

Fact Sheets

The following fact sheets are attached for your information.

- Checklist
- Sample register of committee members
- Running an association
- Public officer
- Association records
- Financial reporting requirements
- Annual general meetings
- General meetings
- Resolutions
- About the constitution
- Membership
- Management committee
- Management committee meetings
- Insurance
- Commercial activities & monetary gain
- Resolving disputes

These fact sheets and other information are available on the Fair Trading website at www.fairtrading.nsw.gov.au/Cooperatives_and_associations.html or from the Registry.

CHECKLIST FOR INCOMING COMMITTEE

Please complete and keep in a safe place

(Suggestion - Attach to front of Minute Book or Register of Committee Members)

Apr 2017

INCORPORATED ASSOCIATION

Name

Registration number

LOCATION OF

Incorporation certificate

Constitution

Minutes of committee and general meetings

Member register

Committee members register

Disclosure of interests register

Authorised signatories register

ANNUAL OBLIGATIONS

End of financial year end date is / (same date each year)
DAY MONTH

Annual general meeting (within 6 months of the end of financial year)

Due by

Annual summary of financial affairs (form A12) (lodge within 1 month of the AGM each year)

Due by

PUBLIC OFFICER & OFFICIAL ADDRESS

Public Officer name

Official address

(Note: A change of public officer or change of official address must be notified to Registry Services within 28 days)

FORMS TO BE LODGED WITH REGISTRY SERVICES

Annual summary of financial affairs (form A12-T1) (Large Associations) or (form A12-T2) (Small Associations)

Change of public officer or official address (form A9)

Alteration of the constitution or objects (form A6)

Change the association's name (form A7)

Cancel registration as an association (form A8)

CONTACTING REGISTRY SERVICES

Telephone 1800 502 042 or (02) 6333 1400

Mail Registry Services
PO Box 22
Bathurst NSW 2795

Email registryinquiries@finance.nsw.gov.au

Website www.fairtrading.nsw.gov.au

XYZ INCORPORATED

NOTE:

1. The register of committee members must be kept in New South Wales at the main premises of the association, or if the association has no premises, at the association's official address.
2. Any change in the committee's membership must be recorded in the register within one month after the change occurs.
3. The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.

Running an association

Incorporated associations

Incorporation benefits an association and its members. However, it also brings a number of responsibilities.

Committee members and the public officer are primarily responsible for ensuring an incorporated association complies with its statutory and reporting obligations.

Failure to comply with these obligations may lead to the issue of a penalty notice, prosecution, or in some instances, cancellation of the association's incorporation.

Confirming an association's status

A free online register provides key information about incorporated associations registered in NSW, including an entity's incorporation name and number, date of incorporation and registration status. Visit the NSW incorporated associations online register on the Fair Trading website.

For more detailed information, contact Registry Services on 1800 502 042 or email registryinquiries@finance.nsw.gov.au for assistance.

In addition, searching the Organisation and Business Names search facility on the Australian Securities and Investments Commission website at connectonline.asic.gov.au.

Minimum number of members

An incorporated association must have a minimum of 5 members at all times. An association's registration may be cancelled if it has fewer than 5 members.

There is no maximum limit for the number of members in an association.

Management of associations

An association must establish a committee to manage its affairs. The committee must include 3 or more members. All committee members must be over 18 years of age and at least 3 of whom reside in Australia. The public officer may be a member of the committee.

Members of the management committee must carry out their functions with due care and diligence for the benefit, as far as practicable, of the association. They must disclose any interest in a matter that conflicts with their ability to perform their duties. They must not use their position or information acquired as a committee member dishonestly.

A former committee member must ensure that all documents of the association in their possession are delivered to the public officer within 14 days of vacating office.

For more information on the role and responsibilities of the management committee, visit the Management committee page on the Fair Trading website.

Refer to sections 28 and 31 to 33 of the *Associations Incorporation Act 2009* (the Act) for more information.

Commercial activities and monetary gain

An association must not secure a monetary gain for its members. Any profits made by an association should be used to further the objects for which the association was established.

Organisations operating as commercial enterprises are not eligible for incorporation.

For more information on restrictions on providing monetary gain to members or on commercial activities, visit the Commercial activities and monetary gain page on the Fair Trading website.

Association records

The committee must ensure the association keeps and maintains the records required by the Act or otherwise required for the efficient running of the association.

For information on the registers and other documents that should be kept and maintained by an association, visit the Association records page on the Fair Trading website.

Refer to sections 29, 31 and 50 of the Act.

Public officer

An association's committee must appoint a public officer who is over 18 years of age and a resident of New South Wales.

The public officer is, by virtue of that office, an authorised signatory for the association.

The committee must fill the office of public officer within 28 days of a vacancy. The new public officer must advise Fair Trading of the details of the appointment within 28 days of taking office.

A former public officer must ensure that all documents of the association in their possession are delivered to a committee member within 14 days of vacating office.

For more information on the role of the public officer, visit the Public officer page on the Fair Trading website.

Refer to sections 34 to 36 of the Act.

Official address

The official address must be an address in NSW at which the public officer can generally be found, and at which documents can be served on the association by post.

The official address cannot be a post office box.

The public officer must advise Fair Trading of a change of official address within 28 days after the current address becomes obsolete or unusable.

Refer to sections 6 and 13 of the Act.

Annual general meetings

The association's annual general meeting (AGM) is to take place within 6 months of the close of the association's financial year or in a timeframe allowed by Fair Trading.

A newly incorporated association must hold its first AGM within 18 months of registration.

Associations are required to submit their financial statements for the previous financial year to the AGM.

The nature of the financial statements submitted to the AGM must be in accordance with the category of association, either Tier 1 or Tier 2. For more information on financial reporting requirements, visit the Financial reporting requirements page on the Fair Trading website.

Refer to sections 37, 44 and 48 of the Act.

Financial reporting

The Act divides associations into two tiers for reporting purposes.

Larger, or Tier 1 associations are those whose gross receipts are more than \$250,000 or current assets are more than \$500,000. Tier 1 associations are required to submit audited financial statements each year to the members at the AGM.

