

**Lab**

Australia  
New Zealand

# How to meet the B Corporation legal requirement

Australia & Aotearoa New Zealand

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## What is the legal requirement?

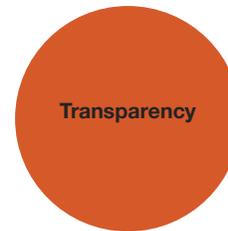
The B Corp legal requirement is a core part of B Corp certification, alongside your impact score of at least 80 points (the *performance* requirement), and having your impact score published on the directory (the *transparency* requirement).



Adopt legal framework to consider all stakeholders



Get a verified score of 80+



Make your public profile on the B Corp directory

Adopting the B Corp legal requirement is committing to a higher standard of accountability in your company's decisions, through leadership changes or capital raises. It signals to investors, employees, and directors that your mission is embedded into the core of your business.

To meet the requirement, businesses must update their constitution to include two clauses: the **purpose statement** and the **stakeholder clause**.

### 1. The purpose statement ('purpose clause'):

*'The purpose of the Company is to deliver returns to shareholders whilst having an overall positive impact on society and the environment.'*

Some companies will already have an objects or purpose clause in their constitution. In this circumstance, it would be most appropriate for the existing clause to be amended. If they don't have this clause, the **purpose clause** should be inserted at the beginning of the constitution as one of its foundational clauses.

## What is the legal requirement?

The second component of the legal requirement is the **stakeholder clause**. The stakeholder consideration clause concerns how the directors should discharge their duties.

### **2. A clause stating that its directors must consider stakeholders in their decision-making ('stakeholder clause'):**

*In discharging their duties under this constitution, applicable company legislation and the general law, the directors or other officers of the Company:*

- a. will include in their consideration the following factors:*
  - i. the likely consequences of any decision or act of the company in the long term; and*
  - ii. the interests of the company's employees; and*
  - iii. the need to foster the company's business relationships with suppliers, customers and others; and*
  - iv. the impact of the company's operations on the community and the environment; and*
  - v. the desirability of the company maintaining a reputation for high standards of business conduct; and*
  - vi. the interests of the members of the company; and*
  - vii. the ability of the company to create an overall positive impact on society and the environment; and*
- b. Need not give priority to a particular factor referred to in paragraph (a) over any other factor (included in paragraph (a) or otherwise).*

It is most appropriate that the clause sit with those clauses in the constitution concerning the powers and duties of directors.

Most constitutions will already have a clause that notes something to the effect that the company is managed by the directors, who may exercise all powers of the company that do not require shareholder approval. Amending this clause would be the most appropriate location for the stakeholder consideration clause.

## Steps to meet the legal requirement

Under Australian and Aotearoa New Zealand law, a company may amend its constitution to set out the company's objects.<sup>1</sup> For most companies, modifications to the company constitution may be made by **special resolution** passed by the company's shareholders, subject to any further requirements specified in the constitution itself.<sup>2</sup> To meet the legal requirement:

1. Read your company constitution to see if it includes any provisions relating to how the company may modify the constitution. If there are specific provisions dictating how modifications are to be made, you will need to follow that process.
2. If the constitution does not include any specific provisions about modification, your company's shareholders will need pass a **special resolution** that adopts the following two clauses into your constitution:
  - a. **Purpose clause**
  - b. **Stakeholder clause**

We recommend seeking legal advice for your specific circumstances, particularly if you are a public company or have complex shareholdings where additional steps are required and minority buy-out rights may arise. The above steps are general guidance intended to help companies through this process.

