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# Is Your Constitution Fit for Purpose?

## A Practical Guide to Effective Governance

by



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# Introduction

In an increasingly complex and regulated environment, a well-crafted constitution is more than just a legal necessity—it's the foundation upon which effective governance is built. For not-for-profit organizations, the constitution is vital in aligning the organization's mission with its operational and legal frameworks, ensuring both compliance and agility in the face of change. This eBook is designed to guide board members, CEOs, governance professionals, and legal advisors through the intricacies of maintaining and updating their constitution. By approaching the constitution as a living document that underpins every aspect of governance, this guide will provide you with the insights and practical tools necessary to ensure your organization's constitution is truly fit for purpose, supporting its long-term success and resilience.

**This eBook will equip you with practical strategies and expert insights to ensure your organization's constitution is robust, up-to-date, and aligned with best governance practices.**






# The Constitution as a Living Document

## Why Your Constitution Needs Regular Review:

A constitution is not a static document meant to sit untouched in a filing cabinet; it is a living, breathing framework that should evolve with your organization. As your organization grows and external regulations change, it's essential to regularly review and update your constitution to ensure it remains relevant and effective. This process helps safeguard the organization's legal standing, aligns governance practices with current operational realities, and supports the achievement of strategic goals. By regularly revisiting the constitution, boards can proactively address potential governance challenges before they become significant issues, ensuring that the organization is always operating in compliance with both its mission and the law.

One of the most critical aspects of maintaining a fit-for-purpose constitution is understanding that it must reflect the current practices and procedures of the organization. Regularly reviewing and updating your constitution prevents discrepancies that could lead to legal complications and governance failures.



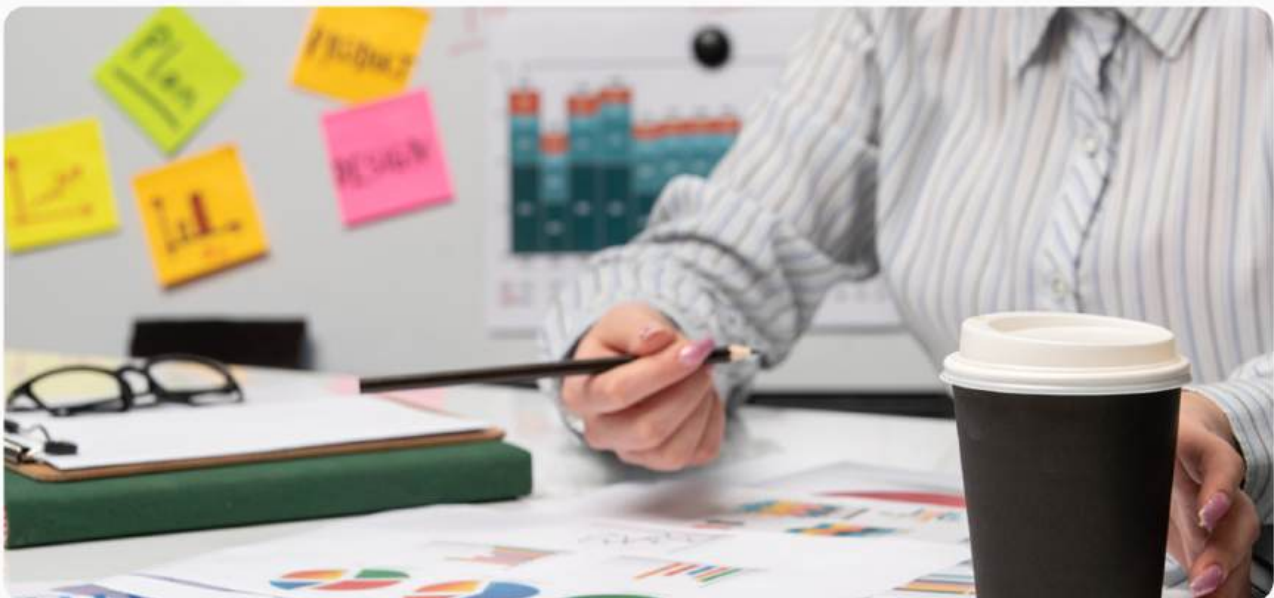
*"I've seen many constitutions where it says that the treasurer has to do X, Y, and Z in the constitution. They haven't had a treasurer for 13 years."*