Smaller, or Tier 2 associations are those whose gross receipts are less than \$250,000 or current assets are less than \$500,000. Tier 2 associations are required to submit a summary of their financial affairs to the AGM.

Associations must lodge annual financial summaries in the approved form with Fair Trading within 1 month after the AGM and no later than 7 months after the end of the association's financial year.

More information on financial reporting requirements is available on the Financial reporting requirements page on the Fair Trading website.

Refer to sections 42 to 49 of the Act.

General obligations

An association's full name (including the word 'Incorporated' or the abbreviation 'Inc') must appear in legible characters on any letter, statement, invoice, notice, publication including website, order for goods or services, or receipt in connection with its activities.

A person must provide Fair Trading with information or documents concerning the affairs of an association when required to do so.

Refer to sections 41 and 85 of the Act.

Charitable fundraising

Many organisations conduct fundraising appeals in order to finance their charitable activities.

If you have any enquiries about charitable fundraising under the *Charitable Fundraising Act 1991* in NSW, call Fair Trading on 02 9895 0011 or email charity.inquiries@finance.nsw.gov.au.

Do we have obligations under any other legislation?

Associations must comply with any relevant State and Commonwealth legislation that applies to its operations.

Visit the following organisations' websites for more information:

- **Australian Charities and Not-for-profits Commission** www.acnc.gov.au
- **Australian Taxation Office** www.ato.gov.au
- **Information and Privacy Commission** www.ipc.nsw.gov.au
- **Anti-Discrimination Board of NSW** www.antidiscrimination.justice.nsw.gov.au
- **NSW Industrial Relations** (employment) www.industrialrelations.nsw.gov.au
- **Fair Work Ombudsman** (employment) www.fairwork.gov.au
- **SafeWork NSW** www.safework.nsw.gov.au

Need more information?

Contact Registry Services
PO Box 22
Bathurst NSW 2795
Ph: 02 6333 1400
FreeCall: 1800 502 042
Email: registryinquiries@finance.nsw.gov.au

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

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

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Public officer

Incorporated associations

What is a public officer?

A public officer is the official point of contact for an incorporated association and one of the authorised signatories

Who can be a public officer?

A committee member, an ordinary member or a person outside the association may hold the position of public officer.

The public officer must be over 18 years of age and reside in New South Wales. An association's incorporation may be cancelled if it does not have a public officer or if its public officer does not comply with these requirements.

What is the official address?

Every association must have an official address. The official address must be a physical address in NSW where the public officer can generally be found. It must be premises at which documents can be received by post.

The official address cannot be a post office box.

The public officer must advise NSW Fair Trading of a change of official address by lodging the approved form *Notice of appointment of public officer and notice of change of association address* (form A9) within 28 days after the current address becomes obsolete or unusable.

Authorised signatory

The public officer is automatically one of the authorised signatories for the association. However, the public officer is not automatically a signatory to the association's bank account.

For additional information on authorised signatories, visit the Management committee page on the Fair Trading website.

How is the public officer appointed and removed?

The person nominated as the public officer on the application for incorporation of an association will become the association's first public officer. The committee must fill any vacancy in the position of public officer within 28 days.

A public officer will vacate the position if he or she:

- dies
- resigns in writing to the committee
- is removed from office by the passing of a resolution at a general meeting
- becomes bankrupt
- becomes a mentally incapacitated person
- ceases to be a resident of New South Wales, or
- meets any circumstances as provided for in the constitution.
- The new public officer must notify Fair Trading within 28 days of the new appointment. Notification must be in the approved form *Notice of appointment of public officer and notice of change of association address* (form A9).

What are the responsibilities of the public officer?

The public officer is responsible for:

- notifying 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, upon vacating office
- acting as the official contact for the association, including taking delivery of documents served on the association and bringing them to the attention of the committee as soon as practicable
- custody of any documents as required by the constitution.

Need more information?

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Association records

Incorporated associations

The records of an association are its corporate memory and provide evidence of actions taken and decisions made by the association. They support the daily functions and operations of an association.

What records must be kept?

An association must keep the following records:

- a register of committee members
- a record of any disclosure of interest by a committee member
- a record of the association's financial transactions and position
- minutes of the proceedings of committee and general meetings
- a register of members.

An association should also keep the following records:

- a record of its authorised signatories
- a record of its current public officer and official address.

What information has to be recorded?

Register of committee members

The register of committee members must be kept at the main premises of the association or the association's official address, which must be in NSW.

The register must be made available for inspection, free of charge, by anyone and must contain the following particulars:

- the name, date of birth and residential address of each committee member
- the date on which each committee member takes office and vacates office
- the name of any committee members who hold the positions (if any) of president, vice-president, secretary or treasurer
- the date on which those committee members were appointed or elected to those positions and the date those appointments ceased.

The register must be updated within 1 month after any change in the committee's membership occurs.

Register of disclosure of interests

The committee must maintain a record of any disclosure by a committee member of a direct or indirect interest, being or to be considered at a committee meeting, that appears to raise a conflict with the committee member performing their duties. The committee must deal with any disclosure according to section 31 of the *Associations Incorporation Act 2009* (the Act).

The disclosures recorded must be kept with the register of committee members and must be available for inspection by any member of the association upon payment of a fee, as determined by the committee. The fee must not exceed \$5 which is the maximum fee allowed by the Associations Incorporation Regulation 2016 (the Regulation).

For more information, visit the Management committee page on the Fair Trading website.

Financial records

Associations must keep records that correctly record and explain their financial transactions and financial position.

Where an association acts as the trustee for any trust, it must keep records that correctly record and explain the financial transactions and financial position of the trust.

Tier 1 associations must ensure financial records are sufficient to enable financial statements to be prepared in accordance with the Australian Accounting Standards.

As a minimum all associations need to keep:

- receipt books
- records of payments - with supporting documents and approvals
- invoices
- bank statements
- bank deposit books (if used)
- cheque books.

It may also be appropriate for associations to maintain an asset register. This is important for maintaining control of major assets when there are changes in the committee.