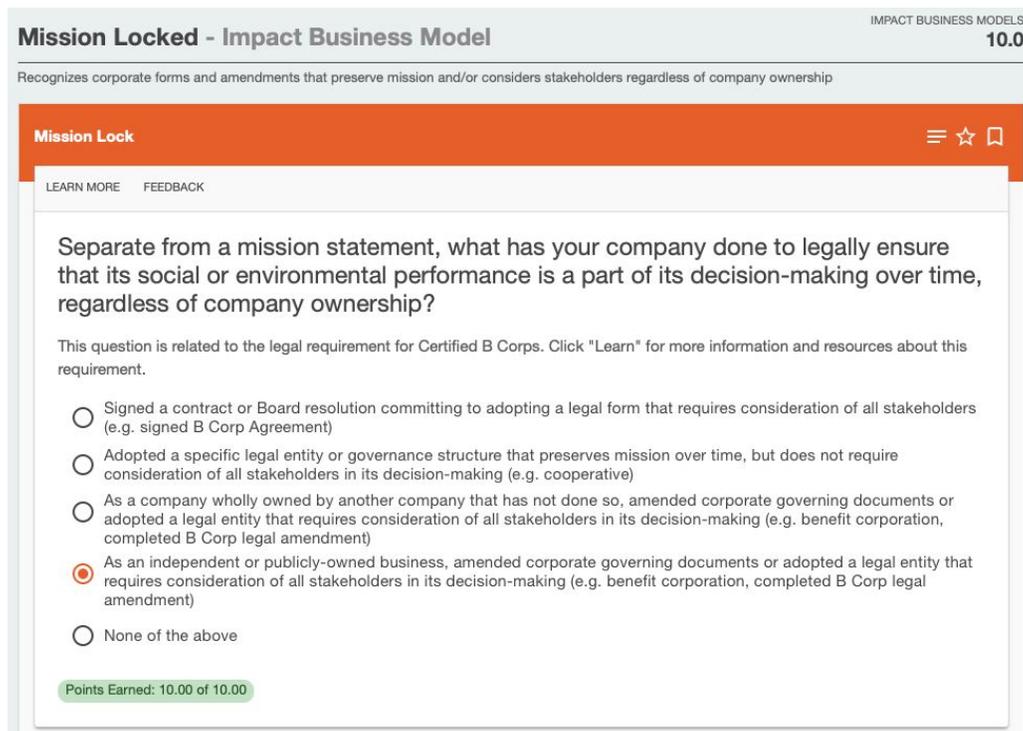
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<sup>1</sup> Australia: *Corporations Act 2001* (Cth) s 125(2), New Zealand: *Companies Act 1993*, ss 30 and 31

<sup>2</sup> Australia: *Corporations Act 2001* (Cth) s 136(2) and s 136(3), New Zealand: *Companies Act 1993*, s 32

## Steps to meet the legal requirement

Once complete, upload a copy of your constitution to the B Impact Assessment under “**Mission Lock**” in the **Governance** impact area. You can also select the answer indicating you have completed the B Corp legal amendment, worth 10 points.



**Mission Locked - Impact Business Model** IMPACT BUSINESS MODELS 10.0

Recognizes corporate forms and amendments that preserve mission and/or considers stakeholders regardless of company ownership

**Mission Lock** ☰ ☆ 📄

[LEARN MORE](#) [FEEDBACK](#)

Separate from a mission statement, what has your company done to legally ensure that its social or environmental performance is a part of its decision-making over time, regardless of company ownership?

This question is related to the legal requirement for Certified B Corps. Click "Learn" for more information and resources about this requirement.

- Signed a contract or Board resolution committing to adopting a legal form that requires consideration of all stakeholders (e.g. signed B Corp Agreement)
- Adopted a specific legal entity or governance structure that preserves mission over time, but does not require consideration of all stakeholders in its decision-making (e.g. cooperative)
- As a company wholly owned by another company that has not done so, amended corporate governing documents or adopted a legal entity that requires consideration of all stakeholders in its decision-making (e.g. benefit corporation, completed B Corp legal amendment)
- As an independent or publicly-owned business, amended corporate governing documents or adopted a legal entity that requires consideration of all stakeholders in its decision-making (e.g. benefit corporation, completed B Corp legal amendment)
- None of the above

Points Earned: 10.00 of 10.00

Companies in the initial certification process may also need to upload their constitution to the **Legal Requirement Review** task during Evaluation.



**Legal Requirement Review** ASSIGNED TO Your Company Due Nov 23

If you are not currently in a certification review process, please email a copy of your constitution to [certification@bcorporation.com.au](mailto:certification@bcorporation.com.au) by the deadline outlined on the [legal requirement page](#).

The clauses in this document are referred to as the “template clauses”. You may decide to develop more specific provisions adding additional purposes, or additional stakeholders; however, to satisfy the legal requirement, you must have clauses in your governing documents that are consistent with the intent and legal effect of the template clauses.

