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Governance Handbook - Section 1 Constitutions

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Legal Stuff

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While the authors have used their best efforts in preparing this handbook and the resources contained within it, they make no representations or warranties with respect to the accuracy or completeness of this document.

The advice and strategies contained herein are of a general nature and may not be suitable for your specific circumstances. You should consult with a professional where appropriate. The authors shall not be liable for any loss of profit or any other commercial damages, including but not limited to special, incidental, consequential or other damages.

Due to the dynamic nature of the internet, certain links and website information contained in this publication may have changed. The authors make no representations to the current accuracy of the web information shared.

In Queensland, as an incorporated association, most U3A organisations will be subject to the Associations Incorporations Act and its Regulations. The relevant Government regulator is known as the Office of Fair Trading. There is substantial information available on their website about the legal aspects of both the Act and its Regulations and during the service of this guide, it is possible that some information may change to reflect changes in the legislation. We have added some important links here for you to easily remain up to date.

HELPFUL LINKS

[Incorporated Associations Smart Business Guide](#)

(A must for your association, on the laws and how they apply to you in simple to understand terms)

[Associations Incorporations Act 1981](#) (For rules about running an association)

[Office of Fair Trading Queensland](#) (For information about your responsibilities)

[Australian Charities & Not-for-profits Commission](#) (For those who are registered charities)

[Australian Taxation Office](#) (To keep up to date with changes in tax law)

[Department of Justice OFT Fundraising](#) (For information on raffles & donations)

[Australian Consumer Law](#) (What claims you make in advertising and to “sell” membership & activities)

[Workplace Health & Safety Queensland](#) (For your obligations to members, staff & volunteers)

[Fair Work Ombudsman](#) (When volunteers are bullied)



Introduction

Good Governance - two little words full of meaning that should be at the heart of all the work undertaken by your board/committee and your subcommittees.

The Good Governance Health Check guides users through the essential concepts, principles and activities needed to ensure a healthy and productive organisation.

Most incorporated Associations are small, volunteer-driven organisations, with limited resources and in need of practical guidance to meet the many challenges of the modern not-for-profit environment.

The Health Check contained within this Handbook will give you a snapshot of your Association's governance health status and will identify areas where improvement is needed. Levels of understanding and familiarity will vary amongst your board members according to the purpose, structure, scale and sophistication of your organisation, but the Health Check can be applied to any incorporated entity.

And - to help you work smarter not harder - we've included a Toolbox full of simple tips, techniques, templates and examples to help your organisation on its governance journey.

How does it work?

It's simple. The Handbook is divided into 11 sections, starting with the big picture and moving through the detail of specific areas of operation. Each section contains Questions and Toolbox tips, techniques and examples.

Carefully read each question and the explanation. If you can confidently answer "yes", then tick the box. If the answer is "no" or you don't know, then leave it blank for now. You'll get most value from the Good Governance Health Check if you're completely honest. Most questions are objective - they ask for evidence of something factual or tangible.

When the question asks if you have a particular plan or policy or procedure, only say yes if you can actually put your hands on an example or on the finished item. Some questions are subjective - they ask for an opinion or perception. Glossing over problem areas puts your organisation at further risk and means you miss out on important opportunities to diagnose issues and work out solutions. And - hey - it means you're wasting your time and your money - and that's never smart. Honesty is the best policy!

After you've answered all the questions for that section, review your answers. If you find blank check boxes then you have the start of your Good Governance To Do list. It's simple! Good Governance is complex, but the step-by-step Health Check breaks it down into bite size chunks and makes it do-able.

At the end of each section you'll find the Toolbox. It contains tips, techniques and examples relevant to that particular topic. You can work through the Checklist and Toolbox one section at a time or you can come back to the Toolbox after you've answered all the questions in all sections.

Work through all of the sections. You can do this at your own pace - take all the days, weeks or months that you need. The speed isn't important - but achieving continued forward progress is. It's all about having a strategy and the right tools to achieve genuine continuous improvement.

Good luck and good governing!

