

Q&A about the proposed constitutional amendments

<i>MEMBER</i>	<i>QUESTION</i>	<i>AASW RESPONSE</i>
	<p>What is the difference between a Constitution, Governance Charter and Bylaws? And why is this important?</p>	<p>These are questions we are frequently being asked in our conversations with members, so we wanted to post a response to this.</p> <p>Current best practice for governance in Australia adopts a portfolio of three types of documents:</p> <ol style="list-style-type: none"> 1. Constitution A constitution describes the establishment of an association; the limits of the role and responsibilities of the board, criteria for association membership; statutory compliance obligations with legislation such as the Corporations Act 2001; and what to do if things go wrong. The constitution establishes the legal framework within which the association works. 2. Governance Charter A governance charter is the statement of intent for the governance culture and values of an association. It clarifies the responsibility of the Board, the Branches, the National Committees and other entities, such as the Journal Editorial Board to act in the interests of the membership. This document describes how an organisation is regulated. 3. Bylaws to the Constitution The bylaws to the constitution bring together the non-statutory administration rules in a single place using transparent non-legalistic language, to enable organisational units such as the AASW's Branch Management Committees and staff to carry out their roles and responsibilities. This is a procedural document. <p>Many of the AASW's current policies and practices are good, but they are just described in the wrong place. As you will see from the table of proposed changes and rationale, many of the proposals simply relate to moving a current provision from the Constitution to its more appropriate governance document.</p>
<p>Vittorio Cintio NSW Branch</p>	<p><i>5 November 2015</i></p> <p>I am unclear as to whether Section B.10. (The member can be suspended or expelled in accord with the procedures contained in the AASW ethics bylaws.) applies to Board Directors? If it does - it presumably means if a Director is no longer a member, the person cannot continue to be a Director? Could you clarify please.</p>	<p><i>6 November 2015</i></p> <p>Section B.10 (Ethics By-Laws) applies to Directors as it applies to all members, provided it does not relate to a Director's fiduciary duties under the Corporations Act.</p> <p>It is important to note that as per our legal advice, section 203E of the Corporations Act</p>

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		<p>specifically states that a “Director cannot be removed by other directors”.</p> <p>Section 206B of the Corporations Act outlines the conditions under which automatic disqualification of a Director occurs, such as, conviction of an offence that concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the corporation; or that concerns an act that has the capacity to affect significantly the corporation’s financial standing; or that involves dishonesty and is punishable by imprisonment for at least 3 months.</p> <p>The legal advice is that the Corporations Act deals with breach of fiduciary duty by a Director and it is not appropriate to use the Ethics By-Laws in that context. If a Director refused to resign as a Director as a result of a breach of fiduciary duty, then removal by a general meeting would need to be sought. See proposed changes to sections D.23, D.24 and D.25 which deal with the vacation of office of Director and removal and substitution of Directors. Changes are also required to these sections for compliance with the Act.</p> <p>If it was appropriate to use the Ethics By-Laws in relation to alleged misconduct by a Director, and if serious ethical misconduct was found against a Director which recommended their suspension or expulsion as a member, and a Director refused to resign as a Director, then removal as a Director would still need to be sought by resolution of a general meeting, as per the Corporations Act. Again, see also proposed changes to sections D.23, D.24 and D.25.</p>
Deborah Walsh QLD Branch	<p><i>11 November 2015</i></p> <p>Can you explain how restoring the membership eligibility requirements to the Constitution is important?</p>	<p><i>12 November 2015</i></p> <p>The Constitution has the power to ensure that the AASW remains the association of, and for, professional social workers and the students who are studying AASW accredited social work courses.</p> <p>The Constitution previously stipulated that all members have an accredited social work degree or are in the process of studying for one, however, an amendment in 2008 saw these requirements moved to the bylaws, which are set by the Board. This means that currently the Board – not the Constitution or members – determines membership eligibility. The present Board upholds the pre-2008 requirements, but</p>