Where financial records are kept in a language other than English, an English language copy must be kept with the document.

The committee is responsible for ensuring appropriate internal financial controls are implemented for all payments made on behalf of the association. As a matter of good corporate governance, the committee should have oversight and authorise/approve payments regularly. This should be undertaken at each committee meeting at a minimum.

For information on the association's financial reporting requirements, visit the Financial reporting requirements page on the Fair Trading website.

Minutes of meetings

The association must keep minutes of the proceedings of all committee meetings and general meetings.

The minutes should set out a clear, concise and accurate summary of the proceedings of the meeting. This includes details of persons attending the meeting, documents submitted to the meeting and any passed or failed resolutions. For additional information on matters that should be included in the minutes, visit the General meetings page on the Fair Trading website.

For more information on management committee meeting minutes, visit the Management committee meetings page on the Fair Trading website.

If any part of the minutes is in a language other than English, a copy of the minutes in the English language must also be kept with the minutes.

Authorised signatories

It is important that an association keeps accurate records of its authorised signatories. It is suggested that these records be kept with the register of committee members.

Note: The association's public officer is an authorised signatory of the association.

The particulars recorded should include:

- name of the authorised signatory
- position (e.g. public officer, committee member)
- date of appointment and the date appointment ceased
- reason appointment ceased (e.g. ceasing to be committee member, resignation, removal from position of public officer by general meeting)
- reference in minutes to track the relevant appointment or revocation.

For information on the role of authorised signatories, visit the Management committee page on the Fair Trading website.

Who is responsible for maintaining the association's records?

The committee is responsible for ensuring that the association keeps and maintains the required records. In some cases, the constitution of the association may set out particular responsibilities for keeping and maintaining the records of the association.

Committee members must deliver all documents in their possession that belong to the association to the public officer within 14 days after vacating office.

The public officer is responsible for:

- collecting all association documents from former committee members and delivering the documents to the new committee
- returning all association documents in his or her possession to a committee member within 14 days upon vacating office.

Who can inspect the association's records?

The register of committee members must be made available for inspection, free of charge, by any person.

The record of disclosure of interests must be kept with the register of committee members and must be available for inspection by any member of the association

upon payment of a fee determined by the committee which must not exceed \$5.

Inspection of other documents of the association is governed by the association's constitution.

How should financial records and minutes of meetings be kept?

Records and minutes must be kept in written or electronic form. If the records and minutes are kept in electronic form, they must be able to be converted into hard copy. If a person is entitled to inspect the records, a hard copy of the record must also be made available within a reasonable time.

How long do we have to keep the association's records?

Financial records are to be kept for a minimum of 5 years after they were made.

There are a number of other factors that may impact on the period for which an association may need to maintain its records. For example:

- the requirements of any other legislation that may apply to the association. For example, associations that have employees have to keep time and wages records for 7 years
- associations that have employees also need to comply with any statutory requirements for retaining records concerning work, health and safety or superannuation legislation
- documents that might relate to potential litigation should not be destroyed
- documents that might record any liability for capital gains tax should not be destroyed.

In addition, some documents should be retained indefinitely. For example:

- minutes of meetings are the official written record of the business transacted at a meeting and need to be retained indefinitely
- documents that provide title to assets such as title deeds or evidence relating to intellectual property should be retained indefinitely.

If the association is unsure how long it should keep particular records, it should seek its own legal advice.

Need more information?

Contact Registry Services

PO Box 22

Bathurst NSW 2795

Tel: 6333 1400

Free Call: 1800 502 042

Email: registryinquiries@finance.nsw.gov.au

Financial reporting requirements

Incorporated associations

Financial records

Associations must keep records that correctly record and explain their financial transactions and financial position.

Tier 1 associations (see below for definition) must ensure their financial records are sufficient to enable financial statements to be prepared in accordance with the Australian Accounting Standards.

Where any of the financial records are kept in a language other than English, an English translation must also be kept with the documents.

Tier 1 and Tier 2 associations

An association's reporting obligations under the *Associations Incorporations Act 2009* (the Act) is based on its status as either a Tier 1 (large) or Tier 2 (small) association.

Tier 1 associations are those whose total revenue as recorded in the income and expenditure statement (i.e. gross receipts) for a financial year is more than \$250,000 (excluding GST) **or** current assets* are more than \$500,000.

For more information, visit the Tier 1 association's financial reporting page on the Fair Trading website.

Tier 2 associations are those whose total revenue as recorded in the income and expenditure statement (i.e. gross receipts) for a financial year is \$250,000 (excluding GST) or less **and** current assets* are \$500,000 or less.

For more information, visit the Tier 2 association's financial reporting page on the Fair Trading website.

***Current assets** refers to assets (other than real property or assets that are capable of depreciation) held by the association as at the end of the association's last financial year. It includes amounts held in financial institutions, stocks and debentures.

Summary of annual financial reporting requirements

The association must hold its annual general meeting (AGM) within 6 months after the end of the association's financial year.

Before the AGM, the committee must:

1. Prepare financial statements as soon as practical after the end of the association's financial year.
 - Tier 1 associations must prepare financial statements in accordance with Australian Accounting Standards.
 - Tier 2 associations must prepare financial statements that give a true and fair view of the association's affairs.
2. Arrange for the statements to be audited if it is a Tier 1 association or if it is otherwise required to do so eg. by the association's constitution or under a funding agreement.
3. Consider the financial statements and confirm the statements provide a 'true and fair' view of the association's financial performance and position. This confirmation should be recorded in the minutes of the committee meeting.

At the AGM, the committee must present the financial statements to the AGM, together with the auditor's report for a Tier 1 association. The AGM minutes should include a copy of the financial statements, any auditor's report and a record of any resolution passed in relation to the financial statements or auditor's report.

After the AGM, the committee must:

1. Lodge the *Annual summary of financial affairs - Tier 1* (form A12-T1) or *Annual summary of financial affairs - Tier 2* (form A12-T2) within 1 month of the AGM and no later than 7 months after the end of the association's financial year, together with payment of the prescribed lodgement fee.
2. Tier 1 associations must also lodge a copy of the audited financial statements, audit report and any resolution passed in relation to the financial statements or auditor's report.

