

Glossary

Key words and abbreviations

AAS refers to Australian Accounting Standards and is relevant to the review or audit of an incorporated association's financial statements.

AGM refers to an annual general meeting.

AI Act refers to the *Associations Incorporation Act 2009* (NSW).

AI Regulation refers to the *Associations Incorporation Regulation 2016* (NSW).

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 means, broadly, a group (whether incorporated or not). Specifically, in this guide, the word 'association' refers to a New South Wales incorporated association.

ATO refers to the Australian Taxation Office.

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 *Associations Incorporation Act 2009* (NSW) ('Tier 1 associations') or for other reasons, such as funding agreements.

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 is a legal status that offers a person protection from further action against them by creditors (that is, people to whom the person owes money).

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, which means the same thing.

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.

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) 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 1 of the *Associations Incorporation Regulation 2016 (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 means 'arrange' or 'call people together' – for example, the chairperson of an incorporated association may convene a meeting of the committee.

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 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 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 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 are a formal written record of the matters discussed and decisions made at a meeting.

Model Constitution (or Model Rules) means the Constitution set out in Schedule 1 of the *Associations Incorporation Regulation 2016 (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 1 of the *Associations Incorporation Regulation 2016 (NSW)*) or by the association.

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 refers to the government agency responsible for regulating incorporated associations in New South Wales.

Objects is another word for the purposes of an incorporated association.

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 means, broadly, a group (whether incorporated or not). Specifically, in this guide, the word 'organisation' refers to a New South Wales incorporated association.

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 *Associations Incorporation Act 2009 (NSW)* or the association's Constitution (or Rules), but they can supplement them.

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 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 *Associations Incorporation Act 2009* (NSW), 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**) 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 is the minimum number of people that need to be present at a meeting for that meeting to proceed.

Register is essentially a list, or database, containing information about certain matters, members or documents.

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 NSW Fair Trading website here, and you may purchase extracts from it about your association or about other associations.

Regulation refers to the *Associations Incorporation Regulation 2016* (NSW).

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 is another word for the Constitution of an incorporated association.

Schedule refers to a Schedule (and the items, or paragraphs, within it) of the *Associations Incorporation Act 2009* (NSW) or the *Associations Incorporation Regulation 2016* (NSW).

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 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 1 of the *Associations Incorporation Regulation 2016* (NSW)), any general meeting which is not an 'annual' general meeting is classified as a 'special' general meeting.

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). 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%. Special resolutions are required by the *Associations Incorporation Act 2009* (NSW) when an association makes certain important decisions, such as changing its name, Constitution, purposes or official address; amalgamating with one or more other associations; winding up the association voluntarily or seeking cancellation or transfer of registration by NSW Fair Trading.

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 is an incorporated association whose gross receipts (total revenue) 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 is an incorporated association whose gross receipts (total revenue) are less than \$250,000 or whose current assets is less than \$500,000; or be declared not to be a Tier 1 association by NSW Fair Trading.

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 ceases to exist.