

Bush Club Constitution

1. Recap

- **Why have a constitution?**

The Bush Club is an incorporated association and must by law have a constitution. This can be the Model constitution published by Fair Trading or the Club's own constitution, which is recorded in the public register of incorporated associations, maintained by Fair Trading.

The constitution is a contract between the Club and its members, who agree to adhere to the provisions outlined in the constitution.

- **What matters must be addressed 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 club'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 club.
- **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 club.
- **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 club's income.
- **Management of funds** How the club's funds are to be managed and the procedure for drawing and signing cheques on behalf of the club.
- **Custody of books etc.** Who is responsible for the club's books, documents and securities.
- **Inspection of books etc.** The procedures for the inspection of books and documents by members.
- **Financial year** The club's financial year.
- **Winding up** The winding up of the club.

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

- **What is the relationship between the Constitution & Club Policies?**

The Club has both a Constitution and a Policy document. The Policy document is subservient to the Constitution. It sets out in more detail the Club's policies and procedures. It can be changed by the Committee, providing it remains consistent with the Constitution, without going through the formal procedures required to change the Constitution. It is not registered with Fair Trading.

- **Why change the current Constitution?**

Since the current Constitution was registered, a new regulation titled **Associations Incorporation Regulation 2016 (NSW)** came into effect on 1 September 2016; Fair Trading have published a new model constitution, to take account for example of technological change; and the Club's Committee propose changes that are inconsistent with the Club's existing Constitution (e.g., we no longer use the Club's common seal on official documents).

- **What is the role of 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 or
- adopt a modified version of the Model constitution as their own constitution.

The Club has previously adopted a modified version of then current Model 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.

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 clause is taken, by default, to be a part of the association's constitution because the association has failed to address a Schedule 1 matter.

• **How do we change the Constitution?**

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.

While not required by the Act, Fair Trading recommends, where appropriate, an association consider passing a special resolution to adopt a new constitution **consolidating** all desired changes.

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

- **How do we pass a special resolution?**

Our current Constitution states:

32. Special resolution

A special resolution may only be passed by the club in accordance with section 39 of the Act.

Section 39 of the Act states:

- (1) A resolution is passed by an [association](#) as a "**special resolution**" :
 - (a) at a meeting of the [association](#) of which notice has been given to its members no later than 21 days before the date on which the meeting is held, or
 - (b) in a postal or electronic ballot conducted by the [association](#), or
 - (c) in such other manner as the [Secretary \(of Department\)](#) may direct, if it is supported by at least three-quarters of the votes cast by members of the [association](#) who, under the [association's constitution](#), are entitled to vote on the proposed resolution.
- (2) A notice referred to in subsection (1) (a) must include the terms of the resolution and a statement to the effect that the resolution is intended to be passed as a [special resolution](#).
- (3) A postal or electronic ballot referred to in subsection (1) (b) may only be conducted in relation to resolutions of a kind that the [association's constitution](#) permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the regulations.
- (4) A direction under subsection (1) (c) may not be given unless the [Secretary \(of Department\)](#) is satisfied that, in the circumstances, it is impracticable to require votes to be cast in the manner provided by subsection (1) (a) or (b).

- **What is the role of Fair Trading in the case of a dispute?**

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.

2. Summary of key changes from 2016 Regulation (Sourced from NCOSS)

The following applies to organisations that are already incorporated under NSW Associations legislation.

Official address

The official address of the association must still be in New South Wales, however it must also be an address where the public officer can be found (ie resides, is employed or carries on a business, etc) and where documents can be served on the association by post.

It cannot be a post office box.

Duty of committee members

Prior to the 2016 amendments, the Act specifically noted that committee members must disclose conflicts of interest and not use their position or any information they have obtained whilst committee members, dishonestly. It also stated that a committee member cannot allow their association to trade whilst insolvent.

All committee members are now required to carry out their duties, as far as possible, with due care and diligence, and for the benefit of the association.

Personal liability of committee members

The Act now provides committee members protection from personal liability wherever it can be shown they are acting in good faith whilst carrying out their role.

Consecutive terms of office

There is now a requirement to add a clause in constitution stating the maximum number of consecutive terms of office an office bearer can sit on the committee. However, while it is a requirement to mention it, there is no requirement to set a maximum number of consecutive terms (eg the number may be zero). It is acceptable to state there is no maximum number of terms as per the Associations Incorporation Regulation 2016 (NSW), **Schedule 1 Model constitution** Cl 14 (5).

Voting

Voting at a general meeting of the association is no longer restricted to being conducted in person or by post, it can be conducted electronically. However, if you wish to use either postal or electronic voting it must be addressed in your constitution. The model constitution (the *Associations Incorporation Regulation 2016* (NSW), **Schedule 1 Model constitution** Cl 38 & 39) allows you the one method most suitable for your association.

