

Proposed new Constitution and By-Laws: Summary of governance changes

It is proposed to adopt a new Constitution to incorporate a number of developments in law, corporate governance and general corporate and commercial practice for companies since that time. In addition, further changes are expected following the outcomes from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. As a result, the Board recommends the adoption of a new Constitution that reflects current practice and provides the flexibility to respond to the changing external environment.

As the changes introduced affect numerous provisions in the Constitution, it is proposed that a new Constitution be adopted, rather than amending the existing Constitution.

Many of the proposed changes are administrative and remove provisions in the Constitution that are minor in nature, replicate the law or are no longer in keeping with good practice. It is not practical to detail all of the changes to the existing Constitution in this summary. However, all material differences between the existing Constitution and the proposed Constitution are set out below.

Copies of the existing Constitution and proposed Constitution and By-Laws are available from the Endeavour Foundation's website at www.endeavour.com.au/get-involved/stakeholder-summit. You can also request copies by contacting the Company Secretariat at companysecretary@endeavour.com.au or (07) 3908 8401.

Topic	Detail
Objects	<p>The objects outlined in a Constitution are vital as they serve as the guiding principles and purpose of an organisation's existence.</p> <p>Given the importance of the objects, these have been carried over into the new Constitution and there have been no changes to the objects.</p> <p>The objects include providing an opportunity for clients and families to 'voice' their interests and concerns. Given some clients are non-verbal a definition of 'voice' has been added to Constitution to provide clarity and ensure it is clear the term encompasses all views, experiences and perspectives regardless of the means of communication.</p>
Membership	<p>The Board continues to embrace the principle of encouraging a wide voting membership open to interested people who want to elect Directors and hold the Board to account. To achieve this the membership structure and the process to become a Member have been made simpler.</p> <p>There will only be one membership type under the new Constitution, a Voting Member. This will enable every Member to vote in an election for elected Directors.</p> <p>The current Honorary and Life Members will continue, with the same rights, however there won't be any new admissions to these membership categories. However, it will still be possible to acknowledge outstanding services to the organisation in other ways. Affiliate and Corporate Membership categories will cease to exist. There are no current Affiliate Members and only 36 Corporate Members, with the last Corporate Member admitted in 1998.</p> <p>Current Corporate Members are being contacted to discuss other ways in which they can support Endeavour Foundation.</p> <p>Applications for membership will be made more streamlined with the removal of requiring two existing Members to support the application.</p>

Membership Fees	<p>As set out above, there will be no new life memberships, although existing Life Members will continue to enjoy the same rights. For current and new Non-life Members, membership fees will be payable annually or up to 3 years in advance.</p> <p>While the Board may currently set the membership fee, under the new Constitution, Members will have a say on the level of membership fee. Members will be asked to approve the amount of the annual membership fee. The new Constitution also allows for membership fees to vary based on determined criteria, for example there may be a reduction in the membership fee for a new member in their first year, or a reduction for a family member or carer of a client of Endeavour Foundation. These different fees are also required to be approved by members.</p> <p>These amendments enable members to have an input into Endeavour Foundation's membership fees, an important element associated with building and maintaining membership. They also enable members to contribute to criteria which may assist in recruiting and retaining membership.</p>
Membership Structure	<p>Under the current Constitution, Members are allocated to areas and only Area Committee members are able to vote in Director elections. To enable all Members to vote in Director elections, the membership will no longer be divided into areas. All Members will be able to vote regardless of where they reside. Further information on the election of directors is set out below.</p>
Advisory Groups	<p>The current Constitution sets out the establishment and operation of Area Committees and a National Council. They will not continue under the new Constitution but instead there will be a range of advisory groups and family support groups.</p> <p>Following the governance review by the Board, the introduction of the NDIS and changes to the law and general corporate practice, it was determined that the new advisory groups would be a better way to ensure the Endeavour Foundation is aware of the views of a range of clients, families, carers and advocates from across geographic locations and service offerings.</p> <p>Details of the purpose and operations of the new Area Advisory Groups, the new National Chairs Advisory Group and the new Client Advisory Groups are detailed in the new By-Laws.</p>
Composition of the Board	<p>The current Constitution states that the number of Directors must be between five and nine. These provisions allow for up to five elected and four appointed Directors.</p> <p>The new Constitution requires a minimum of four and up to five elected Directors. Given the increasing level of responsibility and personal liability of directors and the diversity of Endeavour Foundation's operations, the new Constitution allows for up to five appointed Directors. This is to ensure the Board has the appropriate skill diversity required.</p> <p>Additional directors will be appointed to complement the skills of the elected Directors filling any identified skills gaps.</p>
Casting Vote	<p>It is now better practice for a Chair not to have a casting vote. A casting vote is a deciding vote used by the Chair to break a tie in a voting situation.</p>