SECTION 1

Constitution

All incorporated associations have a Constitution that provides the framework for how the organisation operates. The Constitution will list the purpose of the Association (the “Objects”); provide for the election of a Committee; define Committee and Association powers; identify how and when General Meetings are convened; and what happens should the Association wind up, amongst other things.

Constitution Checklist



<p>Is your Constitution written in plain English?</p>	<p><i>The Constitution is the document that establishes the way your association operates and the reasons for which it was established. All Incorporated Associations must have one and to make it effective and useful it should be clear and simple to read and understand.</i></p>	<input type="checkbox"/>
<p>Is it reviewed regularly?</p>	<p><i>Like anything else, a Constitution can become out of date so needs to be reviewed regularly. Changes in the way you do things, the environment within which you operate and new technologies should be taken into account</i></p>	<input type="checkbox"/>
<p>Do the objects listed in your Constitution reflect current aims and priorities?</p>	<p><i>The “Objects” are the aims of the Association as written in the Constitution. They would have been written when the Association was first formed, but over the years your purpose and priorities may have shifted to meet changing needs.</i></p>	<input type="checkbox"/>
<p>Does every Committee member have a copy of the Constitution?</p>	<p><i>Providing a copy of the Constitution as part of the Committee induction package is good practice and ensures that all members are able to reference it should any issues or questions arise.</i></p>	<input type="checkbox"/>
<p>Do you have an Organisational Charter?</p>	<p><i>As a Constitution is difficult to change, many Associations keep the detail in the Constitutions to a minimum and adopt an Organisational Charter to govern the way the Committee operates and how the affairs of the Association are regulated. This can also be called a Committee or Board Charter.</i></p>	<input type="checkbox"/>
<p>Is your Organisational Charter consistent with your Constitution?</p>	<p><i>If you do have an Organisational Charter, it must not contain any provisions that are in conflict with your Constitution.</i></p>	<input type="checkbox"/>



SECTION N 1

Tips & Techniques

Constitution





TIPS & TECHNIQUES

Constitution

Your Constitution (sometimes called Rules) is the founding document for your organisation and all Associations are required to have one under the Associations Incorporation Act. It provides the written rules and legal structure within which your organisation operates.

While there are some essential requirements, there is considerable flexibility in how the rules are set and what they require. All Constitutions should be simple, easy to read and in plain English. As the process for changing a Constitution can be difficult and time-consuming, it's best to include only the detail you need and retain as much flexibility as possible. Additional detail on what you do and how you do it may be included in your policies and procedures. Office of Fair Trading has provided a template for services to use free of charge to start you off on the right foot.

ESSENTIAL ELEMENTS

The following are some of the essential elements required in a Constitution

1. The name of the Association

2. The Objects (aims) of the Association

These are the reasons for which the Association was established—the overarching objectives of the organisation. Remember to include a 'catch-all' clause such as "and such other objects as shall be decided by the Committee from time to time" in case you want to add objects down the track.

3. Membership of the Association

Who are the core group for whom the Association was formed? Are there any eligibility criteria? Are there different classes of membership? Try and keep classes of membership to a minimum and eligibility as simple as possible. Again, include a 'catch-all' clause such as "and such other classes of membership as shall be decided by the Committee from time to time".

4. The composition of the Committee and how they are elected

What are your minimum and maximum number of Committee members? How are Committee members elected? Will you reserve some Committee positions for skills-based members? These are the sort of questions that should be answered in this section.

5. The powers of the Association, how and by whom they can be exercised

There's a standard list of powers that can be exercised by the Association and these can be found in the sample Constitutions made available by the Government department that administers the Associations Incorporation Act in each State (links following). In writing your Constitution, however, you need to decide which of these powers must be exercised by the members in general meeting and which may be exercised by the Committee or individual office-bearers.

6. The powers and duties of the Committee

What the Committee can and can't do, and what obligations they have to the association.

7. How you will appoint an Auditor

Not every Association will need to be audited as the requirement for this depends on your turnover and assets reaching a particular level. However, the process for appointing an auditor should be included in your Constitution in any case.



TIPS & TECHNIQUES

Constitution

8. Appointment of a Public Officer

All Associations are required to have a Public Officer and this role is often held by the Secretary or the senior Staff Officer if you have staff.

