



## U3A NETWORK NSW INC.

### Memorandum

From: Carmen Champion/former Governance Officer

To: All U3A Presidents

Subject: Amending/Repealing Constitution

Date: 17/11/2019

### AMENDING/REPEALING CONSTITUTION

One of the primary duties of the members of a management committee is to conduct the business of their NFP in accordance with the law. That includes having a constitution that addressed all matters of relevance to the conduct of the association in language that does not create uncertainty/ambiguity.

#### **A WARNING.**

The constitution of an association is a contract between the association and its members. The constitution must not only reflect the nature of the association but must also ensure that the rights of its members are protected. The latter is particularly important as the means whereby members can challenge the decisions of the management committee are limited.

Over the last 2 years I have seen too many attempts to severely limit the operation of clauses dealing with the rights of members. Recently, I encountered an attempt to simply do away with the members' rights clauses altogether ! That is unconscionable.

The constitution is a legal document. Who would you trust to draft or comment on such a document in your personal/business life? Would you be prepared to rely on your non-lawyer neighbor whether he be an engineer, scientist, businessperson or plumber for advice? None of those 4 possibilities have the training to review a legal document in a worthwhile manner.

Again, over the last 2 years I have had to spend an inordinate amount of time dealing with specious comments/arguments relating to the template constitution. That fact in itself creates a significant problem in seeking to find a new Governance Officer. Most retired lawyers can think of better things to do in their retirement than argue legal drafting with non-lawyers.

**The starting point** is to recognize that any changes you make to this legal document will have long-term consequences. If a dispute were to arise about the wording of a clause, its interpretation will be confined to the actual words used. A judge is confined to the primacy of construing the written word. A judge cannot receive evidence as to what the person responsible for drafting the clause in dispute thought his chosen words convey!

So, give the task of reviewing your constitution to the busiest person on the committee with the least hubris!

### **AMENDMENT OR REPEAL.**

There are two ways to deal with changes to a constitution. If the proposed changes are small in number, then it becomes a matter of amending the relevant clauses by substituting the proposed new wording.

If the proposed changes are substantial in number, then it may be less cumbersome and time-consuming to repeal the existing constitution and substitute the proposed new version.

**The First Step** is to review the existing constitution and identify what, if anything, needs to be changed. There has to be a sound reason for any proposed change and an understanding as to what legal consequences are inherent in any proposed change. **FOCUS** on matters that need change because the wording does not reflect your association's current practice. For example: check out clauses B. 1g), 24, 26, 49, 52, 118 and 156 of the template constitution (some of these clauses provide an alternative to what appears in the clause).

Do not play around with the terminology used: many of the clauses in the constitution are what are known as boiler-plate clauses. These are clauses that as a matter of practice and necessity appear in all contracts. The terminology used usually reflects the requirements of the law both statutory and common law.

**The Second Step** is to have the management committee approve all proposed changes to the constitution. The members of the committee should be provided with a summary of the proposed changes, the proposed terminology, and detailed reasons for the proposed change for each. Before the proposed changes are put to the membership it is necessary for the members of the management committee to pass a motion that the proposed changes be put to the members in meeting.

**The Third Step** is to alert the membership to the proposed changes. That requires the provision to the membership of a copy of the existing constitution, a copy of the new version with all changes marked up, and a detailed explanation of why each one of the proposed changes are necessary. The notice should also set a date for a casual meeting of the membership when the proposed changes can be explained in more detail and members may ask questions.

**The Fourth Step** is to call for a vote on the proposed new version of the constitution. Check your constitution as to the length of notice required (check out information on the U3A website re how to calculate the notice period). The notice must set out each and every motion to be voted upon. If you are proposing to repeal the existing constitution all you need are 2 motions: the first repealing the existing constitution subject to the second motion being passed. The second motion substitutes the proposed new constitution for the one that has been repealed.

If you decide to simply seek approval for the amendment of some clauses of the existing constitution you will need to provide in the notice a schedule of proposed changes. Each change must then be subject to a motion! That simply means that members can vote in favour of some but not all proposed changes.

Once the necessary resolutions have been passed your association will need to comply with the requirements of NSW Fair Trading. Without its approval the changes will not take effect!.

Carmen Champion/

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