



FOUNDATIONS

Changing Your Constitution Without Losing Member Trust

Why passing the vote and surviving the vote are two different legal questions

A board that clears the 75 per cent threshold for a special resolution sometimes assumes the job is done. It is not. Passing the vote and surviving the vote are different achievements, and Australian law has a long history of striking down constitutional amendments that were technically passed correctly but exercised the majority's power improperly.

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.

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The Principle The Vote Count Does Not Override

The leading Australian authority on this is the High Court's decision in *Gambotto v WCP Ltd* (1995) 182 CLR 432. The case concerned a constitutional amendment allowing a majority shareholder to compulsorily acquire minority shareholdings, and the amendment had, in fact, passed by the required majority. The High Court held it invalid regardless. Where a constitutional amendment goes so far as to expropriate a valuable right belonging to a member or a minority group of members, the majority must show the amendment serves a proper purpose and does not operate oppressively, tested through both procedural fairness, full disclosure of the reasons for the change and the alternatives considered, and substantive fairness in the outcome itself.

Gambotto concerned shares specifically, but the underlying principle sits within a broader and well-established line of authority: a constitutional amendment is not valid merely because it cleared the special resolution threshold. It remains open to challenge if it is beyond any purpose the constitution was ever meant to serve, or oppressive to the members affected by it. For an association, this matters most where an amendment touches voting rights or membership entitlements, the same terrain as the *Carlingford Bowling Club* case discussed earlier in this series. *Carlingford* is a related but different lesson: board-made by-laws that restricted a class of members' voting rights were invalid because they conflicted with the constitution.

A 75 per cent vote proves the numbers were there. It does not, by itself, prove the amendment was a proper exercise of the majority's power. Those are two separate legal questions, and boards that only ask the first one are exposed on the second.

Why This Is Also A Trust Problem, Not Just A Legal One

The legal principle and the practical governance lesson point in the same direction. An amendment rushed through on the numbers, without engagement with the members it affects, is simultaneously more legally exposed and more corrosive to member trust. Members who feel a change was done to them rather than discussed with them are the members most likely to challenge it, formally, through an oppression claim for a CLG or the dispute and court processes under the state or territory Act for an incorporated association, or informally through disengagement, resignation, and the erosion of goodwill that makes every future governance decision harder to land.

A Consultation Process That Satisfies Both The Law And The Members

- Disclose the actual reason for the change, in plain terms, before the vote. The procedural fairness limb of Gambotto is not a formality, it requires disclosure of purpose and the alternatives that were considered and rejected.
- Engage the specific members or classes most affected well before the formal notice period begins. The 21-day minimum notice for a CLG, discussed in the special resolutions article, is a legal minimum (incorporated associations should check their state or territory Act and rules), not a consultation timeline.
- Where the change touches voting rights or membership entitlements specifically, treat it as higher risk regardless of vote count, and consider whether it is the kind of provision that should have been entrenched, or protected by broader consultation, in the first place.
- Document the board's reasoning, including alternatives it considered and why it settled on this approach. That record is exactly what would need to be produced if the amendment were later challenged as improperly purposed.
- After the vote, communicate the outcome and the reasoning to the full membership, not just those who attended. Members who were not in the room but hear about a change secondhand are the members most likely to feel it was imposed on them.

None of this slows down well-justified constitutional change. It protects it. An amendment built through real consultation and properly documented reasoning is both harder to challenge in law and more likely to be accepted by the membership it governs. The board that treats the special resolution threshold as the finish line, rather than the last step in a process that started with a legitimate purpose and open engagement, is the board most likely to find out the hard way that 75 per cent was necessary but never sufficient.

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](#)

Annie Gibbins

Founder and CEO, Nexus Leadership

BOARDROOM ACTION WORKSHEET

Changing Your Constitution Without Losing Member Trust

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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