

**FOUNDATIONS**

Special Resolutions: What Should Be Locked in the Constitution

The 75% threshold most boards know, and the entrenchment option most don't

A special resolution is the mechanism through which members exercise their most significant constitutional power, and it is worth boards understanding both what triggers it automatically under the Corporations Act 2001 (Cth), and what they can deliberately add to that list themselves. Most boards know the 75 per cent threshold. Fewer understand the procedural machinery around it, or the drafting choice sitting underneath it.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Mechanics, Precisely](#)
2. [The Entrenchment Option Most Boards Do Not Know Exists](#)
3. [What Deserves Entrenchment, And What Does Not](#)
4. [A Practical Checklist For Your Next Constitutional Amendment](#)

The Mechanics, Precisely

For a CLG, section 136(2) of the Act allows the constitution to be modified or repealed by special resolution. Incorporated associations should apply the special resolution, notice and lodgement rules in their state or territory Act and their rules, and check whether entrenchment, discussed below, is available to them in the same way. A special resolution requires at least 75 per cent of the votes cast by members entitled to vote on it, at a general meeting. Members must be given at least 21 days' notice of that meeting under section 249H, and where a special resolution is to be proposed, the notice must state the intention to propose it and set out the resolution's exact wording, a requirement under section 249L that trips up more organisations than the voting threshold itself. A notice that only gestures at an upcoming constitutional change, without the precise text members will actually be voting on, does not satisfy the Act's requirements.

The 21-day minimum can generally be shortened for an ordinary general meeting if members holding at least 95 per cent of the votes that could be cast agree beforehand, but this shortcut is unavailable for a resolution to remove a director, to appoint a replacement for a director removed in that way, or to remove an auditor, which always require the full notice period regardless of how much member agreement exists. Boards under time pressure to push through a change quickly should check which category their meeting falls into before assuming a shortcut is available.

The Entrenchment Option Most Boards Do Not Know Exists

Here is the drafting choice. Section 136(3) allows a constitution to entrench specific provisions, meaning it can require something tougher than the standard 75 per cent special resolution before those specific

provisions can be changed. This might mean requiring an 80 or 90 per cent threshold, requiring the consent of a particular office holder or class of member, or requiring an additional condition to be satisfied before the change takes effect. Once entrenched under a properly drafted clause, that higher bar becomes binding, not merely aspirational language.

This is a real design decision, not just a legal curiosity, and it deserves to be made deliberately rather than left unused by default or applied blanket-wide out of caution. Entrenchment is not a tool for making your constitution generally harder to change. It is a tool for protecting a small number of provisions that deserve more protection than everything else in the document.

What Deserves Entrenchment, And What Does Not

The temptation, once a board learns entrenchment exists, is to apply it broadly, on the theory that more protection is always safer. That instinct should be resisted. A constitution where everything requires 90 per cent approval becomes nearly impossible to update as the organisation legitimately evolves, which recreates exactly the model-rules problem discussed earlier in this series, a document that cannot keep pace with the organisation it governs.

- entrenchment-worthy: the objects clause, since changing an organisation's fundamental purpose should be harder than routine constitutional housekeeping.
- entrenchment-worthy: the not-for-profit and dissolution clauses discussed in the objects and purpose clauses article, since these protect members and, for charities, ACNC registration itself.
- entrenchment-worthy: any clause specifically protecting minority member voting rights, precisely the kind of provision at issue in the Carlingford Bowling Club case discussed earlier in this series.
- Not entrenchment-worthy: procedural detail, administrative mechanics, or anything that plausibly needs to adapt as the organisation grows. If it belongs in a by-law rather than the constitution at all, it should never be entrenched.

A Practical Checklist For Your Next Constitutional Amendment

- Confirm the notice of meeting states the exact proposed wording of the special resolution, not a summary or a description of its effect.
- Confirm 21 days' clear notice has been given, and check whether your specific resolution falls into a category, director removal, appointment of a replacement for a removed director, or auditor removal, where the 95 per cent shortcut is unavailable regardless of member agreement.
- Check whether the clause you are amending is entrenched, and if so, confirm you are meeting the higher threshold the entrenchment clause requires, not just the standard 75 per cent.
- After the resolution passes, lodge it. A non-charitable CLG lodges the special resolution with ASIC within 14 days. A CLG registered as a charity notifies the ACNC instead. An incorporated association lodges with its state or territory regulator within the time its Act requires, and in some jurisdictions the change has no effect until it is registered.

Special resolutions are not just a voting threshold to clear. They are a procedural discipline with real consequences for getting the details wrong, and a design opportunity for boards willing to think deliberately about which parts of their constitution deserve more protection than the rest.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Special Resolutions: What Should Be Locked in the Constitution

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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