



Incorporated Associations in NSW: the 2010 changes to the law and how it affects you

The 2009/2010 incorporated associations legislation in NSW

The *Associations Incorporation Act 2009* (NSW) and the *Associations Incorporation Regulation 2010* (NSW) commenced together on 1 July 2010.

The 2009 Act repeals and replaces the *Associations Incorporation Act 1984* (NSW). There are a number of changes that have been made to the law with the commencement of the new Act and regulations. Among some of the new Acts' features are:

- the amendment of the use of the term 'rules' to 'constitution', as well as the inclusion of a Model Constitution in Schedule 1 of the Regulation to replace the old 'Model Rules';
- facility for postal ballots;
- provision for meetings to take place at more than one location through the use of technology;
- provision for a common seal (no longer required but optional), as well as documents to be signed by two authorised signatories (in line with the *Corporations Act 2001* (Cth));
- committee members who have a direct or indirect interest in a matter that appears to raise a conflict with their duties to the committee must now disclose the nature of that interest as soon as possible at a Committee Meeting;
- the division of associations into two tiers according to income and assets and the requirement of 'tier 1' associations to have their annual accounts audited;
- the empowerment of the Commissioner of Fair Trading to take legal and disciplinary action where statutory duties or requirements are breached.

What is the effect of the new law?

In order to remain in step with the new law your association may require an update to its constitution. This is because your constitution may still be based on the old laws and will therefore be out of date. Whether your association's constitution is still referred to as the 'rules' of the association or it is not in accordance with the new Model Constitution provided for in the Regulations, your constitution may no longer be current.

How Terri Janke and Company can help...

It is important to ensure compliance with statutory and legal requirements. We advise our clients on compliance with these obligations and help them to achieve best practice in the management of their associations by striving for transparency and fairness process. We have experience assisting clients with:

- the interpretation of constitutions to assist boards to achieve their goals;
- the re-drafting of constitutions, including amending out dated and unworkable clauses to reflect the current law; and
- the provision of general legal advice regarding board governance issues.

We know corporate governance through first-hand experience. Terri Janke has over 15 years' experience of being on boards and committees, including incorporated associations, companies limited by guarantee and government boards. We know the satisfaction of well-managed responsibility. Terri Janke is also a graduate of the Australian Institute of Company Directors Course and a member of the Australian Institute of Company Directors.

Updated: 2 February 2012