

Review of Draft Constitution with regard to the Constitution issued 11 June 2019:

The authority given in 9.26 appears to take control by virtue of 9.27 of sub-branch assets.

Powers of the Board

9.26 Subject to the *RSL NSW Act*, any other act applicable from time to time and this Constitution, the Board has the power to manage, control and direct the affairs and conduct of RSL NSW and may exercise all the powers granted to RSL NSW by this Constitution or any applicable law, except any power which the *RSL NSW Act*, any other applicable act or this Constitution expressly provide must be exercised by Service Members or Delegates (or Alternate Delegates).

9.27 Without limiting clause 9.26, the Board has the express power to:

(b) is that the Board has express powers over Sub-Branches which will be governed and regulated by the Board.

(b) govern and regulate the functions of sub-Branches and the application, management and use of property, funds, income and assets held by sub-Branches, to the extent permitted by law, to ensure that sub-Branches are applying sub-Branch Property to further the Charitable Purpose.

That is that Sub-Branches will have their PROPERTY, FUNDS, INCOME and ASSETS governed and regulated by the Board.

Clause 9.27(b) should be a stumbling block in the proposed constitution for those sub-Branches with substantial assets.

(c) without limiting clause 9.27(b) and, subject to the provisions of clause 5, require sub-Branches to apply property, funds, income and assets in a particular manner to further and fulfil the Charitable Purpose.

Sub-Branches can have power exercised over them by the Board as to how they apply sub-Branch Property. This clause does not give a sub-Branch control over what they consider a Charitable Purpose for their own sub-branch. The Board can direct how funds raised by a sub-Branch will be spent, and not necessarily on Charitable Purposes for their sub-Branch.

Ownership of funds and assets has been a major issue of discussion in a new constitution. Sub-Branches fundraise for their own planned mutual benefits and sub-Branches procure assets for their own planned mutual benefits. As an example of bottom up management; where disbanding of a sub-branch occurs, while the surrender of assets may best be placed with RSL NSW, the reallocation of any such assets would be directed for reallocation at the direction of sub-branches through a Congress process.

Without being tedious and repetitive, this constitution puts the control of RSL NSW squarely with the Board and not the members. Whereas a constitution to represent the members needs to have the Board direct the affairs of RSL NSW in accordance with the aims and principals of the organisation.

As just one example:

12.2 The Board may establish a District Council of the sub-Branches in each District. Each District Council will be governed by and operate subject to the direction of the Board and must report to the Board in accordance with this Constitution and the District Council Standard Operating Procedures.

By inference this would allow the Board to consolidate the number of Districts (an issue already raised.)

Other examples of Board control: eg13(74); 13(77); 13(79);

14. DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

The Board, Board Members, CEO, President are in control of but not themselves subject to dispute resolution under this constitution.

18.1 The Board may from time to time pass a resolution adopting Operational Policies and Procedures.

Where is the control by members over the organisation? The RSL is its membership.

5. APPLICATION OF INCOME AND PROPERTY

5.1 RSL NSW is a not-for-profit entity and its income and assets:

- (a) must only be used to carry out the objects in pursuit of its Charitable Purpose; and
- (b) must not be distributed, paid or transferred, directly or indirectly, by way of profit to any RSL NSW Member.

Members should not expect their annual fees to be paid into a charity as this condition would have.

Section 8

In this document there is no accountability of the Board to the membership. The AGM and the Congress appear as two separate events and neither have their roles or their authority over the Board defined.

Other points for a constitution which should be considered:

A Preface needs to look forward and mandate its role. As a starting suggestion for the aims and purposes for RSL NSW:

The administrative and coordination body, being the Board and RSL House employees are subordinate to sub-Branches and their members through the structure and authorities of District Councils and up to State Council.

The application of this constitution recognises the need for welfare and support at sub branch level for members. Socialisation and support between sub branch members welfare and needs of people who meet the criteria to be RSL NSW members, whether current members or not.

