

Association Constitutions

PCAAE: 29 June 2015

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Disclaimer: This is practical advice based on our work with associations and charities. The contents of this presentation do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek specialist advice in relation to any particular matters you or your organisation may have.



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Association's key documents

1. Legislation – plus explanation of what it means to your association and people
2. Constitution – voted upon and changed by Members at General Meeting
3. By-Laws/Regulations (optional) – can be changed by the Board
4. Governance Charter – can be changed by the Board
5. Statements of Purpose – Mission cascades into Goals then Activities
6. Plan – stating what/who/when and presented in grid format
7. Budget – linked to Plan; drafted by CEO; approved by Board
8. List of Directors and Office Bearers – how long on Board and “day job”
9. Staff org chart – changed by CEO; will staff structure achieve Plan?
10. Minutes – Board meetings, committee meetings and General Meetings
11. Annual Report – records achievements, challenges; acknowledges efforts
12. Audited financial report – plus 5 years to 10 years financial history



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Key requirements in constitution for NFP taxation status

1. Objects
2. Membership (mutuality principle)
3. No distribution to members clause
4. Winding up - no distribution to members



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About Constitutions

1. Act of Parliaments overrides Constitution
2. Constitution is your mini-law
3. MEMBERS change the Constitution through a formal process at a GENERAL MEETING – 66% majority of votes cast
4. Clear and relevant, not ambiguous and operational – e.g. don't include member rates
5. Include validation of Taxation status e.g. “mutual”
6. Constitutions need to be reviewed every 3 years



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Content of Constitutions

1. Purpose / Objects
2. Members
 - Defining who can be a Member; expulsion of a Member
 - It is OK to be exclusive and particular, but not discriminatory
 - Member voting rights (or not) at a “General Meeting”
3. General Meetings
4. Directors
 - Who appoints and how; how to dismiss Directors
 - Composition, terms, staggering (eg 3 every year x 3 years terms)
 - Office Bearers positions and Term limits (especially President)
 - Director voting rights at a “Board Meeting”
 - Authority to make appointments
5. Procedural matters



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By-laws/Regulations

By-laws (optional) – Made and changed by the Board and may include –

1. Matters that law does not require to be in Constitution
2. Mechanics of the organisation that change and evolve e.g. membership fees
3. Duties of officers and spokesperson
4. Levels of authority
5. Election processes including nominations, voting
6. How sub-committees are appointed and operate
7. Policy and budget process
8. Protection e.g. insurance, logos, intellectual property



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Governance Charter (a By-law)

1. Each year, the Board needs to reaffirm in writing HOW it will operate
2. Charter covers Terms of Reference, role of the Chair, minutes policy, director behaviour
3. Directors communicate with staff via the CEO
4. Conflict of interest and maintain confidentiality
5. Board induction, development, assessment and succession planning
6. See Article: "Director Behaving Badly"



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Who should be on a Board?

1. This is determined by the Constitution
2. Election by member ballot before AGM
3. If members from same background, having an independent director may be appropriate
4. Some national associations and charities have a Director from every State/Territory
5. Other associations elect directors from membership at large



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Alternate Directors and no Director proxies

1. Alternate Directors are permitted by the Corp Act and if specifically mentioned in the Constitution
2. However, Alternate Directors are not recommended
3. Frequent use of Alternate Directors diminishes Board processes
4. Proxies are a right for voting members at General Meetings – but not at Board meetings
5. Neither a Director nor Alternate Director can vote at a Board meeting as a "proxy" for another Director: only one vote per person



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Constitutions should improve

Constitutions won't be right first time and forever:

- Is your association working most effectively?
- Is your constitution up-to-date with the law?
- Does your constitution reflect best practice?
- Can technology be used for Board meetings and circulating information to members?
- Is it written in clear and not legalistic language?



Achieving Constitution changes

- If you change your constitution (say) every 5 years, it is seen as part of association evolution
- Major changes done rarely may be viewed with skepticism by members
- If there is discontent among membership on other matters, they may be less willing to change



Marketing Constitution change

- Discuss the need for change
- Get a brief and straightforward external review of your Constitution as independent advice
- Sell the need for change to the Board
- Then sell the need for change to the members
- Use respected former Chairs to champion change
- Never come up with an alternative Constitution in the early stages
- When debating is resolved, draft new constitution



Discussion & Comparison

- Feedback on constitutional issues impacting on your association
- Examples of good and bad clauses in constitutions
- How will your association achieve worthwhile change?



Thank you!

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Associations Forum National Conference:

14 - 15 July 2015 Adelaide Convention Centre



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