

Annual General Meeting Special Resolutions: Proposed Constitution Amendments

Tuesday 5 October 2021, 5.30 - 6.30 pm
Microsoft Teams

Recent AGMs have approved a series of amendments to the Constitution to remove duplication, provide clarity of intent and ensure compliance with contemporary guidelines.

A copy of the Foundation's current Constitution is attached (version 9 dated 28 October 2020).

SPECIAL RESOLUTION – AMENDMENT 1 - BOARD MEMBERSHIP

The current Constitution at 5.1.4 states that, “to ensure continuity of the Board’s work, half the Directors shall be elected each year, with the position of Chair being included in one year, and that of Deputy Chair in the following year.”

This requirement is proving to be unworkable and, in practice, not needed. The more important requirement for the Foundation and the Board has been to find Directors and Office Bearers with the right skills, knowledge and experience with a two-thirds majority willing to have sufficient time and capacity to organise and conduct Foundation activities such as seminars and other events.

If strictly enforced, the current 5.1.4 potentially would see the loss of some very productive Directors and Office Bearers, if they decided not to seek re-election, for no reason other than to comply with the Constitution.

Natural attrition of Directors and Office Bearers has been and is expected to be sufficient to inject new talent and expertise onto the Board without the need for this requirement

Proposed Amendment - Section 5 – Board Membership

The Board proposes that the current 5.1.4 be deleted from the Constitution. The Board also proposes that the current 5.1.5 be renumbered to 5.1.4 without amendment.

Moved **Nic Quinn**

Seconded **Ken Moore**



SPECIAL RESOLUTION - AMENDMENT 2 – ADDITIONAL DIRECTORS

The current Constitution at 5.3.1 states that “during an elected term the Board may wish to increase the number of Directors. In this case the additional positions shall be considered vacancies and may be filled by the Board negotiating with individual financial members. Such additional Directors shall retire at the conclusion of the next AGM election.”

The current wording does not make clear whether the cap of a maximum of 12 Directors (as per 5.1.1 of the Constitution) applies to additional Directors. Normally, additional Directors can be accommodated within this maximum cap (e.g. through the early resignation of one or more existing Directors). However, there has been the occasional temporary requirement for additional Director/s above the maximum cap to meet the transitional needs of the Board and the Foundation.

To ensure that the temporary increase in the Directors’ maximum cap is used only to meet essential transitional requirements, the Board proposes to limit the increase to one additional temporary Director.

The Board proposes that 5.3.1 be reworded as follows:

5.3.1 *During an elected term the Board may wish to temporarily increase the number of Directors to meet essential transitional requirements. In this case, one additional Director may be filled by the Board negotiating with an individual financial member. The additional Director shall retire at the conclusion of the next AGM election.*

Moved **Nic Quinn**

Seconded **Ken Moore**



SPECIAL RESOLUTION - AMENDMENT 3- CONDUCTING ANNUAL GENERAL MEETINGS IN EXTRAORDINARY CIRCUMSTANCES

Section 5 Board Elections and Section 11 General Meetings

Section 5.2 of the Constitution outlines how Board elections are to be conducted during annual general meetings. Section 11 of the Constitution outlines more generally how annual general meetings and general meetings are to be conducted. Section 11 also states that annual general meetings must be held before 30 November each year.

Both Section 5.2 and Section 11 are based on physical meetings with a largely electronic process leading up to the meetings (e.g. advice to members of the meetings and the nomination of candidates). Virtual meetings are not covered in the Constitution.

With the current COVID-19 restrictions in place preventing physical meetings, the Government introduced temporary legislation under the ACT Government's *Associations Incorporation Act 1991* (the Act), Section 70AA. (see appendix), to allow virtual meetings. This legislation has allowed the Foundation to conduct the 2021 AGM through an online meeting, however it cannot be expected in future during a pandemic or other extraordinary circumstances.

For the longer term, this Special Resolution seeks approval from Members to amend the Constitution to enable hybrid (physical/virtual) meetings or virtual-only meetings when physical meetings are unable to take place due to extraordinary circumstances or at the discretion of the Board.

The following amendments to the Constitution are proposed (highlighted in yellow):

Section 5 - Board Elections

- 5.2.2 The Secretary shall notify all members of the Foundation of the date of the AGM election not later than 21 full calendar days before that date. Such notification shall include the location (**physical, hybrid or virtual**) and starting time of that AGM together with the office-bearer positions and the number of non-office-bearer positions to be filled.
- 5.2.9 The election of office-bearers and other Directors shall take place at the AGM in the following manner:



