

Don't delay - check your Constitution now

Did you know that any changes to your Constitution only take effect when they are lodged and approved by NSW Fair Trading? The document you may think of as your Constitution may have been updated over many years but never lodged, in which case those updates have no legal effect. Importantly in the context of Save OOSH, your Constitution may unduly restrict your ability to transfer assets to the P&C or other bodies. The good news is that you still have time to update and lodge your Constitution, but don't delay as the process takes some time.

For Incorporated Associations (which includes almost all parent-managed OOSH services) your Constitution sets out how the assets of your Association are divided in the event of the wind-up of the Association. With some parent-managed services now looking to wind-up and transfer Service Approval to their P&C Association, they may assume that they can handover any leftover assets (including cash) to the P&C or another body - however their Constitution may suggest that the school itself receive those assets. We have already seen evidence of the Department of Education taking action to claim these leftover funds, against the intention of the parent-managed Association, because of perceived limitations of their Constitution.

Step Plan: Changing Your Constitution

1. REQUEST A COPY OF YOUR CONSTITUTION FROM FAIR TRADING

The copy of your Constitution that you should be abiding by is the one lodged with Fair Trading. Many OOSHs have made changes to their Constitution over time, or may have even lost their original Constitution and started using a new or template one. Even if you do think you're operating with your original Constitution, it's important to check which one is lodged with Fair Trading.

How to Request your Constitution:

Copies of documents lodged can be obtained by completing the Incorporated associations search request form.

Lodge the Search request form with Registry and Accreditation by emailing [this form](mailto:registrysearches@customerservice.nsw.gov.au) to registrysearches@customerservice.nsw.gov.au.

We recommend requesting a certified copy of your Constitution (\$70). However, if you cannot afford a certified copy, a non-certified copy will suffice (\$50). Both will be sent electronically.

3. Documents required C = Certified copy | P = electronic PDF file

| | | | | |
|---------------------------------------|---|---|-------|----------------------|
| <input type="checkbox"/> P | Extract: includes Association name, registration status, current and previous Public Officer names, official address and list of documents lodged | Registry use only | \$ | <input type="text"/> |
| <input type="checkbox"/> C | <input type="checkbox"/> P | Certificate of Incorporation | \$ | <input type="text"/> |
| <input checked="" type="checkbox"/> C | <input type="checkbox"/> P | Constitution (Certified \$70 / PDF \$50) | \$ | <input type="text"/> |
| <input type="checkbox"/> C | <input type="checkbox"/> P | A2 - Incorporation application | \$ | <input type="text"/> |
| <input type="checkbox"/> C | <input type="checkbox"/> P | A5 - Certificate (vesting of property) | \$ | <input type="text"/> |
| <input type="checkbox"/> C | <input type="checkbox"/> P | A7 - Application to change Association name | \$ | <input type="text"/> |
| <input type="checkbox"/> C | <input type="checkbox"/> P | A8 - Application for voluntary cancellation | \$ | <input type="text"/> |
| <input type="checkbox"/> C | <input type="checkbox"/> P | A9 - Public Officer and/or Official Address alteration form | \$ | <input type="text"/> |
| <input type="checkbox"/> C | <input type="checkbox"/> P | A12 - Annual Summary for year(s) <input type="text"/> | \$ | <input type="text"/> |
| | | (not available if received via ACNC) | | |
| <input type="checkbox"/> C | <input type="checkbox"/> P | Other <input type="text"/> | \$ | <input type="text"/> |
| | | | | |
| | | | TOTAL | <input type="text"/> |
| | | | \$ | <input type="text"/> |

Payment can be made using the online payment portal (details provided on the online form).

Next Steps

Available documents will be provided by email:

- within 3-5 working days if the association was registered after 2003; or
- within 5-10 working days if the association was registered before 2003.

You will be advised if the requested documents are unavailable.

2. PROTECTING THE ASSOCIATION’S RIGHT TO DIRECT ASSETS

This is the area we want to draw your attention to. The wording of your Constitution (in conjunction with the *Associations Incorporation Act 2009*) will determine how you can distribute your assets in the event that you have to wind up your Association.

You may find this under

- “Dissolution”
- OR
- “Distribution of property on winding up”.

What are you looking for?

You want to ensure that your Constitution allows the members to make choices regarding the direction of assets in the event that you wind up. For OOSHs impacted by the Department’s policy change (see [Save OOSH](#)) this is particularly important, however we urge all OOSHs that are Incorporated Associations to make this change regardless of your school site/location.

If you have something along the lines of:

“Dissolution

...

b) Upon a resolution being passed in accordance with paragraph (a) of this rule, all assets and funds of the Association on hand shall after the payment of all expenses and liabilities, be handed over to the [insert school name] or a body associated with that school...”

You should consider whether this is in the best interests of your members. Our feedback from members is that OOSH Associations require more freedom to determine how their assets will be distributed if they close.

A provision that specifies who the assets will be distributed to in strict terms, such as the one above, places restrictions on your Association higher than those in the Act.

Instead consider this section from the [Model Constitution](#). Note: Depending on the age of your Constitution you may already have this wording in your Constitution.

“Distribution of property on winding up

(1) Subject to the Act and the Regulation, in a winding up of the association, the surplus property of the association must be transferred to another organisation:

- (a) with similar objects, and
- (b) which is not carried on for the profit or gain of the organisation’s members.”

3. IDENTIFYING OTHER CHANGES (OPTIONAL)

Depending on your Constitution, there may be a number of things your Committee are interested in changing. For example, adding the provision to have online meetings has been a popular choice in recent years.

There is nothing to stop you from changing multiple sections of your Constitution at the same time, but you will still need the approval of your members (see below).

4. CHANGING THE CONSTITUTION

A change of constitution or objects is passed by special resolution by members, not at a management committee meeting, **and takes effect when it is registered by NSW Fair Trading.** To change your Constitution you should follow the steps below.

a) Call a Special General Meeting

The members will need at least 21 days notice of the Special General Meeting. All members must be notified. NOTE: You may have a longer notice period in your Constitution. Check the section on

Special General Meetings and comply with any requirements in your Constitution.

b) Wording the Notice

When sending all members notice of the Special General Meeting, send them the proposed changes to the Constitution. Make it clear that you will be voting to approve these changes to the Constitution.

c) Voting at the Special General Meeting

At the Special General Meeting, 75% of the members present (or proxies, if your current Constitution allows for proxies) must approve the constitutional change.

d) Send the Change to Fair Trading

Once the Constitution is approved, you will need to send the new constitution to Fair Trading within 28 days. You will need to use the A6 form, found [here](#).

QUESTIONS ABOUT PROCESS OR FORMS?

Talk to Fair Trading

Make an online enquiry
Free Call: 1800 502 042

OR

Email Network on support@networkofcommunityactivities.org.au