That RSL NSW works to recognise and encourage socialisation activities conducted within sub-Branches to meet welfare standards as a charitable exercise by members.

Recognition that the uniqueness of the organisation aims comes out of the common and unique structure of Military Service.

Without exception, the interpretation of all parts of the RSL NSW constitution will be in line with this mandate.

Include a sunset clause to remove transitional clauses (and this clause) when a fixed date or event has been reached.

Submission concerning a new Constitution for RSL NSW:

I raise some points below which I believed show a direction for the organisation that is not a top managed organisation. Such management structures have proven to be problematic for many organisations including RSL NSW.

RSL members, whether current or retired from the Defence Force, become members of an RSL sub-branch for a variety of personal reasons. While members are charitable, the RSL is not a charity per se. Members work for the common good of all members and others at their choice. A sub-branch may also support their local community; they do not do so as a matter of charity but as a matter of choice; in other words it is not particularly mandated. The charter of the RSL is not solely that required of a registered charity alone. We are however a non profit organisation. (Similar views have been express elsewhere.)

The RSL NSW Bill 2018 legislation requires RSL NSW to constitute a corporation.

This does not require RSL NSW to be structured in the old fashioned greedy corporate structures which see members isolated from control of their organisation. The RSL is a member based organisation. Within the requirements of the legislation we need a structure which firmly places members in command of the direction of RSL NSW. That structure turns on its head the old fashioned model of top down management and the greed which has developed from that model.

An RSL NSW constitution requires it comply with Legislation using a model directed from the input of members through sub branches and not directed from a Board. This requires the role of the Board to be specifically defined as being responsible to implementing the combined input through a Council and Congress from members (not the other way around). Governance of the organisation would provide direction to the Board. The Boards responsibility is in insuring the organisation meets legislative requirements.

This constitution has not been written for bottom up control ie for the membership to direct how the Board should operate for the benefit of the members. This constitution requires legal input from the members perspective to achieve the members control of their organisation - not a rehash of any other constitution or what appears to be more *corporate control over shareholders*. Members of RSL NSW should recognise that they are the current owner of the organisation and as such should have control as stakeholders over the organisation.

All RSL members should by now have been made aware of the feelings of the respondents to the survey conducted by RSL NSW of members. But those who are now looking at '11June' constitution draft have no idea what the membership wanted. Historical corporate structure needs to be turned on its head as to where the power behind the RSL NSW Board comes from. I have said it before - it needs lawyers to put into legal-ease what the membership wants for NSW RSL. Currently we have been given a version that is far from bottom up control and then asked to modify it. The discussion of the contents of any proposed constitution should be taken far more widely out to members.

The reason this process is taking so long is that the free flow of information and ideas from members is stymied by top down control. A register of sub-branches and their contact details should be available through all sub-Branches and maintained by RSL NSW. Such a requirement in a constitution would allow members, through their sub-branch, direct access to other members and

not be controlled by any future obstructionist Board. As an example, this letter and others on this matter needs dissemination to all members through their sub-Branches for consideration. There is currently no process for this to happen but there is a wealth of members thoughts going unheard by other members.

The 11 June constitution draft, including considerations resulting from the current review, should be put in a forum form to the membership to explain the proposed constitution and allow members to ask questions from that explanation of how the constitution is to operate. There will be questions arising which members should have the opportunity to explore and resolve. This should be undertaken by an advisory body and include at least one lawyer with a working understanding of the proposed constitution. (This could in part be undertaken with a sequence of *YouTube* video/s)

This constitution is not a structure that has members with overarching control of RSL NSW. It does not support members and sub-Branches, it controls them. This constitution requires a radical redrafting to put the membership in control of the organisation. Otherwise the control of RSL will be lost to a corporate control structure.

We require a constitution that is directed from sub-branch input and managed by a Board. The membership needs to engage a lawyer or legal firm to put together a bottom up control constitution based on member input.

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