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		<p>future Board may not.</p> <p>Returning membership eligibility requirements to the Constitution puts this back in the hands of members and safeguards our association into the future.</p>
Deborah Walsh QLD Branch	<p><i>11 November 2015</i></p> <p>How will the amendments to the Constitution and by-laws strengthen support for students in the AASW?</p>	<p><i>12 November 2015</i></p> <p>Currently the Constitution doesn't allow for any post-nominal for students. The proposed new clause B.6(b) allows for the creation of a specific post-nominal to recognise student members. This is intended to strengthen support for student members and support their developing professional identity.</p> <p>Further, the new clause proposed at the end of section B clarifies that student members are entitled to all the privileges of membership, which includes voting on company resolutions and sitting on advisory groups, representative councils and practice groups (with the only exception being that they are unable to hold some elected positions).</p>
Mike Clare WA Branch	<p><i>11 November 2015</i></p> <p>How will the proposed constitutional changes support and strengthen the role of students in the AASW?</p>	<p><i>12 November 2015</i></p> <p>Please refer to the response above.</p>
Vittorio Cintio NSW Branch	<p><i>11 November 2015</i></p> <p>Why is the Board proposing to remove our values statement from the Constitution?</p>	<p><i>12 November 2015</i></p> <p>As per the Explanatory memorandum table, the legal advice is that a Constitution is not the appropriate document to detail strategies and values. A Constitution is a governing document which sets out a company's rules and legal requirements.</p> <p>The values for social work practice properly sit within our Code of Ethics and other standards documents. It is not being proposed to change the values as explicated in the Code of Ethics. Any such change to our core values would be undertaken in consultation with members and following a full review of the Code of Ethics.</p> <p>The proposed replacement clause for the Constitution states that the Company will have a governance charter, Code of Ethics and practice standards that contain principles agreed to by all members.</p>

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Vittorio Cintio NSW Branch	<p>11 November 2015</p> <p>How can the Board guarantee Branch Presidents' involvement in strategic planning if this is being removed from the Constitution?</p>	<p>12 November 2015</p> <p>As per the Explanatory memorandum table, references to strategic planning and operational issues are not relevant to a Constitution. The Board's ongoing commitment to and working relationship with Branch Management Committees should and will be explicated in a Governance Charter.</p>
Vittorio Cintio NSW Branch	<p>11 November 2015</p> <p>How do the proposed changes to membership clauses protect us from future rogue Boards given that future Boards continue to determine university accreditation standards and approve university courses?</p>	<p>12 November 2015</p> <p>The Australian Social Work Education and Accreditation Standards (ASWEAS) set out the principles, standards and graduate attributes for professional social work education in Australia.</p> <p>As per the Explanatory memorandum table, the proposed changes to the membership clauses will enshrine membership eligibility in the Constitution to ensure that the AASW remains the association of, and for, professional social workers and students studying AASW accredited social work courses.</p> <p>As with any changes to our core values, any changes to our core education standards would be undertaken in consultation with members and stakeholders and following a full review of the ASWEAS.</p>
Vittorio Cintio NSW Branch	<p>11 November 2015</p> <p>How do we provide for the continuing membership eligibility of overseas graduates with 3 year degrees coupled with acceptable recognition of prior learning? And in case of New Zealand graduates, the continuing approval of 3 year degrees?</p>	<p>12 November 2015</p> <p>The key principles in international qualifications recognition are <i>comparability and outcomes</i>, not equivalence and inputs. The AASW's role as a skilled migration assessing authority is to determine whether an applicant has the <i>key transferable skills and knowledge</i> required to evidence the competencies needed to practice social work in Australia, not a comparison of the structure as to how these were acquired.</p> <p>In operating an international qualifications assessment program, it is not possible or reasonable to require an exact match of course structure and content between countries.</p> <p>Further, the AASW assessment criteria is consistent with the International Federation of Social Workers (IFSW) and International Association of Schools of Social Work (IASSW) global education standards which are intended to promote the individuality and uniqueness of national standards while acknowledging the commonalities needed to compare diverse</p>

