

15 May 2025

Consultation team
Australian Charities and Not-for-Profits Commission

Submitted via email consultations@acnc.gov.au

Public consultation on template constitution for charitable companies limited by guarantee

Justice Connect welcomes the opportunity to make a submission to the Australian Charities and Not-for-Profits Commission (**ACNC**) in relation to its updated draft template constitution for charitable companies limited by guarantee (the **Template Constitution**) and associated consultation paper (the **Consultation Paper**). We thank the ACNC for granting an extension of time to make this submission.

Our submission is made up of two parts:

- this letter where we provide our overall recommendation, along with responses to the five key areas for feedback requested in the Consultation Paper, and
- the **attached mark-up of the standard Template Constitution** where we provide specific feedback on individual clauses and guidance notes.

Our submission predominantly focuses on the standard Template Constitution. We will not be commenting on the Template Constitutions developed for the various deductible gift recipient (**DGR**) categories.

About Justice Connect

In the face of huge unmet legal need, [Justice Connect](#)'s vision is a world in which legal support is within everyone's reach. Our purpose is to increase access to legal support and progress social justice.

We have been serving the community for more than 25 years. We are a registered charity and accredited community legal center.

Our expertise

This submission draws on the experience of our specialist, national [Not-for-profit Law](#) program which provides free and low-cost legal assistance to not-for-profit organisations and social enterprises, many of which are volunteer run, small to medium sized registered charities or organisations eligible for registration as a charity.



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In the period of May 2024 to May 2025, we provided over 4,000 hours of free legal assistance to approximately 600 organisations on questions relating to governing documents. Our [Managing an organisation's rules or constitution](#) resources received 12,201 views and our [Guide to running a charitable company limited by guarantee](#) was downloaded 4,277 times. Just under 1,000 people attended our low-cost webinar program on governance related topics.

Our submission

Overall comments

We applaud the ACNC for developing the Template Constitution for small companies limited by guarantee. While the company limited by guarantee (CLG) structure is often preferred by large and sophisticated charities, in our experience the structure is still regularly used by small, volunteer groups with limited governance experience that have a national or interstate element to their activities. It is crucial that this cohort has access to a template constitution that is free, easy to use and easy to understand.

We reviewed the Template Constitution with small, volunteer run groups in mind, specifically asking the following **three key questions**:

- Is the Template Constitution in plain language, a reasonable length and easy to understand and navigate?
- Does the Template Constitution include customisation options that are simple to implement?
- If the Template Constitution is adopted as is, can directors and members work out the answers to common governance questions themselves without the need for legal advice?

We were unable to answer these three questions with a resounding yes and would not recommend this Template Constitution to our client cohort in its current format. Our reasons are outlined below and in the attached mark-up of the Template Constitution.

We recommend that further consideration is given to the design and content of the Template Constitution with the above three questions in mind.

ACNC Consultation Paper – Request for comments on ‘Guidance’

We support the move to build guidance into the Template Constitution rather than have a standalone guide. Reading across two documents can be difficult and time consuming, especially if the reader is using a phone or tablet. The use of pop out colour coded text boxes in the Template Constitution makes it easy to distinguish between the guidance and the clauses.

The built-in guidance represents an early opportunity to educate board members and promote good governance. In our experience, community members wishing to start a charity are faced with a wealth of information and it can be difficult for them to navigate through available resources or know where exactly to

begin. The Template Constitution refers readers to specific resources in that way has the potential to reduce the 'overwhelm' factor.