- **For companies**, including public companies, the template clauses need to be included in your company’s constitution.
- **For sole traders**, you must include the template clauses in a written statement that is made to the public at large (such as a purpose statement or customer guarantee made available on a website or other prominent place in your business)
- **For partnerships**, your partnership agreement should contain the template clauses, expressed to be binding commitments on all partners. If you have a board or other governing body, the template clauses must also be included in the charter of the board or governing body.
- **For businesses operating as a Trust** where the trustee is the direct owner of the business or its assets, the template clauses must be included in the trust deed so that they apply to the trustee, informing the trustee’s obligations to the trust’s beneficiaries. Note, where the business operates through a company but is owned by a trust, the template clauses should appear in the company’s constitution and they need not appear in the trust deed.
- **For co-operatives**, the template clauses should appear in the co-operative’s rules, which often state the co-operative’s objectives already. Care should be taken to align the template clauses with any existing object clauses.
- **For mutuals**, a mutual entity (or mutual company) will have a constitution that sets out the specific rules governing its internal affairs. The template clauses should be inserted into the constitution. As for co-operatives, mutual companies often have specific objectives expressed in their constitution, so care should be taken to align the template clauses with any existing object clauses.



# Legal requirement

## Why we introduced the constitution amendment

B Lab aims to improve the culture and practice of business to build an economy that is inclusive, sustainable, and regenerative. B Corp certification is at the core of this work: B Corps lead by meeting high standards of verified social and environmental performance. B Corps must consider their impact on stakeholders, and work to have an overall positive impact on society. This must be done within the legal frameworks governing the roles and responsibilities of business, in each country where B Corps reside.

By amending company constitutions to include purpose and require stakeholder governance, a company creates alignment between its shareholders, directors and management team — even if the same people fulfil these roles. This alignment is important to ensure a company's commitment to consider stakeholders, and to strive for an overall public benefit, is supported by shareholders.

It also ensures directors can act in confidence when fulfilling their duties; the amended constitution makes it clear that the best interests of the company include consideration of stakeholders, and striving to have an overall public benefit alongside shareholder returns.

This approach is also designed to help companies protect mission through capital raises and leadership changes. They are designed to reflect best-practice governance seen in many businesses today, particularly in Certified B Corporations.

The existence of a legal requirement is not new; since 2012 all B Corps in Australia and Aotearoa New Zealand have signed a B Corp Agreement. This requires the B Corp to commit to:

- operate in line with the principles of public benefit and stakeholder governance, and
- take steps to embed that commitment into their company form, once a pathway is determined by B Lab.

To date, signing the B Corp Agreement has constituted an interim step in meeting the legal requirement. The constitution amendment for B Corps [evolved from the legislative reform](#) that B Lab has pursued since 2012. Given the evolution in corporate practice (and thus directors' duties), we consider we can now achieve the goals of Benefit Company reform without legislative change. This position has been supported by careful engagement with stakeholders, and rests on legal advice that supports the approach we now require B Corps to undertake.

Amending a company constitution to include a higher standard of accountability comes with a level of risk, along with benefits. Without risk there is no accountability. Each company must consider its own context before making this change. Companies and their directors are accountable to shareholders, regulators (such as [ASIC](#), [APRA](#), and the [ACCC](#) in Australia, and [NZX](#), [FMA](#) and the [Commerce Commission](#) in Aotearoa New Zealand)) and potentially anyone else aggrieved by their actions, or inactions. Amending a company constitution is a clear commitment to your shareholders about how the business will be run, and how directors intend to meet their responsibilities.

Of course, future shareholders may make changes to the Constitution to change the clauses above. The clauses themselves do not prevent this. However, to maintain your status as a Certified B Corporation you will need to keep the clauses as provided.

Companies that make public statements about their purpose, including in advertising, already hold themselves out to a standard and could be held to account for those statements (for instance through competition and consumer laws, or by the ACCC in Australia or Commerce Commission in Aotearoa NZ).