	<p>Under the new Constitution, the Board Chair's authority to exercise a casting vote on Board resolutions has been removed. For example, if the Directors were tied in a vote the resolution will now fail to pass.</p> <p>Similarly, the Chair's casting vote during Members' meetings has also been removed.</p>
Director Eligibility Criteria	<p>The new Constitution introduces new Director eligibility criteria including a prohibition on a person being eligible for re-election or re-appointment if they have served more than eight continuous years (see Tenure of Directors below for further information).</p> <p>The Board, under the new Constitution, is required to establish a Nominations Committee to assist in the selection of new Directors. This applies to both elected and appointed Directors. All Director nominations will now be considered by a Nominations Committee.</p> <p>The Nominations Committee will be an advisory committee with no decision-making powers. The new By-Laws detail the operation of the Nomination Committee, including the Committee's formation, which requires:</p> <ul style="list-style-type: none"> • two Directors; • at least one appropriately skilled external person to be on the Committee; and • one ex-officio member from the National Chairs Advisory Group. The National Chairs Advisory Group will choose one of their members to fulfil this role. <p>The Committee is also required to prepare a Board Composition and Eligibility Requirement prior to the appointment or election of each Director. This Board Composition and Eligibility Requirement document is approved by the Board. The By-Laws detail the minimum required elements to be set out in this document which includes the skills, geographic location and lived experience being sought.</p>
Tenure of Directors	<p>Under the current Constitution, there is no maximum tenure for directors. In line with best practice the new Constitution imposes a maximum tenure on Directors ensuring renewal and refreshment of the Board.</p> <p>The new Constitution states that Directors are only eligible for re-election or reappointment, if at the time of their election or appointment, they have not within the last six years, completed more than eight continuous years as a Director. This period enables directors to add value to the organisation while also ensuring continual renewal at the Board level. Terms will be staggered to enable appropriate succession planning.</p> <p>If a Director has served more than eight continuous years and was elected Board Chair for the first time during their last term, the Board may resolve they are eligible to stand for election or appointment for one further three-year term. This is to enable appropriate succession planning to occur at the Board.</p> <p>Both elected Directors and appointed Directors will continue to serve terms of three years up to a maximum of nine years.</p>
Elected Directors	<p>Under the current Constitution, each Area Committee may nominate one of its Members to be elected to the Board, provided it does not have a current serving elected Director. Where there are more nominations from Area Committees than Director elected vacancies, all Members of all Area Committees vote to determine the outcome of the contested position.</p>

	<p>Under the new Constitution, all Members will now have the right to vote in the elections for all elected Directors. These elected Directors may come from any geographic region and are not required to be a Member of a new Area Advisory Group. The nomination will, however, require the support of at least two existing Endeavour Foundation Members.</p> <p>In addition, the restriction of only one Director coming from an area has been removed, enabling as many Directors that have the appropriate or desired skill set to come from an area. These changes are to ensure the Board comprises directors with the most appropriate skill sets, rather than being limited to candidates based on their place of residence.</p> <p>However, the Board recognises the importance of having directors from different regions and has set out in the By-Laws the requirement for the Board to have representation from different geographical regions, specifically Southeast Queensland, regional Queensland, New South Wales and Victoria.</p>
Appointed Directors	<p>As mentioned above, the Board may appoint up to five appointed Directors with background, skills and experience prudent or necessary to enhance the ability of the Board to better discharge its role.</p> <p>As outlined above, these Directors will be assessed against a Board Composition and Eligibility Requirement and all nominations will be reviewed by the Nominations Committee. Given the new Nominations Committee and the rigorous process of reviewing candidates, the requirement for these roles to be ratified by the Members at an AGM has been removed.</p>
Alternate Directors	<p>The current Constitution allows for the appointment of alternate Directors. An alternate Director is a person who acts on behalf of a Director in their absence, possessing the authority to attend and participate in board meetings and make decisions on behalf of the absent Director. This provision has been removed from the new Constitution. It is considered poor practice today as it is unrealistic to expect a temporary participant in a single Board meeting to understand the organisation and its complexities, in order to add value to Board decision making.</p>
Director Remuneration	<p>Directors are required to commit significant time to fulfil their roles and also accept substantial personal liability risk when they become a Director.</p> <p>The new Constitution enables Directors to be remunerated for their role, at a future time, if Members subsequently resolve to approve a fee pool. For the avoidance of doubt, the proposal does not seek to pay Directors, but rather to include a mechanism for directors to be remunerated at a later date if Members' resolve to approve.</p>
Chair of the Board	<p>Under the current Constitution, the Chair and Deputy Chair are required to be elected every year. The new Constitution allows a person elected as Chair or Deputy Chair to continue to hold that position until the expiry of their current three-year term as a Director. On re-election or reappointment as a Director a person is eligible for reappointment but is not automatically reappointed as Chair or Deputy Chair. Where this occurs, the Board will resolve afresh the appointment of the Chair or Deputy Chair.</p> <p>The Board may by resolution remove and appoint a new Chair or Deputy Chair at any time.</p>

Dispute Resolution	A new provision setting out a procedure for disputes between a Member or Director and: one or more Members; one or more directors; or Endeavour Foundation; has been included to allow attempted mediation of disputes before escalation.
Patrons	The Endeavour Foundation may appoint one or more persons to act as an ambassador at any time and does not require provisions in its Constitution for this to occur. As a result, the new Constitution does not include appointment of patrons, however this does not stop Endeavour Foundation from approaching a person in the future to act as a patron or ambassador.