**Steven Bowman**  
Conscious Governance



# Engaging Your Members in Constitutional Changes

Engaging your members in the process of constitutional changes is not just a best practice; it's essential for ensuring the legitimacy and acceptance of those changes. When members are involved and informed, they are more likely to understand the need for updates and support the board's decisions. Effective member engagement begins with clear communication about why changes are necessary and how they will benefit the organization. This approach helps to build trust, fosters a sense of ownership among members, and minimizes resistance to change. By treating constitutional updates as a collaborative effort rather than a top-down mandate, organizations can ensure that their governance framework remains both relevant and supported by those it serves.



A critical aspect of this engagement is recognizing that members should be viewed as partners in the governance process. Stephen Bowman emphasized this during the webinar, noting, "You are guaranteed to upset your members if you tell them, 'Here are the changes that we, the board, want—just say yes.' They won't do it; so you need to take them through a process." This quote underscores the importance of involving members early in the discussion, seeking their input, and ensuring that they feel heard. By doing so, organizations can navigate the delicate process of constitutional change with greater ease and success, ultimately strengthening their governance structures.



## Identifying Common pitfalls

One of the most challenging aspects of constitutional review is dealing with clauses that are either outdated or problematic due to their unintended consequences. When reviewing your constitution, certain clauses tend to cause more issues than others, often due to outdated language or misalignment with current practices. Clauses related to board size, term limits, and the roles of officers can be particularly problematic. These sections, if not regularly reviewed and updated, can lead to significant governance challenges, such as power imbalances or operational inefficiencies.

For instance, a clause that mandates a large board size might have made sense years ago but may now hinder effective decision-making and agility. It's crucial to scrutinize these clauses to ensure they still serve the organization's best interests.



## Aligning Clauses with Practices

Another critical aspect of reviewing key clauses is ensuring they accurately reflect how your organization currently operates. Misalignment between the constitution and day-to-day practices can create legal vulnerabilities and governance challenges. For example, if your constitution specifies certain processes for electing board members or handling disputes that your organization no longer follows, this discrepancy can lead to significant issues, especially in times of conflict or legal scrutiny. Regularly updating these clauses to match actual practices helps ensure that your governance framework remains robust and legally sound.



# Adapting Your Constitution to Contemporary Governance Trends

It's crucial that your organization's constitution keeps pace with these changes. Failing to update your governance framework to reflect modern trends can leave your organization behind, struggling with outdated practices that no longer serve its best interests. Here are some of the key governance trends that should be reflected in your constitution:

## 1. Smaller Board Sizes

There is a growing trend towards reducing the size of boards, particularly in not-for-profit organizations. Smaller boards are seen as more agile and effective, allowing for quicker decision-making and more dynamic discussions.

Steven Bowman highlighted this issue, noting that "in many organizations, particularly in Australia, the board sizes are between 14 and 16... Makes no sense." This trend is shifting towards more streamlined boards that can better meet the demands of modern governance.

## 2. Term Limits for Board Members

Implementing term limits for board members is becoming increasingly common. This practice helps to refresh the board with new perspectives and prevents stagnation or entrenchment of long-serving members.

## 3. Use of Technology in Governance

The use of technology in governance has accelerated, especially in the wake of the COVID-19 pandemic. This includes virtual meetings, digital voting systems, and online collaboration tools, which have become essential for modern boards.

Gordon Shaw pointed out the necessity of updating constitutional clauses to reflect these changes, stating, "Ensure that while you are doing your constitutional review, you have adequately reflected what your workflows are in terms of technology for meetings, for resolutions as well." This shift towards digital governance requires boards to revisit and update their constitutions to accommodate new technological practices.

## 4. Independent or Co-opted Directors

There is a growing recognition of the value of appointing independent or co-opted directors to fill specific skills gaps on the board. This approach allows boards to bring in expertise that may not be available within the organization's traditional membership.