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		<p>training programs throughout the world; to facilitate movement of social workers between countries; and to identify core purposes of social work globally, while still maintaining and valuing national/local creativity and innovation in social work education.</p> <p>Furthermore, the IFSW/IASSW states that “from an ethical point of view the migration of those social workers that wish to practice in another country should be enabled and not blocked” (IFSW, 2012).</p>
Vittorio Cintio NSW Branch	<p><i>11 November 2015</i></p> <p>What is the justification for barring students from National Director roles?</p>	<p><i>12 November 2015</i></p> <p>As per the Explanatory memorandum table, the legal advice is that student members should not hold particular elected positions such as Board Director, Branch President or Branch Vice President.</p> <p>The rationale for this is that it is not appropriate or reasonable for a person who does not hold the qualification for a profession to be responsible for or represent that profession. Further, to allow this would serve to diminish the importance of the qualification.</p> <p>However, students are encouraged to participate in the association and are entitled to all other privileges of membership, at a greatly reduced membership rate.</p>
Vittorio Cintio NSW Branch	<p><i>11 November 2015</i></p> <p>Why is more power being concentrated in the office of National President through the abolition of a Board Executive?</p>	<p><i>12 November 2015</i></p> <p>This is an inaccurate statement. The proposed abolition of the Executive Committee of the Board would not concentrate further power in the position of National President. On the contrary, such an amendment is proposed to remove any perception of too much power resting with the National President and Vice Presidents. The proposed amendment ensures that the full Board continues to be actively involved in and responsible for all governance matters.</p>
Vittorio Cintio NSW Branch	<p><i>11 November 2015</i></p> <p>What is the envisaged role of Vice Presidents subsequent to the abolition of a Board Executive?</p>	<p><i>12 November 2015</i></p> <p>The role of Vice Presidents will continue to be as important as they have always been. The Vice President positions are key leadership roles in the association.</p> <p>Vice Presidents will continue to undertake all the duties and responsibilities of a Company Director,</p>

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		<p>as well as responsibilities such as deputising for the National President as required; leading internal review processes such as this Governance Review as appropriate; meeting with internal stakeholders such as Branch Presidents; and representing the Association at external stakeholder meetings as required.</p> <p>The Vice Presidents positions are also important for Board succession planning.</p>
Vittorio Cintio NSW Branch	<p><i>11 November 2015</i></p> <p>What is the mechanism for the speedy expulsion of National Directors who refuse to resign after being found in breach of Our Code of Ethics (to a level whereby any other member would be removed from membership)? How can the AASW protect itself from costly litigation if a Director challenges whatever mechanisms are put in place?</p>	<p><i>12 November 2015</i></p> <p>As per our response to your question dated 5 November above, section 203E of the Corporations Act specifically states that a “Director cannot be removed by other directors”.</p> <p>Therefore, if a Director refused to resign as a Director after being found in serious breach of the Code of Ethics (to a level where removal of membership has been recommended by an independent hearing and/or appeal panel), then their removal would need to be sought by resolution of a timely general meeting, as per the Corporations Act.</p> <p>Clauses C.6 and C.7 of the current Constitution already set out the provisions for the calling of a general meeting. No changes are proposed to clauses C.6 and C.7.</p> <p>In such an event the AASW is obliged to act in accordance with the Corporations Act, and would seek specialist legal and insurance advice, to protect the association from litigation.</p>
Carol O’Brien NSW Branch	<p><i>12 November 2015</i></p> <p>Could you please clarify whether 75% of the total membership or 75% of the votes actually made are needed to pass the changes?</p>	<p><i>12 November 2015</i></p> <p>To change the Constitution requires 75 per cent of members present at the AGM, in person or by proxy, to vote in favour of the amendments. This is why every vote counts.</p>
	<p><i>12 November 2015</i></p> <p>They (the Constitution changes) are being put as a single package that can only be approved as a whole. You have no option to vote separately for elements which you may want to approve/disapprove or abstain.</p>	<p><i>12 November 2015</i></p> <p>A couple of members have raised this as a comment so we wanted to acknowledge this with a response also.</p> <p>As per the e-Bulletin from the National President on 11 November 2015, the Board has thoroughly reviewed and endorsed the changes and it is because they see them as important and uncontroversial that they are presenting them to members at the AGM to be accepted with a</p>