Need more information?

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Annual general meetings

Incorporated associations

How often must an annual general meeting (AGM) be held?

An association's committee must ensure that an annual general meeting (AGM) is held within 6 months after the association's financial year end. An association's constitution must specify its financial year.

For new associations, the first AGM must be held within 18 months from the date of incorporation.

If an association fails to hold an AGM or to submit financial statements to members at the AGM, then each member of the committee of the association will be guilty of an offence and liable to a penalty.

How is an AGM called?

An association's constitution must specify the manner of calling an AGM and the manner in which notice of the AGM is to be given. The notice convening the meeting should specify that the meeting is the AGM.

If the Model constitution applies, members must be given at least 14 days' notice of an AGM, or 21 days' notice if a special resolution is to be proposed. The notice of meeting must specify:

- the place, date and time of the meeting
- the nature of the business to be transacted at the meeting, and
- if a special resolution is to be proposed, the notice must set out terms of the resolution and a statement to the effect the resolution is intended to be passed as a special resolution.

For convenience, the notice of meeting and notice of any special resolution can be sent to members at the same time and in the same document, provided it is sent not less than 21 days before the AGM.

If the association's constitution so provides, the AGM may be held at 2 or more venues using any technology that gives each of the association's members a reasonable opportunity to participate.

What business is conducted at an AGM?

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 (as determined by the association's constitution)
- receive the association's financial statements or reports (this must be done at the AGM), and
- conduct any other business of which notice has been given to the members.

What financial statements or reports are to be submitted to the AGM?

Tier 1 (large) associations have total revenue of more than \$250,000 or current assets of more than \$500,000.

At each AGM of a Tier 1 association, the committee must submit the association's financial statements for the previous financial year, together with the auditor's report for those statements to the meeting.

For information on the financial statements and the auditor's report, visit the Tier 1 associations financial reporting page on the Fair Trading website.

Tier 2 associations

Tier 2 (small) associations have total revenue of less than \$250,000 and current assets less than \$500,000.

At each AGM of a Tier 2 association, the committee must submit the association's financial statements for the previous financial year to the meeting. The financial statements must give a true and fair view of the association's affairs.

For information on financial statements, visit the Tier 2 associations financial reporting page on the Fair Trading website.

What must be lodged with Fair Trading after the AGM?

Tier 1 associations

Within 1 month after the AGM, or no later than 7 months after the end of the financial year, the association must lodge the following documents with Fair Trading:

- an *Annual summary of financial affairs* (form A12 - T1) for the financial year
- the audited financial statements for the association and any trusts it administers
- a signed and dated auditor's report
- a copy of the terms of any resolution passed at the AGM that relate to the financial statements and auditor's report
- payment of the prescribed lodgement fee, and late fee if applicable.

Tier 2 associations

Within 1 month after the AGM, or no later than 7 months after the end of the financial year, the association must lodge the following with Fair Trading:

- an *Annual summary of financial affairs* (form A12 - T2)
- payment of the prescribed lodgement fee, and late fee if applicable.

Importantly, failure to properly lodge the annual summary means an association will be guilty of an offence and liable to penalty. The statement will not be taken as lodged if the relevant fee has not been paid.

Need more information?

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General meetings

Incorporated associations

What are general meetings?

There are two kinds of general meetings that are usually held by associations. These are:

Annual general meetings (AGMs)

These are convened to conduct business required under the *Associations Incorporation Act 2009* (the Act). This includes presenting the annual financial statements and other regular annual business, including electing committee members as may be required by the association's constitution. An association's committee must ensure that an annual general meeting is held within 6 months after the close of the association's financial year.

Other general meetings

These are variously referred to as special, ordinary, or extraordinary meetings. They are any general meeting, where all members attend, that is not an AGM.

These meetings are convened in accordance with the association's constitution, to deal with any other matters that may arise requiring a decision of the general membership.

The manner of calling, the quorum and the procedure of a special general meeting are usually the same as for an annual general meeting, although the business to be conducted will be different.

The information below applies to both annual general meetings and special general meetings.

How are meetings called and conducted?

The constitution for each association must specify:

- the intervals between general meetings of the association's members
- how a general meeting is called
- the quorum for general meetings
- the procedure at general meetings
- whether members are entitled to vote by proxy at general meetings

- the kinds of resolution that may be voted on by a postal or electronic ballot, and
- the time within, and the manner in which, notices of general meetings and notices of motion are to be given, published or circulated.

If the Model constitution applies, members must be given at least 14 days' notice of a general meeting or 21 days' notice if a special resolution is to be proposed. The notice of meeting must specify:

- the place, date and time of the meeting
- the nature of the business to be transacted at the meeting and
- if a special resolution is proposed, the notice must also set out terms of the resolution and a statement that it is intended to be passed as a special resolution.

Associations can include in their constitutions the flexibility to hold meetings (both committee meetings and general meetings) at 2 or more venues using any technology that gives each of the members a reasonable opportunity to participate.

Can members request a general meeting?

The association's constitution may provide for members to make a request for a special general meeting to be held.

If the Model constitution applies, a committee must, on the written request (can be in electronic form) of at least 5% of the total number of members, convene a special general meeting of the association. The request for the meeting:

- must state the purpose or purposes of the meeting
- must be signed by the members making the request
- must be lodged with the secretary, and
- may consist of several documents in a similar form, each signed by one or more of the members making the request.

The Model constitution sets out the procedures allowing the members who made the request to hold a special general meeting if the committee fails to do so.

How can a member raise a matter at a general meeting?

The constitution for an association should set out the manner in which a notice of motion is to be given. A member who wishes to bring any business before a general meeting should give notice to the association in accordance with the constitution.

If the constitution does not deal with this matter, the relevant clause of the Model constitution will apply. This clause provides that the member give the secretary written notice of the matter to be raised at a general meeting. The secretary must include that matter in the next notice calling a general meeting.

