

Article Information

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Reviewing the Constitution of Your Not for Profit? Here are 6 things you should bear in mind

This article discusses six areas your Not For Profit should consider when reviewing your constitution.

Does the constitution refer to the current legislation? If the organisation was established several years ago, the constitution may not refer to or comply with current legislation such as the Corporations Act 2001 and the Australian Charities and Not for Profits Act 2012.

Are there transition provisions in the constitution that no longer apply? Where an organisation has adopted more than one constitution during its lifetime, it will often contain provisions that are only relevant for a specified period of time. Where these provisions have not operated for several years, they should ideally be removed from the constitution.

Does the Constitution, and particularly the objects of the organisation, accurately reflect the activities of the organisation? Often a not for profit's objects are not regularly updated and over time may no longer reflect the current direction and activities of the organisation. Objects should be regularly reviewed to ensure that they are sufficiently broad to include all of the organisation's current activities and that none of the organisation's activities fall outside of the scope of its objects.

Does the Constitution have provisions allowing for meetings to be held and notices to be given using current technology? Directors are required to explicitly agree to the use of technology at Board meetings. Constitutions can also provide for the use of technology at members' meetings which can be useful where an organisation has members in several locations. Updates to a constitution should also include provision for the giving of notices (including for members' meetings and requests for candidates for election to the Board) by email and other electronic means.

Have any issues arisen in relation to the procedures for Director election, retirement by rotation and appointment? Do these procedures function well? Do the directors have a mix of expertise and skills that is relevant to the organisation's activities and its future plans? Is there regular turnover of Directors on the Board? If the answer to any of these questions is no, these procedures should be reviewed and amended to better reflect the organisation's requirements.

Does the Constitution comply with the current tax legislation? The tax legislation applying to not for profit entities is amended regularly by the Australian Tax Office. We recommend that not for profit organisations have their constitution and tax arrangements reviewed regularly to ensure that the organisation can continue to enjoy the significant tax benefits applicable to complying not for profit entities.