

Arthritis NSW Constitution – Proposed amendments - Explanatory Statement

In line with the ACNC recommendation for charities to regularly review their governing documents, the Board undertook a review of the constitution in 2021. While the current document is in reasonable shape, some amendments are being proposed to improve the document.

The purpose of the review and the proposed amendments is to:

- reflect ANSW’s charity status by referencing the ACNC Act
- ensure the objects accurately reflect ANSW’s mission and activities
- bring the constitution in line with contemporary governance practice and current ANSW practice
- remove any ambiguities and address any omissions in the existing constitution
- ensure the constitution is a better functioning document.

Any constitutional change must be approved by the members via a special resolution passed at the upcoming AGM on 25th November 2021. Members are invited to submit any comments or questions on the proposed amendments outlined in this paper by 18th November 2021 to info@arthritisnsw.org.au or on 02 02 9857 3300.

Summary of constitutional amendments

Clause	Subject	Comments	Reasons for change
2	Definitions	<p>Added "ACNC Act" and "Registered Charity"</p> <p>Added "Constitution"</p> <p>Removed "Attending Member"</p> <p>Removed "Centre of Excellence"</p> <p>Added "Surplus Assets"</p> <p>Added "Vice President"</p>	<p>As Arthritis NSW is a registered charity with the ACNC, the constitution should reference the ACNC</p> <p>The document uses the term "Constitution" throughout and definition is added to clarify the meaning</p> <p>Definition removed to simplify drafting.</p> <p>Definition not used.</p> <p>Added for the purposes of the winding up provision and to address the applicable legislative requirements.</p> <p>Undefined.</p>
4(c) and 4(d)	Inconsistency provisions	Added inconsistency provision with respect to the application of the ACNC Act and Corporations Act where it conflicts with the Constitution.	Added to provide certainty that the relevant legislation overrides the Constitution to the extent there is any conflict.

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6	Objectives and Purposes	The objects describe the reasons why the organisation exists and also influence its taxation and charitable status. The new format for the objects clause is to have one overall objective that encompasses the broad purpose for the entity. This overall objective is supported by sub-goals that would give an indication of the types of work or actions that the organisation may take in pursuing the overall objective.	The objects clause has been reviewed to ensure they reflect Arthritis NSW's PBI status and current mission and activities.
7(b)(ii)	Application of income and property – payment to directors for provision of professional services	Deleted requirement for amount to be approved by the President	Board approval of any such payment is sufficient.
7(c)	Application of income and property – certain payments to members allowed	While profits and assets cannot be paid to members by way of dividend or bonus, members may still receive payments in certain situations such as if they are an employee, reimbursement of expenses, for provision of goods and services.	This is to avoid any doubt as to whether members may be reimbursed for expenses, engaged for services or employment by Arthritis NSW.
8(c)	Annual subscription fee.	New clause which clarifies that the Company may charge an annual subscription fee for Members separate to the initial subscription fee payable by a Member on application.	The Constitution already contemplates that this is the case. This clause has been added for the avoidance of doubt.
8(f)&(g)	Membership rights	New clauses clarifying the rights of members	The rights of members are fundamental and should be specified in the constitution. Members who fail to pay the membership fee by the due date may not exercise their membership rights until the fee is paid.
Previous 8(g) New 8(m)	Honorary Life Members	All current Honorary Life Members will continue, however, the category will cease and no further individuals will be admitted.	Individuals who make a significant contribution will continue to be recognised but this could be done via an award or honour, rather than the granting of lifetime constitutional membership.
11	General meetings	<ul style="list-style-type: none"> New clauses regarding general meetings. Note terminology changed to general meetings to reflect contemporary terminology. Clarify that a general meeting may be held using technology The Board may call and hold an AGM 	Charities that are companies limited by guarantee no longer have to comply with provisions in the Corporations Act regarding general meetings. This includes the requirement to hold an AGM within 5 months of the end of each financial year and the requirement to hold a general meeting on the request of 5% of members.

