

Notes on proposed Changes to the
Constitution of NWECA Inc.
July 2015

Background:

Commissioner for Corporate Affairs

This is the person who administers the Associations Incorporation Act. (S)He requires that our constitution contains certain things and that a copy of it is lodged with him/her. Any changes to it (made at an AGM) have no effect until she/he is notified of them (and approves them- by not disallowing them).

The fundamental principal of incorporation is that the Association exists as its own legal entity just as a person does. That is, it can own property, sue people and be sued by others. This has the effect of limiting the legal liability of its members. (In our case the liability is limited to \$5.) If the group of people were just a “club” and one of the group did something that caused a detriment to someone else in the community that person could sue not just the offending member of the club but any other member as well. (They usually go for the rich one even though that person didn't cause the detriment or perhaps didn't even know it was happening.)

In exchange for this protection the funds, property and assets of the association are ONLY to be used to further the Objects of the association. That is, they CAN NEVER be shared about amongst the members.

Also, an incorporated association is required to ALWAYS use the words “Incorporated” or the abbreviation “Inc.” after its name to signal to those that it is dealing with that this form of legal limitation exists.

There are specific categories of groups who are allowed to incorporate eg sports clubs, environment groups, educational groups etc. Interestingly Tourism Promotion or Chamber of Commerce groups are not on the list for instance.

The curious aspect of the rules set out in our constitution are that there is no person set out to enforce them - unlike the law of the land which is enforced by the police force. If we break some of the fundamental rules of incorporation (distributing funds to members etc) we can have our incorporation revoked but if we fail to, say, hold committee meetings monthly if our rules say we must then it is up to an individual to enforce that either by reminding or coercing us or ultimately taking the matter to a civil court. That said, it is still important that we abide by the rules we have set for ourselves in order that we don't give ammunition to some person or group who disagrees with our existence. This is especially so given that as an environmental group we are always on the verge of offending some political group or one with a vested interest in not protecting the environment.

The **Public Officer** is NOT the person who is responsible for policing the constitution and is certainly not “the person who gets into trouble” if the group “goes bust”. They are merely the official point of contact for communication with the Commissioner or from other parts of the legal process. They are also responsible for submitting the association's annual return to the Commissioner. As far as the Act is concerned the Public Officer doesn't even have to be on the committee (but it is probably a good idea if they are).

Objects (Sometimes also referred to as Aims)

When setting out the “Objects” of the association the key is to be specific but at the same time “cast as wide a net” as possible to allow the association to undertake things in the future that aren't foreseeable at the moment.

Meetings:

There are two types of meetings:-

Committee Meetings; Meetings of the Management Committee to run the day to day affairs of the association. Generally held monthly. Management Committee has an Executive of 4 or 5 key people who have specific roles and are given SOME autonomy in decision making. (NB They do not “run” the committee.) The Management Committee is elected at the AGM.

General Meetings; meetings of all the financial members of the association. They must all be given notice of the meeting, its time, place and nature of business to be decided. These meetings set binding

directions/rules for the association that can only be changed by a subsequent General Meetings. There should only be two types of General Meetings:

-Annual General Meetings (AGMs); All members meet annually to review the associations past performance and elect a committee to manage the coming 12 months.

-Special General Meetings (SGMs); Held at any time as necessary to deal with specific item(s) of business that cannot wait until next AGM.

Proposed amendments:

In proposing the following amendments I have endeavoured to retain the perceived intention of the original document but have tried to clarify what I consider to be confusing/ misleading terms as well as avoiding pitfalls which I foresee. I welcome discussion/feedback.

Reference Clause	<u>Deletion</u>	<u>Addition</u>	<u>Explanation</u>
2.2	“Priority”		No need to restrict ourselves too much
2.5	Entire clause		The “goals” and “values” are too vague. Rationalise “goals” and include in “Objects”. Delete “values”; (these, if expounded upon, can be in mission/vision statements)
2.6		“Provide... Education”	This is often useful when applying for funds etc.
			Perhaps there should be more items in Objects?
4.1	“interests”	“Objects”	
4.2	“Management Committee”	“Secretary”	The secretary should be the point of <u>day to day</u> contact between the association and the outside world.
4.3.1/2/3		Be / become	Tidy up grammar.
4.4.2	“Management Committee”	“a General Meeting”	All the members should have a say in granting life/honorary membership
5.1.1.1		“Their”	Tidy up grammar.
5.1.1.2		“Their Death”	It can happen.
6.0.0	“NB.....”		This explanation is unnecessary
6.1.7.0		“Up to 6 ...”	Allows for a good size of working committee if you have interested people. <u>Currently</u> only 6 people are the committee.
6.1.8.0		“The President...”	Specifies who the Executive is
6.1.8.1		“Any two...”	Specifies what the Executive can do.
6.3		“provided no ...”	Ensures that one person isn't saddled with a particular job for ever nor can they hog it forever but allows enough time for a person “to make their mark”. Ensures the assoc. actively thinks about who manages it. People can still “swap around” on the Exec.
6.4		“of the positions...”	Ensures a practical quorum even if committee isn't at full strength
6.5	“If the ...”	“All meetings...”	Defines who will preside at committee meetings
6.7		“In the event...”	Allows the Management Committee (MC) to fill vacant places on the committee without the