In the current regulatory environment companies are increasingly exposed to a level of risk if they do *not* consider non-financial stakeholders. Changes in the regulatory environment and community expectations of business are increasingly focussed on non-financial stakeholders. For example:

- In Australia, [ASIC](#) and [APRA](#) have released guidance that shows both encourage a focus on non-financial risk, and the [ASX](#) recommends reporting frameworks for listed companies such as Task Force on Climate-related Financial Disclosures ([TCFD](#))
- In Aotearoa New Zealand:
  - the Companies (Directors Duties) Amendment Bill proposes that directors, when determining what is in the best interests of a company, may take into account recognized environmental, social and governance factors
  - the Institute of Directors in Aotearoa New Zealand and MinterEllisonRuddWatts have published a [joint report on stakeholder governance](#) that recommends legislative review of directors' duties.

- Throughout the western world investors and the community are applying more pressure on companies to manage non-financial risk. Companies are experiencing increased litigation risks, particularly relating to failure to address climate change in long-term decision-making and risk assessments.

Risk can be managed through proper governance practices that ensure the company pursues both profit and purpose, and considers stakeholders. This can be done by implementing proper governance procedures to promote a higher standard of decision-making among directors, such as:

- The board actively positions itself to hold management accountable to pursuing its purpose to have an impact, in addition to profit
- The board institutes a policy that requires matters brought to the board describe the consequences on the company's purpose to have an impact and how stakeholders were considered in decision-making
- The board ensures that discussions of the board and its subcommittees canvass issues relevant to its purpose and stakeholders, and that these discussions are minuted
- The board has adequate induction materials and training for new directors as to its constitutional purpose and commitment to consider stakeholders
- The board's charter makes clear the purposes and stakeholder considerations that directors must consider when making decisions.

If your business does not have a formal Board meeting regularly, or has owner/operators running the business, then directors can still follow the above steps by holding meetings where they note the decisions they make and actions they take.

## What is a 'special resolution'?

Special resolutions are generally put to the vote of shareholders at a meeting of the shareholders. Where a physical meeting of the shareholders is held, a 'special resolution' means a resolution:

- where notice has been given to shareholders that sets out an intention to propose the special resolution and states the resolution; and
- that has been passed by at least 75% of the votes cast by shareholders entitled to vote on the resolution (or such other percentage, as the constitution may require for passing a special resolution).

However, many companies prefer for proposed amendments to their constitution to be voted on without members physically meeting.

In Australia, a proprietary company with more than one shareholder may pass a special resolution if **all** shareholders entitled to vote on the resolution (i.e. 100%) sign a document (also known as a circulating resolution of members) that states that they are in favour of the resolution set out in the document. An example resolution is set out at **Appendix 1**.

In New Zealand, an unlisted company with more than one shareholder may pass a special resolution if the requisite % of the shareholders entitled to vote on the resolution, sign the resolution (usually 75%, as above, unless the constitution has a different requirement). The resolution may consist of one or more documents, including electronic communications. Within 5 working days of the resolution being passed the company must send to every shareholder who did not sign the resolution, a copy of the resolution and a statement setting out the minority buy out rights of shareholders. An example resolution is set out at **Appendix 2**.

For companies with a single shareholder, in Australia or Aotearoa New Zealand, a special resolution will be passed if the shareholder records the resolution and signs the record. Example resolutions are set out at **Appendix 3** and **4** for companies in Australia and Aotearoa New Zealand respectively.

The examples provided are general guidance only, and companies should look into their specific circumstances to determine any particular requirements that may be applicable.

## Template Resolution of Members (Australia)

**[Insert Company Name]**

ACN **[Insert ACN]** (Company)

Resolution of members under section 249A of the *Corporations Act 2001* (Cth)

The undersigned, being the members of the Company as at the date this resolution is signed, is in favour of the following resolutions:

**That** the Constitution of the Company be amended by:

1. inserting a new clause **[Insert relevant clause number]** -  
"**#** 'The purpose of the Company is to deliver returns to shareholders whilst having an overall positive impact on society and the environment..'"
2. inserting a new clause **[Insert relevant clause number]** -  
"**#** In discharging their duties under this constitution, applicable company legislation and the general law, the directors or other officers of the Company:
  - (a) must consider:
    - (i) the likely consequences of any decision or act of the company in the long term; and
    - (ii) the interests of the company's employees; and
    - (iii) the need to foster the company's business relationships with suppliers, customers and others; and
    - (iv) the impact of the company's operations on the community and the environment; and
    - (v) the desirability of the company maintaining a reputation for high standards of business conduct; and
    - (vi) the interests of the members of the company; and
    - (vii) the ability of the company to create an overall positive impact on society and the environment; and
  - (b) Need not give priority to a particular matter referred to in paragraph (a) over any other matter, unless the company has stated in this constitution that the directors or other officers of the company must give priority to certain matters related to the pursuit or creation of any objects listed in this constitution."

