



RSL NSW Constitution

On 4 December 2018, 68% of the delegates that voted on behalf of their sub-Branch or District Council rejected the draft Constitution.

The Board has heard the message from members that they would like to be consulted more thoroughly and has asked Social Ventures Australia (SVA), an independent non-profit consulting firm, to put together a survey for sub-Branches and members to gather your feedback. The survey will be sent to sub-Branches and District Councils within the next few days by email and mail and to members by email.

Why does RSL NSW need a new constitution?

RSL NSW operates in a complex regulatory environment. It must ensure its governance structure enables it to comply with its legal and regulatory obligations. This impacts everyone in the League.

RSL NSW's constitution is its primary governance document. It needs to be consistent with the RSL NSW Act 2018 and help our organisation, its members and sub-Branches operate within laws and regulations.

A new Constitution is a fundamental step in the League's journey towards full compliance.

The RSL NSW Act was amended by the NSW government last year and came into effect on 1 January 2019. The new Act applies instead of the RSL NSW Constitution where they differ, which makes the old RSL NSW Constitution inconsistent with the Act.

Why do sub-Branches have to change when the Bergin Inquiry focused on ANZAC House?

The Bergin Inquiry did focus on ANZAC House and State Council. It did not investigate sub-Branch governance or compliance. This is because the State Council agreed to suspend fundraising and conduct a fundraising survey. The Inquiry issued a notice to RSL NSW to provide copies of all the sub-Branch fundraising surveys.

These surveys, together with SBAs and audited financial statements of sub-Branches, have been collated by ANZAC House. The surveys suggest that many sub-Branches may not be compliant.

The main area of non-compliance is related to fundraising. This is the reason that the Board has not yet lifted the fundraising ban. It is the reason why NSW Fair Trading requested that all sub-Branches surrender their charitable fundraising authorities.

In a poll at the recent EGM, approximately 66% of the delegates in attendance said their sub-Branch was compliant with all laws and regulations, 9% said it wasn't and 25% were not sure. Our analysis shows at least 60% are highly likely to be non-compliant. In addition, 75% of delegates in attendance said that not all sub-Branch money and property was charitable. All money held by a charity is charitable money. These results show us that work is needed to assist sub-Branches to properly understand their obligations as part of the repair of RSL NSW and restart fundraising.

Specific compliance areas of concern

1. Spending charity money on the charitable purpose.

At congress in May 2018, information was provided to delegates that showed the aggregate amount spent by all sub-Branches together on the charitable purpose was 27 cents in the dollar. ACNC governance standards require charities to apply their resources towards their charitable purpose. Such a low percentage spent on the organisation's charitable purpose is concerning. We must factor in what the general public would consider a reasonable percentage.

2. Tracking fundraising money from receipt to expenditure

Compliance with the NSW Charitable Fundraising Act 1991, Regulation and RSL NSW Charitable Fundraising Authority is complex. The Inquiry and sub-Branch Fundraising Survey results showed an area of concern for the League is the ability to ensure that we can show where every dollar raised is spent. Every dollar raised must be tracked through accounting records and bank accounts to show where it was spent.

The current legislation requires that fundraising monies are spent on their purpose regardless of the time lapsed between receipt and expenditure. Charities that invest fundraising monies are obligated to account for it when it is spent. If charitable monies are invested for long periods of time without spending them on the original purpose, this increases the risk of losing touch with the original purpose and increases the risk of breaching charitable fundraising law.

3. The appointment of a sub-Branch auditor and auditing requirements

Australian Accounting Standards Board (AASB) and the ACNC recommend charities change their auditor every five to seven years. The fundraising survey showed that average length of appointment for a sub-Branch auditor is currently nine years, with some holding the position for over 15 years. An auditor has a role to play in highlighting whether an organisation is compliant with charitable fundraising legislation. Changing the auditor every five to seven years in accordance with best practice standards helps sub-Branch Executives fulfil their obligations and provides fresh eyes on processes to ensure they are compliant.

4. Compliance with the Trustee Act 1925

Trustees need to ensure that they are compliant with the NSW Trustee Act. It is the responsibility of sub-Branch Trustees to ensure that they operate within the Act, including for example that any property owned by trustees should not be leased for terms of more than five years.

5. Conflicts of interest

One of the most difficult areas for sub-Branch Executives and Trustees is conflicts of interest. There are times when an interest of a member could conflict with their responsibilities to the charity. The ACNC governance standards make clear the fundamental requirement of acting at all times in the charity's best interest and in a way that furthers its charitable purpose, including by disclosing and managing conflicts of interest.

These interests need to be declared, addressed and if possible, prevented. Conflicts can be as a result of interests of an individual's family and friends as well as a personal interest of the member.

Conflicts of interest include those that can be perceived by others who may believe that decision-making is not impartial. A relevant example for the League is when a sub-Branch Executive or Trustee is also a Board Director of a registered club leasing property from the sub-Branch. In this situation, someone who holds both positions should declare their conflict, be excluded from decision-making about the lease and the property and have this minuted in the meeting minutes to protect the member and the charity.

What happens next?

The survey results will be independently collated and reported to the Board. The Board will use the feedback to present a new draft constitution for the consideration of members.

There is no choice – RSL NSW must amend its governing document and the overwhelming feedback from members is that change is necessary, but they want to be heard on what the changes should be and when the vote will occur.

Thank you for your contribution to this very important process for the League. To assist you in completing the survey you will also receive a follow-up email containing some suggested amendments to the draft constitution.

On Behalf of the Board of RSL NSW