- a list of the Members' names who are candidates, in alphabetical order, with the proposers' and seconders' names shall be forwarded to all Directors at least five full days prior to the AGM;
- for physical meetings, balloting lists shall be prepared (if necessary) containing the names of the candidates only, in alphabetic order. At least three days before the AGM, the balloting lists are to be sent electronically to Members. Members and members with proxies are to lodge their votes during the AGM with the results to be communicated to the Chair during the course of the meeting. Members and members with proxies, must be in attendance at the meeting for their votes to be valid.
- for virtual and hybrid meetings, balloting lists shall be prepared (if necessary) containing the names of the candidates only, in alphabetic order. At least three days before the AGM, the balloting lists are to be sent electronically to Members. Members and members with proxies, who are registered to attend the meeting, will be sent the details to lodge their votes electronically during the AGM with the results to be communicated to the Chair during the course of the meeting. Members and members with proxies, must be in attendance online or physically at the meeting for their votes to be valid.
- in case there shall not be sufficient number of candidates nominated, the Board may fill up the remaining vacancy or vacancies;
- if there be only one nomination for any position on the Board the Chair of the AGM at which the election is to take place shall declare such candidate duly elected;
- wherever there is more than one nomination for any position on the Board the election shall be by ballot of the Members, conducted in the following manner:
- at physical meetings and for members physically present at a hybrid meeting, the voter shall mark his/her balloting list by marking a cross opposite the names of each of the candidates for whom he or she votes, and for the formal proxies they are holding. The voter shall also include his or her name, or the name of the formal proxies they are holding, legibly on the balloting list and cause it to be delivered to the Secretary in person. Each person voting shall vote for one candidate for each position required to fill the vacancy and no more.
- members present online at a hybrid or virtual meeting will submit their vote on an electronic form marking a check box next to the names of each of the candidates for whom he or she votes and lodge an additional voting form for formal proxies they are holding. The Secretary will verify the validity of



electronic votes through the technology provider. Each person voting shall vote for one candidate for each position required to fill the vacancy and no more.

- the result of the ballot shall be determined by the Secretary assisted by two scrutineers appointed by the existing Board;
- after the closing of the ballot the Secretary and scrutineers shall check the signatures of Members and their qualification to vote and proceed to the examination of the voting papers and shall report in writing the result of the ballot to the Chair of the AGM. The candidate for each position required to be filled receiving the greatest number of votes shall be deemed elected and a declaration as to such election shall be made at the AGM;
- in any case of doubt as to the formality of any voting paper the matter shall be referred to the Chair of the meeting whose decision shall be final;
- in the event of an equality of votes in favour of two or more candidates, the Chair of the meeting at which the election takes place shall have a casting vote or votes so as to decide the election; and
- the Members comprising the Board may direct the Secretary to destroy the ballot papers at any time after the expiration of one month after the date of the declaration of the election.

Section 11 General Meetings

11.1 Annual General Meeting

11.1.1 The Foundation shall hold an AGM each year between 1 July and 30 November at such time and place, as determined by the Board. **In a pandemic or extraordinary circumstances, the meeting may take place as a virtual or hybrid meeting.**

11.2 General meetings

11.2.1 At the discretion of the Board, general meetings of all members may be held to conduct general business and to receive reports. **In a pandemic or extraordinary circumstances, the meeting may take place as a virtual or hybrid meeting.**

11.2.6 **Quorum.** Ten members, including at least two office-bearers present **in person or online,** constitute a quorum for the transaction of any business of a general meeting

11.2.14 On a show of hands, every financial member present **in person or online** and



entitled to vote, shall have one vote.

11.2.15 **Proxy Voting.** A member may appoint another member as his or her proxy to vote and speak on his or her behalf at a general meeting other than at a disciplinary appeal meeting. Proxy votes will not be considered as 'attendance' for the purpose of constituting a quorum as required in Paragraph 12.2.6. The appointment of a proxy must be in writing, in the approved form, and signed by the member making the appointment. The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the member in any matter as he or she sees fit. A form appointing a proxy may be given personally or electronically to the Chair of the meeting before or at the commencement of the meeting. A form appointing a proxy sent electronically or by mail will be considered a valid proxy if received by the Foundation up to the commencement of the meeting.

11.2.16 A motion or amendment proposed and seconded at any meeting held in accordance with this Constitution, shall be put by the Chair and decided by a majority of the members present in person or online on a show of hands and the declaration of the Chair on the majority shall be final unless a poll be forthwith demanded by not less than five financial members present and entitled to vote at the meeting, provided however that no poll shall be taken on the appointment of a Chair or of scrutineers or the adjournment of a meeting. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than that on which the poll is demanded.

Moved Nic Quinn

Seconded Ken Moore



Appendix - ACT Government's Associations Incorporation Act 1991 (the Act).

70AA General meetings—procedure during COVID-19 emergency

- 1) This section applies to a general meeting held during a COVID-19 emergency.
- 2) The committee may authorise that the meeting be held using a method of communication, or a combination of methods of communication, that allows a member taking part to hear or otherwise know what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link, an internet or intranet link, in writing

- 3) A person who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- 4) A member may vote by proxy at a meeting.
- 5) If an association's rules are inconsistent with this provision, the rules have no effect to the extent of the inconsistency.
- 6) In this section:

COVID-19 emergency means—

- a) *a state of emergency declared under the [Emergencies Act 2004](#), section 156 because of the coronavirus disease 2019 (COVID-19); or*
 - b) *an emergency declared under the [Public Health Act 1997](#), section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).*
- 7) This section expires on 8 October 2021.

Note - an Amendment Bill is before the ACT Assembly that will change 8 October 2021 to "expiring at the end of a 12-month period during which no COVID-19 emergency has been in force". The Amendment Bill may not pass before our AGM.