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		single vote. This is also seen by the AASW's lawyer as best practice for Constitutional amendments because a single vote will ensure consistency in the outcome. Members will recall that the last constitutional changes in 2008 were also voted on as a single motion.
Vittorio Cintio NSW Branch	<i>13 November 2015</i> Could you publish the legal advice that advises us that corporate best practice is "that strategic planning and operational issues are not relevant to a Constitution"?	<i>13 November 2015</i> We have published this advice in the Explanatory Memorandum to Annexure A of the Special Resolution and also in our response to your previous question about this.
Vittorio Cintio NSW Branch	<i>13 November 2015</i> Given that in corporate law directors cannot remove other directors, Board Directors found to have breached the Code of Ethics seriously enough to warrant termination of membership can only be removed via a general meeting triggered by clause C.7. Given that ethics matters are confidential how can ordinary members receive the information that would lead them gather 100 signatures necessary to call a general meeting and how would the AASW support this process?	<i>13 November 2015</i> As per our previous response to your previous questions in relation to this issue, this proposed amendment only relates to matters which are serious enough for an independent hearing and/or appeal panel to have recommended removal of a Director's membership eligibility. As you are aware, the names of members who are found to be ineligible for AASW membership due to serious ethical misconduct are published on the AASW website. While the details of the ethical breach rightly remain confidential, the fact that the member had been found ineligible for membership due to a serious ethical breach would be in the public domain and would therefore give ordinary members the information they would need in order to make an informed vote on a resolution at a general meeting.
Vittorio Cintio NSW Branch	<i>13 November 2015</i> There are legal ethical and contractual obligations related to recognising overseas qualifications that clearly trump proposed membership amendments. Could you outline in detail what these are? And why they are not outlined in the constitution?	<i>13 November 2015</i> The AASW's appointment as a skilled migration assessing authority is a contract between the AASW and the Federal Government. The AASW engages in many contractual arrangements and it is not appropriate or relevant to refer to these in the Constitution.
Vittorio Cintio NSW Branch	<i>13 November 2015</i> Given that that the Explanatory Memorandum to Annexure A is based on legal advice, does this advice contain a rationale as to why it is "best practice" to remove values and principles from the Constitution and the potential risks of not following this advice?	<i>16 November 2015</i> As per the Explanatory memorandum table and our previous response in relation to your previous question about this, the rationale for this legal advice is that a Constitution is not the appropriate document to detail strategies and values. A Constitution is a governing document which sets out a company's legal framework and obligations. The values for social work practice properly sit within our Governance Charter and other standards, such as the Code of Ethics. The

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		risk of not following this particular piece of legal advice is that the Constitution is used inappropriately and therefore not for its proper purpose. This particular proposal is about moving, not deleting, language to its proper document. It's an administrative change to ensure the Constitution remains contemporary.
Vittorio Cintio NSW Branch	<p><i>16 November 2015</i></p> <p>Our CEO stated (on Sunday at the NSW Annual AASW Branch meeting) in response to a question- that the Constitutional amendments could not be put separately, because of the complexity of numbering sections and clauses if some elements of the Constitution were approved and not others. Is it correct that this is the case?</p>	<p><i>18 November 2015</i></p> <p>As per our previous communications in relation to this question, the legal advice is that this is seen as best practice for Constitutional amendments because a single vote will ensure consistency in the outcome. The matter was considered by both the Board and the Governance Review advisory group and members of both groups endorsed the changes being forwarded as a single motion. This is also consistent with the last constitutional changes in 2008 which were voted on as a single motion.</p>
	Some members have asked why it is being proposed to remove the values from the Constitution.	<p><i>23 November 2015</i></p> <p>We feel this is a really important point to clarify.</p> <p>The values for the social work profession are properly set out in our Code of Ethics and other documents such as our Practice Standards and Education Standards, and will be further reiterated in a new Governance Charter.</p> <p>Values do not sit within a Constitution. A constitution exists to describe the limits of the role and responsibilities of the board, criteria for association membership; statutory compliance obligations with legislation such as the Corporations Act 2001; and what to do if things go wrong. Essentially, it is the legal framework within which the association works.</p> <p>The Code of Ethics will remain enshrined in the Constitution and will not be affected. Further, our values remain enshrined in the Code of Ethics and will not be affected. In addition, the objectives of the Company will remain enshrined in Constitution.</p> <p>This proposal is simply about preserving the Constitution for its proper purpose, which is to set out the company's legal framework and obligations, and removing unnecessary duplication when our values are rightly set out in our Code of Ethics and other documents.</p>