9. The start and finish dates of your Financial Year

If you have an annual calendar of events/activity, it's a good idea to set your financial year to your calendar year. This makes budgeting easier and avoids having to account for significant events across two financial years.

10. How you call General Meetings including Annual General Meetings

There will need to be a procedure for how you call general meetings of members including notice periods and information that needs to be provided.

11. How General Meetings are run and how decisions are made

Certain procedures for general meetings should be specified, including the minimum number of members that must be in attendance for the meeting to be legal (the quorum) and how members vote to make decisions.

12. Winding Up

It is a requirement of all not-for-profit organisations that should you wind up at any time, the assets of the Association be transferred to another organisation with similar objects and not distributed among members.

TIPS FOR DEVELOPING YOUR CONSTITUTION

Reading, reviewing or developing a Constitution from scratch can be an intimidating task. Often Constitutions seem to be full of 'legalese' and it can be hard to get past this to the essence of the document. One tip you might consider is to ignore the language and the clause structure and just sit down with the headings. As a Committee or in a smaller working group then put down dot points about how you want the Association to operate under each heading. For example, under Committee you might decide:

- the Committee should be 6—10 members
- each Committee member should serve 2 years with half the committee retiring each year
- committee members should serve a maximum of 4 consecutive terms
- the Committee should elect a President, Treasurer and Secretary
- the Committee will have at least 5 elected positions & a max. of 3 skills-based appointed positions
- the Committee should meet no less than once a quarter and preferably once a month.

This provides a clear indication of how you want your Association to operate. You can then 'convert' your dot points into a format appropriate for a Constitution, either by using a Model Constitution as a guide or by engaging a professional to write it for you.

MODEL CONSTITUTIONS

The regulatory authorities in each State and Territory publish a set of Model Rules that are a great start for your Constitution. Type "model rules" and your state/territory into your search engine or use the hotlinks at the front of this guide!

WHEN TO REVIEW

It's always a good idea to review your constitution every five years or so to see if it still works for you, especially the sections that talk about how many should serve on your management committee and that may affect a quorum. You should also keep an eye out for changes to the legislation that affect your association. It's natural that changes may be necessary to your own rules to reflect changes to the law.



Proxies are commonly included in constitutions as a mechanism to allow members who cannot attend general meetings to have their say.

Proxy voting has been a “norm” of community organisations for many years and has been encouraged to allow members who cannot attend a meeting to have a voice. Unfortunately this is not the way proxies are commonly used and they bring increased risks that the voices of members are not accurately represented.

Firstly, there is a real risk that one activated (or angry) member will approach all the less interested members and ask for the power of their proxy so they can force through their own objectives or protect their own position. This isn’t an exercise in democracy, since members can find it very confronting to refuse someone who is asking for their proxy. It is much more common to see one person arrive at a general meeting holding multiple proxies, rather than to see individual members who can’t attend a meeting award a proxy to a friend.

If you choose to keep the wording in Office of Fair Trading’s Model Rules you will be obliged to ensure that proxy forms are made available prior to each general meeting (even if that is every month). Even if you don’t receive any proxy forms before the meeting, you cannot address new business or vote on any matter you haven’t previously advised.

This can bring a huge amount of work to your Secretary & Treasurer prior to the meeting and your Chairperson at the meeting. There are new provisions in the model rules that allow your members to attend meetings in other ways through the use of technology.

Let’s use a typical example and go clause by clause to develop an understanding ..