However, **Schedule 3 Conduct of postal or electronic ballots** of the Regulation does not allow for a combination of postal or electronic voting for either an ordinary or special resolution. Nor does it allow for a combination of voting at a general meeting with either postal or electronic voting.

Voluntary cancellation (Winding up an organisation)

When winding up an association and applying for voluntary cancellation you are required to complete a statutory declaration that supports the statement that the association has no outstanding debts. It now only requires the signature of one committee member, previously it required two.

Financial Records and Minutes

Associations are now able to retain their financial records in either written or electronic form. If stored electronically, they must be able to be converted into hard copy.

Financial records must be kept for at least 5 years.

However, organisations classified as charities by the Australian Charities and Not-for-profits Commission (ACNC) must retain all records (not just financial) for 7 years. They must also be in English or in a form easily translated into English.

Fees

The Fair Trading fee schedule has been changed. Changes include the fees for lodging the annual financial return have been reduced for Tier 2 (gross receipts less than \$250,000) associations and increased for Tier 1 (larger) associations.

Model constitution

The model constitution has been changed and updated. Some of the clauses have been amended and others are new.

Communication.

- In most cases, any clause that previously required communication to be in writing can now be done by email or other electronic means. Specifically, this includes:
 - o Applying for membership
 - o Signing off the minutes by the chair
 - o Requesting special general meetings

Record keeping.

In most cases clauses that required records to be stored in hard copy can now be stored electronically. Specifically, this includes:

- o Lodgement of membership applications
- o Register of members, however if stored electronically it must be able to be available for inspection by members in hard copy at the main premises or the official address
- o Minutes
- o Financial records.

Participation.

Technology can now be used to facilitate certain activities specifically:

- o Committee meetings and general meetings of membership can be held in more than one place using whatever technology the committee deems appropriate (eg teleconferencing, Skype, etc). Committee members using this technology have the same rights as those present, including voting.
- o Voting on any issue or proposal including both general and special resolutions at general meetings

- The committee can now draw up their own membership application form. They are no longer required to use the form attached to the *2010 Associations Incorporation Regulation* (NSW).
- The association's secretary is responsible for maintaining the register of members.
- There is no maximum number of consecutive terms a member can hold office.
- Where the committee does not have the numbers to form a quorum, the remaining committee may appoint members of the association to form a quorum and be considered to be acting validly.
- There can be no pecuniary gain for individual members and use of its assets and funds must reflect the Association's objectives, i.e. its purpose must be not-for-profit.
- The winding up clause states that any assets including funds that remain after an association has met its debts and liabilities, and the costs of winding up are to be transferred to another not-for-profit organisation with similar objects.
- The association's records must be held in NSW at the association's main premises in the custody of the public officer or a member of the association that the committee deems appropriate.
- The committee can refuse a member access to inspect the association's books if the committee believes it would compromise their confidentiality. Examples are employee records, commercial or legal matters or anything that goes against the interests of the association.

3. Proposed changes

The changes to align the Constitution with current Club policy include:

- limiting access to members' details on the register of members
- deleting the appendix which lists the club's annual fees which not only fails to reflect current fees but also limits the setting of future years' fees without changing the constitution
- removing reference to the Club's common seal which is no longer used
- changing clause 40(3) to read that a receipt for monies received will only be issued if requested
- allowing a member's annual membership fee to become due on the anniversary of their joining the club rather than all members' fees being due and payable on the commencement of the club's financial year (clause 9)
- delegating membership approval from the Committee to the Membership sub-committee (clause 2(1)(e))

Additionally, adding to the requirements for full membership the clause (2(d)) that a prospective member 'has an ability to act in a manner consistent with the interests of the club.'

The use of the words 'an ability' is designed to take into account past behaviour. '

4. Variations between the model constitution and the proposed Bush Club's constitution

In summary, the variations between the Model Constitution published by Fair Trading and the proposed Constitution are:

- The preamble setting out the history of the Club
- The objects of the Club
- Appointment of honorary life members
- The positions that comprise the Committee
- Limiting term of Club President to 3 consecutive terms (Note Clause 15 (7) now reads:

(7) A president shall not hold office for a period of more than three full consecutive years. There is no maximum number of consecutive terms for which other committee members may hold office.

- Appointment of honorary auditor
- Membership register maintained by Membership Secretary in place of General Secretary
- Addition of clause 2(d) related to the approval of a membership application: 'has the ability to act in a manner consistent with the interests of the club'
- Allowing documents and instruments to be executed by the Committee in accordance with the provisions of section 22 of the Act.

5. Where to from here?

The amended Constitution and associated special resolution are submitted to members to vote on at a special general meeting immediately prior to the AGM on 5 December 2019. If passed, then the new Constitution be registered with Fair Trading using the prescribed form and paying the prescribed fee.