

Changing your constitution: checklist

From time to time, an organisation will need to change its constitution. This can feel like a daunting process if you're not sure of what is involved. This checklist outlines the steps you need to take to alter your constitution to meet the current and future needs of your organisation.

At the end of the checklist you'll find a list of regulators who can provide more information about legal structures.

We're using the term "constitution" to refer to your organisation's governing document, but you might know it as your rule book, rules, model rules or trust deed.

	Step 1: Review your existing constitution	Notes	
a.	Review your existing constitution and identify any areas that you (your board) wish to change.	Changing a constitution is quite a process. If you're looking at changing one part, it's a good idea to review the rest of the document as well, in case there are any other changes you want to make at the same time.	
b.	Check your constitution to see whether it outlines how changes need to be made.	Some constitutions (not all) have a section that states how you can make changes and what procedures you need to follow. Check the section on annual and general meetings too, as this will provide more information.	
c.	Clearly document your intended changes. Show which clause you want to change along with the proposed new wording.	Make sure the wording you use is <i>exactly</i> as you intend it to be in the updated constitution.	
d.	If necessary, seek legal or other advice on the implications of the changes, whether they can be adopted, etc.	Places you can go to for advice, depending on your situation: <ul style="list-style-type: none">• Your regulator – see the table at the end of this document• Australian Charities and Not-for-profits Commission (ACNC)• Australian Securities and Investments Commission (ASIC)• Office of the Registrar of Indigenous Corporations (ORIC)• Not-for-profit Law (it has lots of good resources)	

		<ul style="list-style-type: none"> • Lawyer familiar with NFP law 	
	Step 2: Call a general meeting and notify members.		
	Provide written notice of the general meeting and include a proposal outlining the intended changes.	Special resolutions can be tabled either at an annual general meeting once standard business has been attended to or at a special general meeting that has been called to address the resolution/s. Usually, written notice is required 21 or 28 days (minimum) before the event is scheduled, depending on your constitution.	
	Step 3: Hold a general meeting.		
	Table the proposed changes at a general meeting.	If more than one alteration to the constitution is being considered, treat each resolution separately. Depending on the nature and extent of the changes, people may want to debate the merits of the proposed changes.	
	Step 4: Put the resolution/s to the vote.		
a.	Put the proposed resolution/s to a vote of the members.	For the resolution to be considered and voted, there will need to be a quorum present at the meeting. Check your constitution for what constitutes a quorum. The chair will usually determine how the voting is to take place (e.g. secret ballot, show of hands), but check your constitution in case it specifies the voting method that is to be used.	
b.	Count the votes to see whether a majority has been reached.	For a resolution to pass it will need to have a majority vote. This is usually 75%, but check your constitution.	
	Step 5: Notify relevant bodies.		
	You will need to notify your governing body or regulator of the proposed changes. There is usually a time frame applied to this too so check in advance. You might need to notify more than one body; for example, if you are a	<ul style="list-style-type: none"> • If you are a Company Ltd, lodge a form 205 (“Notification of resolution”) with ASIC • If you are a registered charity, lodge a form 3B (“Change of charity details”) with the ACNC • If you are an incorporated association or co-operative, notify your state regulator of the changes; they will need to approve the changes. 	

	Company Ltd you will need to notify both ASIC and the ACNC.		
	Step 5: Adopt the changes (if approved)		
	Once your changes have been approved by the appropriate regulatory bodies, they can be incorporated into your constitution.		

Organisational legal structures (for reference)

Structure	Focus	Owners	Regulator
<u>Unincorporated association</u>	NFP	Individuals	None
<u>Incorporated association</u>	NFP	Members	State and territory government departments
<u>Co-operative</u>	NFP/for-profit	Members	State and territory government departments
<u>Company</u>	Profit	Shareholders	ASIC

<u>Company limited by guarantee</u>	NFP	Members	ACNC
<u>Indigenous corporation</u>	NFP/for-profit	Members/shareholders	ORIC
<u>Statutory organisation</u>	NFP	Parliament (state or federal)	Parliament