We have some suggestions for improvement based on our experience providing free self-help legal resources on our [Not-for-profit Law website](#):

- Our view is that the Template Constitution should only be designed for, and used by, CLGs that are registered charities or that intend to imminently apply to become a registered charity. It is far too confusing for users if the Template Constitution tries to address the needs of two distinct audiences. Guidance for CLGs that are not registered charities should be removed, and it made clear from the outset that the Template Constitution is only suitable for CLGs that are registered charities or intend to imminently apply to become a registered charity.
- A balance needs to be struck between including guidance and a clear purpose and reasonable length of the document. The guidance should be as short and concise as possible, linking readers to further information. The guidance should only seek to provide options, or educate readers, about core governance issues or questions relating to the Template Constitution. We make further commentary on this in our **attached mark-up of the standard Template Constitution**.
- The page '*Preparing to use the Template Constitution*' needs revision so that topics are ordered together in a logical manner, with clearer signposting for the user. We make further commentary on this in our **attached mark-up of the standard Template Constitution**.
- The colour coding, icons and pop out text boxes are used inconsistently throughout the document. We have identified some of these issues in the **attached mark-up of the standard Template Constitution**. Additionally:
 - The pop out text box explaining the 'M' icon should be edited to make clear that certain clauses are mandatory for ACNC registered charities, but that they can be altered. If a charity is choosing to alter the clause, they should first seek legal advice. The way the text box is currently drafted, there is a risk that CLGs using this Template Constitution may mistakenly believe they can not alter the clause at all.
 - An additional pop out box for alternate clauses could be included. This pop out box would make it very clear that the clause in the Template Constitution must be deleted for the alternate clause to work.

ACNC Consultation Paper – Requests for comments on 'Plain language'

We wholeheartedly support the ACNC's goal of using plain language in the Template Constitution.

In our experience, plain language supports people without a legal background to understand the effect of the clauses that they may eventually be bound by. It also supports good governance as people can more easily comply with a rule that they understand and can easily and confidently explain to others.

Removing subclause numbering is helpful in theory, but there are instances in the Template Constitution where it makes some clauses unnecessarily long and very difficult to navigate.

Our recommendation is that either:

- long clauses be broken up into smaller clauses, with more frequent headings, or
- the clauses remain as they are, but heavy sub-clause numbering is used to break the clauses up.

In the **attached mark-up of the standard Template Constitution**, we have identified clauses where the removal of sub-clause referencing is particularly problematic and clauses that could be simplified.

ACNC Consultation Paper – Request for comments on ‘Annual general meetings’

We understand that registered charities are not required by law to hold an annual general meeting (**AGM**) and that this has informed the default position in the Template Constitution.

Ultimately, our view is that charities should have the choice to hold an AGM (which the Template Constitution provides for), but that this should be an informed choice. We suggest including more guidance for charities on the decision to hold an AGM, for example that:

- AGMs can serve as a useful anchor for elections of directors and understanding the cadence of directors’ terms
- passing resolutions without meetings can be difficult, especially when there is a large or growing membership base, and
- if a CLG decides not to hold an AGM, the charity will need to be extra vigilant about its ability to meet the requirements of Governance Standard 2.

ACNC Consultation Paper – Request for comments on ‘Technology neutral governance’

We support the changes made to facilitate technology neutral governance. We would encourage this to be broadened by:

- Amending clause 5 of the Template Constitution to cover *any* document signed - not just documents signed by members. This would have the additional benefit of simplifying other clauses in the Template Constitution.
- Including a general clause about holding meetings using technology. This clause could make it clear that all meetings of the CLG could be held using virtual meeting technology wholly or partially. This would have the additional benefit of simplifying other clauses in the Template Constitution.

ACNC Consultation Paper – Request for comments on ‘Variations’

We strongly support the Template Constitution being published with variations for DGR endorsed CLGs.

Not-for-profit Law regularly encounters DGR endorsed incorporated associations that have adopted the ‘model rules’ from the relevant state or territory regulator and failed to put in a DGR revocation or winding up clause.

While we will not be providing comment on the various DGR versions of the Template Constitution, our view is that the example purpose clauses in the Template Constitution for public benevolent institutions should remain on the ACNC website, not in the Template Constitution, as the ACNC website has a more robust explanation of purpose clauses.

ACNC Consultation Paper – Request for other feedback

See the **attached mark-up of the standard Template Constitution** with comments on various content and clauses.

We would be happy to discuss or expand on any of our comments. We agree to this submission being made public (with signatures redacted).

Yours sincerely,

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