<p>Proxies (1) An instrument appointing a proxy must be in writing and be in the following or similar form— <i>[Name of association]:</i> I, _____ of _____, being a member of the association, appoint _____ of _____ as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to be held on the _____ day of 20 and at any adjournment of the meeting. Signed this _____ day of _____ 20 _____. _____ Signature</p>	<p>Prior to the meeting you must advise members of their right to appoint a proxy (and be able to prove you did).</p> <p>Each of the resolutions on which members will be asked to vote (see clause 7) have to be included as well, so they can decide if they want to give their whole vote to someone or if they want to vote for or against each resolution.</p>
<p>(2) The instrument appointing a proxy must— (a) if the appointor is an individual—be signed by the appointor or the appointor's attorney properly authorised in writing; or (b) if the appointor is a corporation— (i) be under seal; or (ii) be signed by a properly authorised officer or attorney of the corporation.</p>	<p>Secretaries must check that the proxy was properly appointed.</p>
<p>(3) A proxy may be a member of the association or another person.</p>	<p>This clause allows any person, member or not to be a member’s proxy.</p>
<p>(4) The instrument appointing a proxy is taken to confer authority to demand or join in demanding a secret ballot.</p>	



<p>(5) Each instrument appointing a proxy must be given to the secretary before the start of the meeting or adjourned meeting at which the person named in the instrument proposes to vote.</p>	<p>If someone arrives with many proxies, this means a huge amount of work under pressure for your team.</p>
<p>(6) Unless otherwise instructed by the appointor, the proxy may vote as the proxy considers appropriate.</p>	
<p>(7) If a member wants a proxy to vote for or against a resolution, the instrument appointing the proxy must be in the following or similar form— <i>[Name of association]:</i> I, _____ of _____, _____ being a member of the association, appoint _____ of _____ as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to be held on the day _____ of _____ 20____ and at any adjournment of the meeting. Signed this _____ day of _____ 20____ . _____ Signature This form is to be used *in favour of/*against [<i>strike out whichever is not wanted</i>] the following resolutions— <i>[List relevant resolutions]</i></p>	<p>This clause in practice means that you must list each of the resolutions you will be voting on and allow members the opportunity to vote in favour or against each of them.</p>
<p>THE POSSIBLE SOLUTIONS</p>	
<p>Happily, there are at least a couple of alternatives that any association should consider when updating their constitutions.</p>	
<p>40 Proxies (1) The association does not allow proxy voting.</p>	<p>This requires no additional work or compliance by the Secretary. Members who feel strongly can still attend the meeting via telephone, mobile, computer link or in person. Discussion of new business, amendments to wording etc can all go ahead in the moment.</p>
<p>40 Proxies (Keep all the clauses but change ..) (3) A proxy may must be a member of the association or another person.</p>	<p>Let's make sure only members are able to vote at our general meetings!</p>
<p>(2) The instrument appointing a proxy must— (a) if the appointor is an individual—be signed by the appointor or the appointor's attorney properly authorised in writing; or (b) if the appointor is a corporation— (i) be under seal; or (ii) be signed by a properly authorised officer or attorney of the corporation. (c) any member may only be appointed as a proxy for one other member.</p>	<p>If your association feels it must keep the ability to allow proxy votes, at least move to limit them, so they really do represent the opinion of someone who cannot attend, rather than take the risk of any one member taking power by arriving with multiple proxies.</p>



Congratulations

You've worked the whole way through the Good Governance Health Check. Take a bow!

It doesn't matter how long it took you to get here - the important point is that you've taken the time and put in the effort to carefully consider how well your Association is performing.

By now you'll have a plan for continuous improvement (Organisation Development Plan - call it whatever you like, we're plain and simple so we like 'To Do List' - but whatever works for your Committee is fine by us).

You'll also have developed a much greater understanding of what good governance really means - in practice, not just in theory and we're confident you'll have a much greater appreciation of its value to any organisation.



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About Us

The original concept and development The Good Governance Handbook and the online Good Governance Health Check are the result of an original collaboration between Kate Hartwig and Kate Reynolds. Leisa Donlan & Adrian Hart from www.goodgovernanceconsultants.com.au have tailored this guide & updated the content specifically for your organisation and the regulatory framework you work in and added a few templates and other information.

We've all been working in the not-for-profit sector for most of our working lives (hooley dooley, that's about 120 years between us!) and we know what works and what doesn't. Our approach - as you can see with this Handbook - is plain and simple - we provide no-nonsense, proven, practical assistance with governance and organisational development.

We've pooled our good, bad and ugly experiences and some of the many publications, tools, tips and techniques we've developed over the years into one, easy to access Handbook. We hope you've found it useful.