

Constitution / Deed Documents

The set of “rules” that dictates how your organisation is run is called your constitution or deed document.

Every Incorporated Society or Charitable Trust is required to have one of these documents, as set out in the Incorporated Societies Act 1908 and the Charitable Trusts Act 1957.

See sheet 6 for more information about Incorporated Societies and Charitable Trusts.

There are certain rules or clauses that you must include, but once you’ve covered these points you are free to add any other rules of your choice that fit with your organisation and its members.

WHAT IS CONTAINED IN A CONSTITUTION OR DEED DOCUMENT?

- the name of the organisation or group;
- the purposes of the trust or society;
- the make-up of the board (for trusts), or the executive committee (for societies), including the number of trustees, board, or executive committee members and how they are appointed, how long they serve and how they can be removed;
- how people become members, and when/how they cease to be members of a society;
- how the property of the trust or society is to be controlled and managed by the board/executive committee;
- the powers and duties of the trustees/board members;
- how the funds and property of the trust or society will be applied;
- how meetings of the organisation are to be held including quorum numbers and notice of meetings;
- how the financial affairs are to be managed such as the banking of money and the preparation of financial accounts and their auditing;
- the use of a common seal;
- how the trust deed or rules of the organisation may be altered;
- how the distribution of surplus assets on winding up or dissolution will occur.

HOW TO DRAFT A CONSTITUTION OR DEED DOCUMENT

The easiest way to draft a constitution or deed document is to use one of the available templates - for example CommunityNet offer templates in an easy to use format that explain the individual clauses and provides advice on other aspects of running a non-profit community organisation.

You can also look up the deed of an existing organisation similar to your own, and modify it to suit your group (see information box below).

Once you’ve drafted the deed you may wish to have it checked by your solicitor, particularly if you intend to apply for registration with the Charities Commission. You can also contact your Venture Southland Community Development Planner who can provide assistance and advice regarding the details of your document.

FINDING AN EXISTING ORGANISATION'S DEED DOCUMENT

You can find an existing deed document by searching for an organisation (for free) at the Companies Office website (www.societies.govt.nz):

1. click on Search for a Society/Trust - Do it now
2. click on Register Search
3. type in the first word of the name of an organisation you know of or a keyword that will help you find a similar group (e.g. Youth, Waikaitia)
4. click on the name of the group whose constitution you want to look at
5. click on Documents, and you will see a list of the most recent registered version of the groups rules as well as recent annual accounts
6. click on the rules document(s) - often the rules will be the document at the bottom of the list but there may have been later alterations - check both

NEED LEGAL HELP?

The Southland Community Law Centre is available to help community organisations with their constitution or deed documents. All their services are free.

Contact:

Denise Lormans
Southland Community Law Centre
5 Tay Street
Invercargill
03 214 3180 (ext 4)

Denise can also come and talk to trustees about your rights and obligations as trustees/board members - which can often save any future legal problems from occurring.

IMPORTANT CLAUSES IN YOUR CONSTITUTION OR DEED DOCUMENT

While all of your constitution clauses are important, there are a few key clauses to know about so you operate your organisation according to these rules:

Objects Clause

Refers to the purpose of the organisation - the wording of this is critical to ensure that your group obtains the appropriate tax status and meets the requirements of the Companies Office and Charities Commission (for charities). The objects also have to reflect what your group wants to achieve and how you plan to achieve it. For example - preserve history of the area by writing a book.

General Meetings Clause

This details quorum (number of members required to conduct any business legally - usually a majority), notice periods, how meetings are called, and how voting will be carried out. Make sure this practically fits your circumstances and objects of your group.

Executive Committee Clause

This details the composition of the Executive Committee or governing officers, the nominations process, and circumstances where a committee member or trustee may be removed from office.

Auditor

This clause sets out if and how your financial accounts will be audited. It is important to choose an appropriate level of auditing so that financial control is present but the level and cost of auditing is not excessive for your purposes.

Please refer to sheet 5 for more information about auditing.

Information prepared by



Indemnifying of Officers and Committee Members Clause

This clause protects members against personal liability.

** Please note, depending on your organisation and its activities it may also be necessary to have liability insurance cover.*

Pecuniary Gain Clause

This clause is designed to prevent members of the society misusing their position to benefit themselves, or their close family members.

Alteration of Rules Clause

This clause sets out the process of making changes to the constitution.

Winding Up or Liquidation Clause

This clause sets out the process to wind up the organisation and how any surplus assets will be distributed in this case. In a non-profit organisation assets cannot be distributed amongst its members.

HOW TO MAKE CHANGES TO YOUR CONSTITUTION OR DEED DOCUMENT

Your organisation is legally obligated to operate according to your rules or constitution, but it is important to know that you can make alterations to these rules if you find that they no longer suit the way your organisation runs.

Charitable Trusts

While there is no official form to complete, you can download a cover sheet/checklist from the Companies Office Website:

1. Go to www.societies.govt.nz & click on Charitable Trusts
2. Click on Rules and Trust Deeds of Charitable Trusts
3. Click on How do you change the rules of a trust deed
4. Click on the link for the cover sheet: Download form CT3
5. Complete and send with your updated verified document to the Companies Office

Incorporated Societies

You must complete an IS2 Form with the Companies Office to register any changes:

1. Go to www.societies.govt.nz & click on "Incorporated Societies"
2. Click on "Rules of Incorporated Societies"
3. Click on "How do you change the rules of a society?"
4. Read the information under "How to file a change of rules"
5. Click on the link for the IS2 Form to download it
6. Complete and send to the Companies Office along with a copy of your updated rules and any other necessary information

NB. It is free to register a change of rules with the Companies Office.

LINKS / WHERE TO GO FOR MORE INFORMATION:

www.community.net.nz
www.keepingitlegal.net.nz
www.societies.govt.nz

*For more information or help you can also contact your local Community Development Planner at Venture Southland:
143 Spey Street, Invercargill
Ph: 03 211 1400
enquiry@venturesouthland.co.nz
www.southlandnz.com*