



Governance Tips

Helping you stay on track

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Understanding Your Constitution

Many organisations and committees/boards operate according to historical practices without really understanding why. When questioned about their constitution, the response may often be – “heard about it but don’t know if we have one”, “have a copy but have never really looked at it”, “never heard of it – what is it? where is it? why do we need it?”

Knowing the location of your organisation’s constitution and having a working understanding of what’s in it will help the committee meet its legal requirements as an incorporated association.

Who needs a constitution?

The *Associations Incorporation Act 1981* requires all incorporated associations to have a constitution which meets the requirements of the Act and has been agreed to by association members. When an organisation decides to apply for incorporation they must select to adopt either:

- their own set of rules, which must comply with Section 6 of the *Associations Incorporation Act 1981*
- the model rules as set out in the *Associations Incorporation Regulations 1998 Schedule 5* or
- the model rules with amendments.

These rules are often referred to as the Constitution but may also be referred to as the Rules, Regulations, Standards or Articles of Association. If an association chooses to adopt their own rules or the model rules with amendments it must first be approved by the Registrar at Consumer Affairs.

What is the constitution?

The constitution is a legal document that provides a set of rules or guidelines which state how the association will operate. This document also includes a statement

of purpose, or objects of the association which defines the mission of the association.

The Associations Incorporation Act 1981 requires all members of the association to abide by the association’s constitution. Therefore, all members of the incorporated association should be aware of and have access to the association’s constitution.

The committee is the body elected by the association members to manage the business and affairs of the association. Therefore, the committee needs to be familiar with the rules of their constitution, understand how the requirements of the constitution are put into practice and be aware of the legal implications when there is a breach of those rules. A copy of the constitution should be available at every committee meeting and general meeting to enable members to refer to specific requirements when issues arise.

What are the most important things committee should be aware of?

Boards/committees of management of early education organisations should check their constitutions for the following:

- The Act requires that the Annual General Meeting be held within five months of the association’s end of financial year. This is not the same for all organisations.
- Who are considered as members of the association? This may be defined as families who are enrolled in the association’s program or someone from the local community. The constitution should state what processes are required (if any) to become a member. For example, payment of a fee and approval by the committee. It may also state how many votes each member is entitled to – a family membership may only be entitled to one vote although all members or both parents/guardians are considered members or each person may be eligible to vote.

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Department of Education and
Early Childhood Development



Kindergarten Parents Victoria Inc. ABN: 39 058 205 158
Reg No: A0024070C PO Box 1246, Collingwood VIC 3066
Tel: (03) 9489 3500 Rural: 1300 730 119 Fax: (03) 9486 4226
Email: kpv@kpv.org.au Website: www.kpv.org.au

- Composition of the committee – how many positions there are and specific roles such as President, Fees Officer or number of general members. This will determine how many positions need to be filled at each AGM.
- Quorum requirements of committee and general meetings. This is the minimum number of members required for valid decision-making and will vary depending on the type of meeting being held.
- Notification requirements for general (including annual) meetings. This will include how many days notice are required, what must be included in the notice and how the meeting should be advertised.
- Grievance procedures for dealing with disputes and mediation.
- Voting procedures at meetings.

Review of constitution

Associations should review their constitutions regularly to ensure they are still relevant and meet organisational and legislative requirements. It is also important that associations verify that the constitution they are working under is the current approved document. You can contact Consumer Affairs to order a copy of your current constitution if you are unsure.

When the committee/board has identified a need to amend the constitution they should refer to their constitution regarding the rules for changing the constitution. To assist the process a subcommittee may be formed. Changes must be approved by the members of the association at a Special General Meeting. Once the changes have been approved by the members of the association the Public Officer must complete an 'Alteration of Rules or Purpose' (click [here](#)) and submit the application, along with a copy of the resolution and required payment to Consumer Affairs for approval within 28 days of the special resolution being passed.

Developing your own constitution

Organisations are able to develop their own constitution provided information such as membership, payments, funding, committee/board composition, grievance, meetings, windup, manner for altering the rules, custody of documents, inspection of documents are included. For specific details of these requirements click [here](#)

What if the constitution doesn't cover an issue?

Where a constitution is silent on a particular situation, the association should refer to the Model Rules. This can be downloaded in either PDF or Word format by clicking [here](#)

Useful resources

A copy of the Model Rules can be downloaded from Consumer Affairs Victoria, which also has a range of fact sheets for Incorporated Associations.
www.consumer.vic.gov.au

A copy of the *Associations Incorporations Act 1981* and Regulations can be found at
<http://www.consumer.vic.gov.au/CA256EB5000644CE/page/Listing-Resource-Legislation#a>

Contact a KPV Early Childhood Management Consultant
Tel: 9489 3500 or 1300 730 119 or
email: kpv@kpv.org.au

Kindergarten Parents Victoria has a model constitution for early childhood services which is available on our GovernanceWorks CD at www.kpv.org.au

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