Members should ensure that the notice is given to the association with sufficient time for the business to be included in the notice calling the next general meeting.

What happens if a quorum is not present?

The quorum is the number of members required to be present in order to conduct a meeting. No business is to be transacted at any meeting unless a quorum of members entitled to vote is present when the item is being considered at the meeting.

Under the Model constitution 5 members that are entitled to vote at a general meeting, are required to be present in person to constitute a quorum for the transaction of business at a general meeting.

The association's constitution should specify the procedure if a quorum is not present at a meeting. Under the Model constitution, if a quorum is not present within

half an hour of the time appointed for the general meeting:

- the meeting is to be dissolved if convened on the request of members, and
- in any other case, the meeting is to stand adjourned to the same day and time in the following week and at the same place, unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members before the day to which the meeting is adjourned. If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the members present (being at least 3) will constitute a quorum.

Who can vote at general meetings?

The association's constitution is required to specify the eligibility of members to vote.

The Model constitution specifies that a member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid. In addition, any member under the age of 18 years is not entitled to vote.

The constitution must specify whether proxy voting is allowed and, where appropriate, any requirements, restrictions and procedures relating to proxy voting.

The Model constitution does not allow proxy voting.

How are decisions at general meetings made?

In general, questions for decision by an association at a general meeting are to be determined by ordinary resolution. An ordinary resolution is passed by a simple majority of members. This means it is supported by more than half of the valid votes cast by members of the association.

Certain questions are to be determined by special resolution. Special resolutions are required to be passed by at least three-quarters of the votes cast by members of the association.

The votes may be by postal or electronic ballot, in person at the general meeting or by proxy, if allowed under the constitution. For example, if an association has 100 members entitled to vote and only 50 members attend the meeting or give a proxy, then an ordinary resolution will be passed if 26 members vote in favour of it. A special resolution would be passed if 38 members vote in favour of it.

Unless the constitution provides otherwise, a resolution put to the vote of the meeting will be decided by a show of hands. If participation in the meeting by a member does not allow for visual counting, then another form of acknowledging voting intention should be determined.

Where proxy voting is permitted, the constitution will usually provide that a poll may be requested by a specified number of members. A poll is a method of voting where votes are cast in writing rather than by a show of hands and it is the mechanism by which proxy votes can be counted.

If the constitution allows, the chairperson may have a second vote at a general meeting if the votes are equal.

An association's constitution is required to specify the kinds of resolutions that may be voted on by means of a postal or electronic ballot.

Is it necessary to take minutes at a general meeting?

An association must keep minutes of the proceedings at a general meeting.

The minutes of meetings provide a permanent official record of the business transacted. They should form a clear and concise summary of the proceedings of the meeting. The minutes would normally include the following:

- details of the day, date and place of the meeting
- the time the meeting started
- the names of those present and details of 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 general meeting and the signing of them as a correct record
- details of every resolution put to members and whether it was passed with the requisite 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 this is determined during the meeting), and
- the time that the meeting ended.

The minutes of each meeting should be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting. Under the Model constitution, the chairperson can sign the minutes electronically.

Minutes of meetings must be kept in written or electronic form. If records and minutes are kept in electronic form, they must be able to be converted into hard copy. If a person is entitled to inspect the records, a hard copy of the record must be made available within a reasonable time.

If any part of the minutes is in a language other than English, a copy of the minutes in the English language must be kept with the minutes. The Act prescribes penalties for failure to comply with this requirement.

Are members allowed to inspect the minutes?

The association's constitution is required to include provisions regarding inspection of books and documents of the association.

Need more information?

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Resolutions

Incorporated associations

What is a resolution?

A resolution is a formal decision passed by the association in accordance with its constitution, usually made at a general meeting or in a postal or electronic ballot.

There are two types of resolutions, ordinary and special.

An ordinary resolution is passed if more than half of the formal votes cast support it. Most decisions at a general meeting are made by ordinary resolution.

A special resolution is passed if at least three-quarters of the votes cast support it.

Special resolutions

When is a special resolution required?

A special resolution is required for:

- changing the association's name
- changing the association's objects
- changing the association's constitution
- applying for registration by an unincorporated group
- amalgamating with another registered association
- an existing corporation seeking to register as an association
- an existing registered association applying to transfer incorporation
- voluntarily winding up or cancelling the registered association and distributing property.

The association's constitution may indicate other situations that require a special resolution.

An application to register a change of name, objects or constitution must be lodged with NSW Fair Trading within 28 days of the special resolution being passed.

How is a special resolution passed?

A special resolution may be passed:

- at a general meeting of the association

- in a postal or electronic ballot
- in another manner as directed by NSW Fair Trading

Members must be given at least 21 days' notice of the proposed special resolution. The notice must state the:

- time, date and place where the meeting to vote on the special resolution will be held
- intention to propose the resolution as a special resolution
- proposed resolution in full

A special resolution will be passed if:

- the conditions imposed by Fair Trading, if any, are met
- a quorum of members required by the constitution is present at the meeting, and
- it is supported by at least three-quarters of the valid votes cast in person or by proxy, if proxy votes are allowed by the constitution.

The results of the vote can be announced by the chairperson of the meeting and entered into the minute book of the association.

If a postal or electronic ballot has been used, members must be notified of the results as soon as practicable. For information on how to conduct a special resolution through a postal or electronic ballot, visit the Postal or electronic ballot page on the Fair Trading website.

A quorum is the minimum number of members who are required for the meeting to proceed.

Who can vote?

An association's constitution must specify who is eligible to vote.

What is a poll?

A poll is a method of voting on a motion where votes are cast in writing. This allows proxy votes to be counted.

The association's constitution may state the procedure for demanding and conducting a poll.

What is a proxy?

A proxy is a person authorised to vote on behalf of another person.

The constitution must specify if members are entitled to vote by proxy at a general meeting and if there are any restrictions or procedures for proxy voting.

Generally, proxy votes should only be used with a poll as this allows all of the proxies to be counted.

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About the constitution

Incorporated associations

What is the constitution?

