

Towards better association constitutions



By John Peacock and Kathy Nguyen, Associations Forum

Constitutions are crucial documents. Significantly, they define who the members of the association are and the process by which the association elects its leadership.

Associations Forum reviews dozens of constitutions each year. From this experience, we know the importance of good governance documents. From time to time, we're surprised at how bad a constitution can be. Whilst such circumstances are rare, these exceptions prove the rule that a good constitution is paramount in successful outcomes for an association.

Legislation

The law of the nation or state in which the association is incorporated overrides what is said in the constitution.

Constitutions need to be crafted to fit into the legal requirements and stipulations of the Act under which they are established.

Members

Associations have members who are their key stakeholders. We do not believe that members are the 'owners' of the association, because ownership implies that something can be sold and bought. This is not the case with membership.

Constitutions need to define what voting rights members have. This is important because, if constitutional change is required, it should be clear who has the right to vote on such changes. If members have the right to elect directors, this should also be clearly expressed in the constitution.

General Meetings of Members

General Meetings of members are an inherent part of the governance process of associations. This is the opportunity members have to vote to change the constitution and also the Board of Directors. It is also the pinnacle of the compliance cycle where the Board of Directors, being accountable to members, must report to the members on specific matters. General Meetings are an uncontroversial part of the constitution, but they are important. Constitutions must clearly state the processes regarding a General Meeting, many of which will be guided by the relevant law.

Boards of Directors

A fundamental governance principle is that members elect the Board of Directors which is responsible for the governance of the association. When funds permit, the Board of Directors appoints a CEO to manage the association following the directions set out in the strategic plan. Therefore, constitutions need to explain clearly how many people will be elected to the Board of Directors and the process by which this happens.

Mistakes in the worst constitutions

Some of the worst constitutions read by Associations Forum are those that confuse the distinct roles of members, the Board of Directors and management. The major flaw in these documents is often that a Board meeting is seen as being the same as a General Meeting of members. The role of these meetings, the responsibilities of attendees and the processes are all different.

Other matters

Regarding CEO and management, our suggestion is that they are not mentioned in the constitution. CEOs are not part of the official governance structure of an association, hence their appointment and duties should not be included in a constitution which is about governance.

One further point is that using model rules or sample constitutions is often not appropriate for an association. Associations have different membership arrangements and different preferences about how their Board of Directors will be appointed or elected, therefore model rules may result in a less than ideal governing document.

Changing your constitution

Associations Forum is regularly engaged in the project management and drafting of a new constitution of an association. As you will understand from this article, constitutions are vital, and sensible changes are often required. Therefore, the change process needs to be done correctly and seriously, or else there is an elevated risk of the changes not being accepted by the membership.

Our suggestions include:

- ♦ getting the best balance between undue haste and unnecessarily long timeframes that sap momentum
- ♦ having the right members involved in the process at the right time
- ♦ using different styles of documentation at different stages
- ♦ respectful and open consultation throughout the change process.

Conclusion

Associations Forum's mission is "bringing associations together to boost performance". We believe that performance and delivering member benefits will come when the right structures and rules of governance are in place. Unless your association has an excellent constitution, which means that the rules of governance are in the background as annual or reserve powers, your association will not be able to fulfill its core mission. We welcome the opportunity to review your association's constitution and to work with your association to develop an improved document that will be approved by the members voting at a General Meeting. Please contact Kathy Nguyen on 02 9904 8200 or kathy@associations.net.au

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