# Steps for Constitutional Review and Change

Updating your organization's constitution is a critical task that ensures your governance framework remains effective, legally compliant, and aligned with current operational practices. By following a systematic approach, you can navigate the complexities of constitutional review with confidence, engaging your board and members in a collaborative process that strengthens your organization's governance.

- Identify and document specific clauses that are outdated or misaligned
- Engage the board and key stakeholders in discussions to build consensus around the proposed changes before formal approval.
- Draft clear, accessible language for proposed changes, ensuring they are easy to understand by all members.
- Communicate the proposed changes to the broader membership, including a detailed explanation of the rationale behind each change.
- Provide opportunities for members to ask questions and give feedback on the proposed changes through forums or surveys.
- Incorporate member feedback into the final version of the constitution where appropriate and feasible.
- Schedule a formal vote for member approval of the updated constitution during a general meeting or special assembly.
- Ensure that all legal requirements for amending the constitution are met, including necessary filings and notifications to relevant authorities.
- Distribute the updated constitution to all board members, stakeholders, and members, and archive previous versions for reference.





By diligently working through this checklist, you can ensure that your organization's constitution is not only up-to-date but also fully reflective of your current needs and future aspirations. A well-maintained constitution is key to effective governance, helping your organization navigate challenges and seize opportunities with clarity and purpose.

### **Learning from Real-Life Constitutional Challenges**

Real-world examples provide invaluable insights into the potential pitfalls and successes of constitutional management. One key lesson is the importance of regularly reviewing your constitution to prevent governance crises. For instance, organizations that fail to update outdated clauses can face significant operational and legal challenges.

*"We see thousands of constitutions during the year, and I can read them very quickly because the one thing I'm looking for in any constitution are the strange bits, the bits where you go, 'they want what?'"*

**Steven Bowman**

Conscious Governance

This highlights the critical need for vigilance in identifying and addressing clauses that no longer serve their intended purpose or could be exploited.

Another important takeaway from these case studies is the value of engaging your members in the process of constitutional change. Organizations that involve their members early and communicate clearly about the reasons for proposed changes tend to navigate the approval process more smoothly. When members understand the rationale behind updates and feel their input is valued, they are more likely to support the changes. This collaborative approach not only ensures the constitution remains relevant but also strengthens the overall governance framework by fostering trust and transparency within the organization.





# Ensuring Your Constitution Supports Long-Term Success



## Engaging Stakeholders in the Process

A constitution is most effective when it is shaped by the input and engagement of the organization's stakeholders, particularly the board and members. Engaging these key players in regular reviews and updates ensures that the constitution remains a living document, responsive to both internal and external changes. This collaborative approach fosters a sense of ownership and commitment among stakeholders, which is essential for the successful implementation.

**Gordon Shaw** emphasized this during the webinar, stating, "A constitution that is regularly reviewed and updated is one that can effectively guide an organization through both challenges and opportunities, ensuring it stays on course."



## The Importance of Regular Reviews

Regularly reviewing your constitution is crucial to maintaining a governance framework that supports long-term organizational success. As your organization grows and external circumstances change, the constitution must be examined to ensure it remains relevant and effective. This means not only aligning the document with legal requirements but also ensuring it reflects the organization's evolving mission and operational practices. This can help prevent governance crises by addressing potential issues before they escalate.

**Stephen Bowman** noted during the webinar, "It's not about setting your constitution once and forgetting about it. It's about making sure it's always fit for purpose, no matter how your organization changes."



## About BoardPro

Running an SMB or Non-profit board is often as complex as a corporate board, but you usually have far less time and resources! BoardPro is like magic - it tackles the practical needs of SMB and NFP boards like no other platform does. BoardPro guides you step-by-step through meeting workflows, automating the tasks that steal your time. Imagine recording a decision in your meeting minutes, and having BoardPro automatically add it to your decision register? BoardPro even handles late board reports with ease, taking away hours of manual re-work that often goes unnoticed. Governance is done in a way that's easy and refreshing; you have built-in minutes, interests and actions that link between meetings, and settings that help execute on quorums and voting. You're practicing good governance without even realising it! And BoardPro is so affordable. You can add unlimited people to your account. It's part of our mission to make governance easy for everyone.

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