The constitution of an incorporated association is a contract between the association and its members, who agree to adhere to the provisions outlined in the constitution.

Every incorporated association must have a constitution. This can be the Model constitution or the association's own constitution, which is recorded in the public register of incorporated associations, maintained by Fair Trading.

What matters must be included in the constitution?

The constitution must address each of the matters referred to in Schedule 1 of the *Associations Incorporation Act 2009* (the Act), as follows:

- **Membership qualifications** The requirements, if any, to become a member.
- **Register of members** The register of the association's members.
- **Fees, subscriptions etc.** Any entrance fees, subscriptions and other amounts, if any, to be paid by the members.
- **Members liabilities** A member's liability, if any, towards the debts and liabilities of the association.
- **Disciplining of members** The procedure, if any, for disciplining members, including an appeals process.
- **Internal disputes** The procedure for the resolution of disputes between members and between members and the association.
- **Committee** The composition, functions and processes of the committee, including:
 - the election or appointment of the committee members
 - the terms of office of the committee members
 - the maximum number of consecutive terms of office of any office-bearers on the committee
 - the circumstances in which a committee member has to vacate office
 - the filling of casual vacancies on the committee, and
 - the quorum and procedures to be followed at committee meetings.
- **Calling of general meetings** The procedure of holding and calling a general meeting and the intervals between meetings.
- **Notice of general meetings** The process for notifying members of a general meeting and notices of motion.
- **Procedure at general meetings** The quorum, procedure and requirements for conducting a general meeting, and whether members are entitled to vote by proxy.
- **Postal or electronic ballots** The types of resolutions that may be voted on by a postal or electronic ballot.
- **Sources of funds** The sources of the associations income.
- **Management of funds** How the association's funds are to be managed and the procedure for drawing and signing cheques on behalf of the association.
- **Custody of books etc.** Who is responsible for the association's books, documents and securities.
- **Inspection of books etc.** The procedures for the inspection of books and documents by members.
- **Financial year** The association's financial year.
- **Winding up** The winding up of the association.

A representative of the association must certify that the constitution complies with the requirements of the Act, including the above matters.

What is the Model constitution?

NSW Fair Trading developed the Model constitution to cover all matters outlined in Schedule 1 of the Act, as well as a number of additional matters. New and existing associations may:

- adopt the Model constitution
- adopt a modified version of the Model constitution as their own constitution.

Each association must consider whether the Model constitution is suitable because once adopted, it is binding to both the association and members.

If an association's constitution fails to address a matter outlined in Schedule 1, the Model constitution applies for that matter and will form part of the association's constitution. However, this does not apply to change the financial year end of an association registered prior to 1 July 2010, where the constitution does not address the financial year end.

The Model constitution may be updated from time-to-time. The updates will apply to the constitution of any association:

- that has adopted the Model constitution, or
- where the updated rule is taken as part of the association's constitution.

How is the constitution changed?

An association may change its constitution by passing a special resolution. The change must be consistent with the Act and the rest of the constitution.

The association must apply for registration of the changes within 28 days of the special resolution being passed and the application must:

- be in the **approved form** *Application to register change of objects or constitution* (form A6)
- include details of the proposed change
- include a copy of the special resolution as passed
- include payment of the prescribed fee.

A change to the constitution is valid once it is registered with NSW Fair Trading.

An application may be refused if it:

- does not comply with the Act
- is not in the approved form
- is lodged more than 28 days after passing the special resolution.

An association representative must certify that the constitution complies with the Act.

For more information on special resolutions, visit the Resolutions page on the Fair Trading website

What if there is a breach of the constitution?

An individual may take action against a member or the association if a breach has occurred. They can do this either by using the internal dispute resolution process outlined in the association's constitution, or by seeking external advice.

In most cases, Fair Trading does not have the authority under the Act to investigate or to intervene in a dispute relating to a breach of the constitution..

For more information visit the Resolving disputes page on the Fair Trading website.

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Membership

Incorporated associations

What are the qualifications for membership?

The association's constitution must specify any qualifications for membership.

The Model constitution provides that a person is a member of an association if that person is a natural person and:

- has applied and been approved for membership in accordance with the procedure set out in the constitution
- was a member of an unincorporated body immediately before its incorporation
- was a member of an association immediately before amalgamating to form an association
- was a member of a registrable corporation immediately before that entity registered as an association.

Can an association have corporate or affiliated members?

An association's constitution may allow other incorporated bodies (such as incorporated associations, co-operatives or companies) to be members of the association, or for the association to have affiliated members.

An association that wishes to do so must adopt its own constitution and may need to obtain legal advice regarding appropriate clauses.

The Model constitution does not cover these situations.

Is there a limit on the number of members?

An association must have at least 5 members at all times. However a maximum limit is not set for the number of members.

An association's incorporation may be cancelled if it has fewer than 5 members.

When does a person cease to be a member?

The association's constitution should set out the circumstances in which membership ceases. The Model constitution provides the following circumstances in which a person ceases to be a member:

- if the person dies
- the person resigns membership
- the person is expelled from the association
- the person fails to pay the annual membership fee within 3 months after the fee is due.

Can all members vote at a general meeting?

The association's constitution should specify members' eligibility to vote.

The constitution must make provision for the various resolutions that may be voted on by postal or electronic ballot and whether members are entitled to vote by proxy at general meetings.

The Model constitution specifies each member is entitled to 1 vote at a general meeting and all votes must be given personally or by postal or electronic ballot, but proxy votes are not permitted.

Can non-financial members vote at the annual general meeting?

The association's constitution should set out if non-financial members can vote at the annual general meeting.

The Model constitution specifies a member is not entitled to vote at any general meeting, unless all money due and payable by the member has been paid.

Can non-financial members nominate others or stand for election?

The association's constitution must set out provisions on the election or appointment of members of the committee. This includes nomination of persons to stand for election to the management committee.

Can persons under the age of 18 be members and vote?

Persons under the age of 18 (minors) are not prevented from becoming members under the *Associations Incorporation Act 2009* (the Act).

Where the association has members who are minors, the constitution should clearly detail their rights and privileges.