Date: \_\_\_\_\_

**[Insert relevant execution blocks]**

## Template Resolution of Members (New Zealand)

**[Insert Company Name]**  
**(Company)**

Resolution in writing of members under section 122 of the Companies Act 1993.

RESOLVED:

**That** the Constitution of the Company be amended by:

1. inserting a new clause **[Insert relevant clause number]** -  
"**#[#]** 'The purpose of the Company is to deliver returns to shareholders whilst having an overall positive impact on society and the environment..'"
2. inserting a new clause **[Insert relevant clause number]** -  
"**#[#]** In discharging their duties under this constitution, applicable company legislation and the general law, the directors or other officers of the Company:
  - (a) must consider:
    - (i) the likely consequences of any decision or act of the company in the long term; and
    - (ii) the interests of the company's employees; and
    - (iii) the need to foster the company's business relationships with suppliers, customers and others; and
    - (iv) the impact of the company's operations on the community and the environment; and
    - (v) the desirability of the company maintaining a reputation for high standards of business conduct; and
    - (vi) the interests of the members of the company; and
    - (vii) the ability of the company to create an overall positive impact on society and the environment; and
  - (b) Need not give priority to a particular matter referred to in paragraph (a) over any other matter, unless the company has stated in this constitution that the directors or other officers of the company must give priority to certain matters related to the pursuit or creation of any objects listed in this constitution."

Date: \_\_\_\_\_

**[Insert relevant execution blocks]**

## Template Resolution of Sole Member (Australia)

**[Insert Company Name]**

ACN **[Insert ACN]** (Company)

Resolution of sole member under section 249B(1) of the *Corporations Act 2001* (Cth)

The undersigned, being the sole member of the Company as at the date this resolution is signed, is in favour of the following resolutions:

**That** the Constitution of the Company be amended by:

1. inserting a new clause **[Insert relevant clause]** -  
"**[#]** 'The purpose of the Company is to deliver returns to shareholders whilst having an overall positive impact on society and the environment..'"
2. inserting a new clause **[Insert relevant clause]** -  
"**[#]** In discharging their duties under this constitution, applicable company legislation and the general law, the directors or other officers of the Company:
  - (a) must consider:
    - (i) the likely consequences of any decision or act of the company in the long term; and
    - (ii) the interests of the company's employees; and
    - (iii) the need to foster the company's business relationships with suppliers, customers and others; and
    - (iv) the impact of the company's operations on the community and the environment; and
    - (v) the desirability of the company maintaining a reputation for high standards of business conduct; and
    - (vi) the interests of the members of the company; and
    - (vii) the ability of the company to create an overall positive impact on society and the environment; and
  - (b) Need not give priority to a particular matter referred to in paragraph (a) over any other matter, unless the company has stated in this constitution that the directors or other officers of the company must give priority to certain matters related to the pursuit or creation of any objects listed in this constitution."

Date: \_\_\_\_\_

**[Insert relevant execution block]**

## Template Resolution of Sole Member (New Zealand)

**[Insert Company Name]**  
**(Company)**

Resolution in writing of members under section 122 of the Companies Act 1993.

RESOLVED:

**That** the Constitution of the Company be amended by:

1. inserting a new clause **[Insert relevant clause]** -  
"**#[#]** 'The purpose of the Company is to deliver returns to shareholders whilst having an overall positive impact on society and the environment..'"
2. inserting a new clause **[Insert relevant clause]** -  
"**#[#]** In discharging their duties under this constitution, applicable company legislation and the general law, the directors or other officers of the Company:
  - (a) must consider:
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Date: \_\_\_\_\_

**[Insert relevant execution block]**