



FOUNDATIONS

Quarter One Synthesis: Auditing Your Own Governing Document Stack

Ten articles, one working audit your board can run in a single sitting

Ten articles ago, this series opened with a simple observation: most associations never deliberately choose their legal structure, and even fewer deliberately revisit it. The same is true of almost everything sitting underneath that structure, the constitution's legal character, its objects, its membership architecture, its voting design, and the process by which it changes. This closing piece for the Foundations quarter is a single working audit, built directly from the ten articles before it, that your board can run as one exercise rather than ten separate conversations.

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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Structure And Legal Character

- Is your legal structure, incorporated association or company limited by guarantee, a deliberate choice for the organisation you are today, or an inherited default from formation? (Article 1)
- Does every director understand that the constitution operates as a contract (under section 140 of the Corporations Act for a CLG, or under your state or territory Act for an incorporated association), binding the organisation and its members, with real limits on available remedies? (Article 2)

Purpose And Membership

- Does your objects clause, not-for-profit clause and dissolution clause work together consistently, and do your actual current activities still sit inside what the objects clause describes? (Article 3)
- Are your membership classes defined with precision, including voting rights for every class, rather than left silent and open to dispute? (Article 5)

The Document Hierarchy

- Does every by-law your organisation relies on sit within the specific authority the constitution actually grants the board to make it? (Article 4)

- Is anything currently sitting in a policy that needs constitutional or by-law force instead, because it touches member rights rather than day-to-day operations? (Article 4)
- If your organisation still runs on an unmodified model constitution, does your board know that fact, and know that the document can change without your vote whenever the regulator updates the template? (Article 7)

Voting Architecture

- Have you deliberately designed how many votes each membership class carries, using the flexibility section 250E allows, rather than defaulting to whatever the template provided? (Article 6)
- If you are a CLG, does your constitution respect the mandatory proxy right in section 249X, which your constitution cannot remove? If you are an incorporated association, do your proxy rules match your state or territory Act? (Article 6)

A constitution audited against all twelve of these questions at once is a materially different exercise from reviewing each in isolation. The risks compound. A membership class with unclear voting rights, sitting inside an unmodified model constitution, changed years ago through a poorly consulted special resolution, is not three small problems. It is one governance document carrying layered, interacting risk.

Change Process And Review Discipline

- Does your board know which constitutional clauses are entrenched under section 136(3), which specifically deserve entrenchment, and which do not? (Article 8)
- Does your organisation have a defensible, deliberately chosen review interval, with clear event triggers for review outside that cycle? (Article 9)
- When your organisation last amended its constitution, did the process satisfy not just the 75 per cent threshold but the proper purpose and procedural fairness standard the courts apply? (Article 10)

Running The Audit As A Single Board Exercise

Treat this as one agenda item across one or two meetings, not a project to defer until capacity allows. Work through the questions in order. Where an answer is uncertain rather than clearly yes or no, that uncertainty is itself the finding, and it belongs on the list of items for the next constitutional amendment cycle discussed in Article 9. Where an answer reveals a gap, particularly around voting rights, membership classes, or an unmodified template, prioritise it ahead of less consequential housekeeping changes. Record each finding with the evidence checked, an owner and a due date, so the audit turns into action rather than a list.

The Foundations quarter of this series has covered the legal architecture underneath every other governance decision a board makes. Board composition, meetings, financial stewardship and risk, all covered in the quarters ahead, sit on top of this foundation. A board that has worked through these questions, and acted on the gaps, is in a much stronger position. It has a constitution it actually understands, which is a rarer and more valuable thing than most boards realise until they are tested.

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

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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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