The Model constitution specifies that a member under the age of 18 years is not entitled to vote.

The Act does not permit members of the association under the age of 18 years to be members of the committee.

What is the register of members?

The association's constitution must make provision for a register of members. This includes the establishment, maintenance, safekeeping and inspection of the register of members.

The Model constitution specifies the association's secretary must establish and maintain the register of members, in written or electronic form. The register must be kept at the main premises of the association or at its official address. The register must be available for inspection free of charge by any member, at any reasonable hour.

The register should specify the name, postal or residential or email address of each member and the date their membership commenced.

Information on the register may only be used for limited purposes. The Model constitution allows a member to request that their information (other than the member's name) is not made available for inspection.

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Management committee

Incorporated associations

The committee (sometimes called the 'committee of management' or 'board') is responsible for managing the affairs of the association, in accordance with its constitution and the *Associations Incorporation Act 2009* (the Act).

The role of the committee includes:

- managing the association's financial affairs and maintaining its financial viability
- ensuring the association acts in accordance with its objects or purposes
- meeting all legal requirements.

Committee members are appointed and hold office according to the association's constitution.

Each member of the committee should be familiar with the association's constitution and legal obligations.

The constitution of an incorporated association must set out the composition and function of the committee. It must also make provisions regarding:

- the election or appointment of committee members
- the terms of office of the committee members
- the maximum number of consecutive terms of office of any office-bearers
- the grounds on which, or reasons for which, the office of a committee member is to become vacant
- the filling of casual vacancies occurring on the committee
- the minimum number of committee members required for a quorum; and
- the procedures at meetings of the committee.

Who can be a member of the committee?

The Act requires:

- a committee to have at least 3 members
- each member must be aged 18 years or over; and
- at least 3 members of the committee must reside in Australia.

An association's constitution may include additional qualifications for its committee members.

Can a member of the committee be paid?

A committee member may only receive an authorised payment for remuneration.

An association's constitution should contain a provision regarding payments made to committee members to avoid disputes.

What are the responsibilities of the committee members?

Committee members have specific functions and responsibilities under the Act, including:

- ensuring all documents in their possession that belong to the association are delivered to the public officer within 14 days after vacating office
- ensuring that the register of committee members contains all the required particulars
- disclosing an interest in a matter that conflicts with the performance of their duties
- ensuring information obtained as a committee member is not used dishonestly
- ensuring their position as a committee member is not used dishonestly
- carry out his or her functions for the benefit, as far as practical, of the association and with due care and diligence
- appointing a public officer and ensuring that any vacancy is filled within 28 days
- appointing additional authorised signatories and removing such appointments
- ensuring that annual general meetings are held within 6 months after the close of the association's financial year
- ensuring proper minutes and financial records are kept and financial statements prepared in accordance with requirements for either a Tier 1 or Tier 2 association

- lodging an Annual summary of financial affairs with the prescribed fee within 1 month of the association's annual general meeting
- ensuring that the association's full name appears on all official documents and publications
- ensuring that the association does not incur debts that are not expected to be repaid
- ensuring that the association does not do any act with intent to defraud
- ensuring that any document addressed to the association is brought to the attention of the committee as soon as practicable
- complying with any additional duty set out in the constitution.

In addition, members of the committee should:

- be aware of the duties of the public officer and ensure they are properly carried out
- ensure that new committee members are aware of their statutory obligations and responsibilities to the association
- ensure that appropriate internal financial controls are implemented for all payments made on behalf of the association. As a matter of good corporate governance, the committee should provide oversight and authorise/approve payments regularly. As a minimum, this should be undertaken at each committee meeting.

Disclosure of interests

If:

- a committee member has a direct or indirect interest in a matter being considered or about to be considered at a committee meeting, and
- the interest appears to raise a conflict with the proper performance of his or her duties in relation to the consideration of the matter

the committee member must, as soon as possible after becoming aware of this interest, disclose the nature of the interest at a committee meeting.

The committee must deal with any disclosure of interest as required by section 31 of the Act. The details of the

interest must be recorded in the committee meeting minutes and in the Register of disclosed interests.

Unless the committee determines otherwise, the committee member cannot:

- be present while the matter is discussed at the committee meeting, or
- take part in any decision of the committee with respect to that matter.

What is the role of authorised signatories?

An authorised signatory is a person with authority to sign official documents on behalf of the association.

The public officer is automatically one of the authorised signatories. However, the public officer is not automatically a signatory to the association's bank account.

The committee may appoint other committee members as additional authorised signatories. An association must have at least 2 authorised signatories.

An association can execute a document by using a common seal, witnessed by 2 authorised signatories, or just by having 2 authorised signatories sign the document.

The committee should notify any change in its authorised signatories to any party they deal with regularly.

What records must be kept?

The committee must ensure the association keeps and maintains the records of the association required by the Act or otherwise required for the efficient running of the association.

For information on the registers and other documents that should be kept and maintained by an association, visit the Association records page on the Fair Trading website.

Need more information?

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Management committee meetings

Incorporated associations

The procedure for calling and holding a management committee meeting must be outlined in the association's constitution.

If the constitution does not make provision for these matters, the relevant provisions of the Model constitution will automatically apply. Visit the Model constitution page on the Fair Trading website for more information.

How often should meetings be held?

The management committee should meet as often as is necessary to properly manage the affairs of the association. The constitution can stipulate a minimum requirement.

If the constitution provides for it, the committee may choose to hold a meeting at 2 or more venues using technology that allows members an opportunity to participate.

How is notice of a meeting to be given?

The constitution will outline how notice is given for a meeting. The notice of a meeting should include an agenda which specifies the matters to be dealt with at the meeting.

What is a quorum?

A quorum is the minimum number of committee members required to be present in order for the meeting to go ahead. The constitution must specify the quorum and the procedure to be followed if a quorum is not present.

Who is the chairperson?

The constitution will specify the person who is to act as chairperson.

Who can attend meetings?

Unless the association's constitution says otherwise, only committee members are entitled to attend committee

meetings. However, the committee may permit members and other persons to attend.

