:

- be lodged in writing
- be addressed to the Secretary of NSW Fair Trading
- include an address in Australia to which a notice of the result can be sent, and
- be lodged within 28 days after you received the original decision letter or the reasons for Fair Trading's decision

NSW Fair Trading will conduct the internal review and notify you of the result within 21 days.



Review by the NSW Civil and Administrative Tribunal (NCAT)

If you are still unhappy with NSW Fair Trading's decision, your association can request that NSW Fair Trading reconsider the decision and the reasons for the decision. If NSW Fair Trading reconsiders, and still decides not to register the document, you can apply to NCAT. NCAT is an independent body that reviews certain administrative decisions of NSW government agencies.

Time limits apply for reviews of decisions, requests for reasons of decisions and applications to NCAT – see the NSW Fair Trading website for more information on '[Reviews of Fair Trading decisions](#)'.

Assistance from the Ombudsman

In some cases, you can also seek advice from the Ombudsman's Office about a decision. The Ombudsman can investigate the conduct of government agencies if the conduct is alleged to be:

- illegal
- unreasonable, unjust or oppressive
- improperly discriminatory
- based on improper motives or irrelevant grounds
- based on a mistake of law or fact, or
- otherwise wrong

Investigation by the Ombudsman is free. For more information, contact the [Office of the Ombudsman](#).

Tool 34 – Flowchart for preparing and lodging financial documents

Association's financial statements are prepared (and audited, where required) before the AGM

1. The financial statements submitted to members at the AGM must include details of:

- the association's financial records prepared in accordance with the Accounting Standards (Tier 1)
- the association's income and expenditure during its last financial year (this is called a 'profit and loss' statement) (Tier 2)
- the association's assets and liabilities at the end of its last financial year (this is called a 'balance sheet') (Tier 2), and
- any mortgages, charges and securities affecting any of the association's property at the end of its last financial year (Tier 1 and Tier 2)

2. If the organisation was trustee of any trust during its last financial year, for each trust:

- the income and expenditure of the trust during that period (Tier 1 and Tier 2)
- the assets and liabilities of the trust during that period (Tier 1 and Tier 2)
- any mortgages, charges and securities affecting any of the property of the trust at the end of that period (Tier 1 and Tier 2), and
- any trust held on behalf of the organisation by another person or body in which funds or assets of the organisation are placed (Tier 1 and Tier 2)

See sections 43 and 47 of the AI Act.

Financial statements (and, where required, the auditor's report) are submitted to members at the AGM.

1. Members should be given an opportunity to consider the financial statements and ask questions at the meeting. Ideally, the meeting will pass a resolution approving the financial statements (or approves them with certain changes made) and authorise the committee to submit the required documents to Fair Trading.

2. At the end of the AGM, or as soon as possible afterwards, the chairperson signs the minutes of the meeting stating that the financial statements (and where required, auditor's report) were submitted to the members at the meeting.

See sections 44 and 48 of the AI Act.

Continued next page



Person authorised by the committee completes [Fair Trading form A12](#) and collects documents to lodge with form

1. Every year, an association must lodge documents with Fair Trading within one month of the AGM or 7 months after the end of the previous financial year, whichever is earlier (unless further time is allowed by Fair Trading). Both Tier 1 and Tier 2 associations have to lodge annual summaries of financial affairs. This is done by lodging an 'Annual summary of financial affairs' form ([Fair Trading forms A12-T1 and A12-T2](#)). This form sets out information required by the AI Act and the AI Regulation and the lodgement fee. A person authorised by the committee must sign a declaration confirming that certain requirements have been met.

2. When the association lodges the form with Fair Trading, they must attach the following documents:

- the terms of any resolution about the financial statements passed at the AGM (Tier 1)
- the prescribed fee
- a copy of the association's audited financial statements prepared for that year (Tier 1), and
- a signed and dated copy of the auditor's report for those financial statements (Tier 1, or as directed by Fair Trading)

See sections 45 and 49 of the AI Act.

Association lodges Fair Trading form and attached documents with Fair Trading within required time period

1. Association lodges [form A12](#) and attached documents with Fair Trading within 1 month after AGM (or otherwise – see text box above).

2. Documents can be lodged with Fair Trading in person, by post, or by email (in PDF format).

3. An association can apply for an extension of time to hold its AGM or lodge form A12 by downloading the '[Application for extension of time for holding annual general meeting or lodging annual summary of financial affairs](#)' form A11 from Fair Trading's website, completing it, and delivering, posting or emailing it (PDF format) to Fair Trading, together with payment of the applicable fee.

See sections 37(2)(b), 45(2) and 49(2) of the AI Act.

Association keeps documents for at least 5 years

The association must keep financial records that correctly record and explain its financial transactions and position for at least 5 years after each record was made.

See section 50 of the AI Act and section 14(1) of the AI Regulation.