			need to resort to a GM.
6.8		The Management..."	Encourages the MC to meet monthly but allows some flexibility due to holidays/illness etc.
6.9		"Any member..."	Encourages members to be involved in MC meetings if needed and to know its deliberations but not vote as they weren't given that authority by the AGM.
7.1		"In accordance..."	Reminds everyone what they should be doing.
7.1.2		"and to cause..."	Ensures the Auditor's job is made easier.
7.1.3	"fix fees..."		Setting of fees is a job that should be left to GMs and is covered by 9.1.5.9
7.1.6	"make, amend & rescind..."		The MC can <u>never undo</u> decisions made at GMs
7.1.7	"make, amend or adopt..."		The AGM should be the only meeting to make these types of decisions as it may effect all of the members. Se 12.2
7.1.8		"and to subsequently..."	MC needs power to dissolve sub committees. Also sets out the power of s/c, who is on them and how they operate.
7.1.10	"should a vacancy occur..."		No need for a special meeting. Let the MC decide. See 6.7
8.1		"and determine..."	Guidelines for Auditor's remuneration should be set by AGM
9.1.1	"club"	"Association's"	Better terminology to reflect incorporation.
9.1.2		"at least"	Can be difficult to arrange a notice for a specific time. Best to give flexibility but still provide for adequate notice. Also specifies what is in the notice.
9.1.4	"and adjourn"	"current financial" "adjourned" "subsequent" "current financial"	Only <u>financial</u> members should have a right to vote. <u>Should it be more than 6?</u> Grammar Specifies which meeting. Same as before.
9.1.5.1		"or if unavailable..."	What if the President is unavailable?
9.1.5.3		"and previous..."	Otherwise there is no place to approve those minutes.
9.1.5.5		"and Treasurer's..."	The treasurer's report should also be subject to approval.
9.1.5.6	"statement"	"report"	It is more a report than a statement. Re-numbering should occur so it comes before approval.
9.1.5.7	"Executive"	"Management Committee" "setting of his/her..."	Accommodates 6.1.7 - increase in size of MC Allows AGM to oversee setting of auditor's fee. This should be its own dot point.

9.1.5.8	"Executive"	"Management Committee"	Accommodates 6.1.7 - increase in size of MC
9.1.5.9		"and categories ..."	Allows for discounts for families, unemployed, multi year payments etc
9.1.5.10	"Urgent"	"for consideration..."	Only that business for which notice has been given can be considered at an AGM
9.2.0	All		Delete all. General meetings are either Annual or Special
9.2.1	All		Delete all. General meetings are either Annual or Special
9.2.2	All		Delete all. General meetings are either Annual or Special
9.2.3	All		Delete all. General meetings are either Annual or Special
9.3.1	All	"SGM may be called..."	This particular provision isn't necessary. If the nominated situation occurred a SGM could still be called to deal with it. SGMs should be able to be called by the MC or members to address specific issues.
9.3.2		"The Secretary..."	Notice of calling of meetings
9.3.3		"SGM may also..."	Members may also call a SGM
9.3.3.1		"Within 14 days..."	MC must act on request for SGM
9.3.3.2		"If MC fails..."	Requisitioners may act if MC doesn't
9.3.4		"All financial..."	Who may attend and vote
9.3.5		"The quorum..."	Size of quorum and meeting fails if no quorum.
9.3.6		"The business..."	Only notified business to be conducted.
9.3.7		"The meeting..."	Who chairs the meeting.
9.3.8		"All resolutions..."	Outcomes of SGMs are binding
9.3.9		"MC are to keep..."	Minutes to be kept and presented at AGM.
10.1	","	". W"	Grammar
10.1.1		"s ...Special"	Clarify names of meetings
10.1.2			Is this a vote in the event of a tie or is it just a vote. Is it just for President or the Chairperson?
10.1.3			Do you really want proxy voting? If so we need rules for that.
10.2.2		"telephone"	Should this be an option?

	"general or"		We should now refer only to Management Committee meeting.
		"and matters need..."	Quantifies how such alternative decision making will proceed, the need for consensus and the need to record the decision.
11.2		"or authorised..."	Permits electronic transfers, not just cheques.
11.4	"General"	"Committee"	Clarifies terminology
11.6			Is October 31st the end of our FY?
11.7		"and persons..."	As for 11.2
11.9 & 11.9.1		"Inc."	What is this the <u>actual</u> name of the fund?
12.2	"Alterations to..."	"Making, amending..."	Only GMs should have power to set and amend By Laws. See 7.1.7
12.3		"Special"	Specifies the type of General Meeting.
Goals	Delete		Rationalise and add to "Objects"
Values	Delete		Specify these items better and include in Mission and Vision Statements.
			Should the Mission and/or Vision Statements be something that is approved by a General Meeting (my recommendation) or do we leave it to the MC to formulate and update these from time to time? Which ever way, there needs to be reference to it in the Constitution.