Is it necessary to keep minutes?

Yes, minutes must be kept of meetings. 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 this is determined during the meeting
- the time the meeting ended.

Minutes of meetings must be kept in written or electronic form. If records and minutes are kept in electronic form, they must be able to be converted into hard copy. If a person is entitled to inspect the records, a hard copy of the record must be made available within a reasonable time.

If any part of the minutes is in a language other than English, a copy of the minutes in the English language must be kept with the minutes. The *Associations Incorporation Act 2009* prescribes penalties for failure to comply with this requirement.

Record of disclosure of interests

If a committee member discloses an interest at a committee meeting, this must be recorded in the minutes of the meeting.

Are members allowed to inspect the minutes?

The association's constitution must include provisions that address the inspection of books and documents by members.

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Insurance

Incorporated associations

Is an association required to hold insurance?

The *Associations Incorporation Act 2009* does not require associations to take out and maintain any specific type of insurance.

However, as an association must comply with any relevant State and Commonwealth legislation applicable to its operations, an association may be required to hold insurance under other applicable legislation. For example, an association with employees may be required to hold workers compensation insurance (see www.workcover.nsw.gov.au).

Do we need insurance?

As part of their corporate governance obligations, committee members are responsible for:

- assessing the risks applicable to the activities of the association, and
- determining if insurance is required, and if so the type and level of cover.

There are a number of different insurance policies that may be appropriate, for example:

- public liability insurance
- directors and officers liability insurance
- associations liability insurance
- personal accident insurance
- occupational health and safety cover
- workers compensation insurance
- property and/or contents insurance
- fidelity insurance
- building insurance
- travel insurance.

Where can we get insurance?

A number of insurance companies have insurance products that may be suitable for community organisations.

The Council of Social Service NSW (NCOSS) undertakes 'bulk buying' insurance programs to assist non-government community service organisations to identify their insurance and risk management needs. For more information contact NCOSS on 02 9211 2599 or visit www.ncoss.org.au

Information on identifying insurance requirements for associations engaged in sporting activities is available on the Sport and Recreation website at sportandrecreation.nsw.gov.au/clubs/ryc/governance/insurance

The NSW Sporting Injuries Insurance Scheme is a State Government initiative providing cost effective insurance cover for people who are seriously injured while participating in a sporting activity. The Scheme is open for membership to all sporting organisations operating in NSW. Information on the Scheme is available at www.workcover.nsw.gov.au/insurance/sports-insurance

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Commercial activities and monetary gain

Incorporated associations

The *Associations Incorporation Act 2009* (the Act) facilitates the incorporation of associations engaging in small-scale, non-profit and non-commercial activities.

Organisations operating as commercial enterprises are not eligible for incorporation under the Act.

NSW Fair Trading takes into account a number of key factors when considering if an association is or is likely to be engaged in commercial activities, including:

- the proposed objects of the association
- the nature and extent of the proposed activities, including dealings with the public
- if the commercial money-making activities will be a major part of its operations
- if the proposed activities will be undertaken in a normal commercial manner
- if goods or services are restricted to members or available to the general public
- if it is operating on a profit basis rather than a cost-recovery basis
- if it is operating in competition with businesses undertaking the same commercial activities.

The Act also prohibits an association from providing pecuniary (monetary) gain for its members. A breach of the Act could result in:

- cancellation of incorporation
- prosecution
- penalties.

An association provides monetary gain for its members if it:

- carries on an activity for the purpose of securing monetary gain for its members
- has capital that is divided into shares or stock held by members
- holds property in which the members have a disposable interest.

Activities not considered as securing pecuniary gain include, where:

- the association itself makes a monetary gain
- the association is established for the protection of a trade, business, industry or calling in which the members are engaged or interested, but the association does not engage or take part in
- the association provides members with facilities or services for social, recreational, educational or other similar purposes
- members obtain monetary gain from the association in the form of remuneration (ie salary/wage) for a proper purpose
- members obtain monetary gain from the association that they could otherwise gain if they were not a member
- members compete for trophies or prizes in contests directly related to the objects of the association.

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Resolving disputes

Incorporated associations

Who handles disputes within an association?

The management committee of an association is responsible for the administration of the association, including the handling of internal disputes between members, as well as disputes between members and the association. This is done in accordance with the *Associations Incorporation Act 2009* (the Act) and the association's constitution.

The association must provide a procedure in its constitution for the handling of disputes.

What should I do if I have a dispute?

The first step is to try to resolve the dispute directly with the parties involved. If appropriate, you can use the dispute resolution procedure outlined in the constitution.

If the constitution does not include a dispute resolution procedure, then the procedure outlined in the Model constitution should be used.

If the matter remains unresolved, you may wish to seek appropriate legal advice or use an alternate dispute resolution (ADR) service.

For more information on ADR services, contact:

- The Law Society of NSW on 02 9926 0333 or visit www.lawsociety.com.au
- NSW Department of Justice on 02 8688 7777 or visit www.courts.justice.nsw.gov.au

Can NSW Fair Trading intervene in a dispute?

Fair Trading's role is to administer the Act. Fair Trading can only intervene in matters as set out in the Act and the Associations Incorporation Regulation 2016 and generally cannot intervene in any dispute.

Specifically Fair Trading cannot:

- provide legal advice

- act for particular parties to a dispute
- provide an interpretation of the constitution or rules of an association
- intervene in matters relating to the internal administration of an association, including the conduct of meetings and elections
- intervene in internal disputes
- determine the facts of any internal dispute.

Where can I get legal advice?

You can get legal assistance from the following sources:

- a legal practitioner of your choice
- Justice Connect on 02 8599 2100 or visit www.justiceconnect.org.au
- Law Access NSW on 1300 888 529 or visit www.lawaccess.nsw.gov.au
- Community Justice Centres on 1800 990 777 or visit www.cjc.justice.nsw.gov.au
- your local Community Legal Centre, visit www.clcnsw.org.au for a list of centres
- The Law Society of NSW on 02 9926 0333 or visit www.lawsociety.com.au.

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