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			example, due to flooding of original venue, restrictions on gatherings etc).
15(h)	Direct voting	Provision to allow direct voting has been included	Direct voting enables members to exercise their voting rights without having to either attend the meeting or appoint a proxy, for example by submitting an electronic vote prior to the general meeting. Direct voting can sit alongside the proxy system. It may be an additional option for the Board to offer to members.
17	Proxies	Proxy form removed from constitution	Proxy forms should not be prescribed in the constitution as the form used in any year may be in a different format or include different fields.
18(a)	Number of directors	No change to minimum (5) and maximum (9) number of directors	Previous clause 18(g) is unclear - allowed a majority vote of 75% for increase or decrease in maximum board members when the maximum number of board members was already provided at clause 18(a) and can only be changed by special resolution by members. New clause 18(a) clarifies that the number of directors is to be determined by the Board between the range of 5-9.
18(b)	Criteria when Board appoints directors	Clarify that if the Board appoints Directors, they will prescribe selection criteria as well have regard to sub-clauses 18(c) (i) and (ii).	Reflects current practice of the Board in prescribing criteria for appointed positions such as governance experience, accounting skills etc.
18(d)	Office bearers	There will be two office bearer positions – President and Vice President. Removal of “Board Executive” and “Honorary Treasurer” Introduction of maximum term for President of 3 consecutive years	While there may be a need for office bearers to occasionally meet between full board meetings, the powers under previous clause 18(f) could give rise to the situation of having an inner board and an outer board, which is not good governance practice. All board members are jointly responsible and potentially liable for any decisions made. Regarding the ‘honorary treasurer’, there is no legal requirement for the Board to have a Treasurer, and many charities do not include a Treasurer in their constitution. This is because the financial responsibility is shared by all directors, and there is a belief that having a Treasurer as a member on the Board psychologically reduces the attention of the other directors from financial matters.

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			To ensure refreshing of leadership, there will be a term limit of 3 consecutive years for the Presidency.
18(h)	Elections	Elections will be held prior to the AGM with results announced at the AGM	This clause replaces previous clause 20(d) which stated elections were held at the AGM and required list of candidates to be physically displayed at 7 days before the AGM. This practice seems out of date given current use of technology for conducting elections. A ballot conducted prior to the AGM allows more members to participate in the vote. Further it can be an administrative burden to conduct a ballot during an AGM.
19(b)	Terms of directors	Introduction of maximum term for directors of 9 consecutive years (3 x 3-year terms)	This allows for the balance between continuity and refreshing of the Board.
20	Vacation of office of Director	This clause outlines certain situations when a Director vacates their office	This is a standard clause in constitutions and is missing in the current constitution.
22	Powers of the Board	Board may exercise all powers of the Company other than those required to be exercised in general meeting. Board has power to create by-laws. Deleted current clause 22(c) – Board shall appoint a CEO	Current wording implies an operational board. The current requirement for all electronic transactions to be executed by CEO and a Board member is impractical and does not reflect current practice. While the Board may appoint a CEO, constitution should not mandate the appointment. The Board has the power make the appointment and to delegate to the CEO under clause 23.
23	Committees	Deleted clauses 23(d)-(g)	Prescriptive details about committees are more appropriately placed in by-laws or committee terms of reference
24(b),(c)	Board proceedings	Provision made for board meetings by technology Current clause 24(f) re board papers deleted	Standard clause to reflect current practice Board papers are a matter for the Board Charter, not the constitution.
24(f)	Quorum	Quorum changed to majority of Directors in office at the time	Quorum is better expressed as a majority rather than a fixed number which is consistent with contemporary practice. A quorum of 5 Directors may be difficult to meet if there is a board of only 5 or 6 Directors.
24(h)(i)	Written resolutions	Provision made for board resolutions to be passed without a board meeting	Standard clause to reflect current practice

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26	Interests of directors	Amended to remove the prohibition on the directors holding an office in the Company or a related body corporate of the Company.	Directors by virtue of their directorship hold 'an office' with the Company. This prohibition has therefore been removed as otherwise Directors could be in breach. Directors still are prohibited from holding a place of profit or employment in the Company or a related body corporate of the Company.
27	Financial records	Amended so that the Board has control on what accounting records and documents of the Company will be made available to Members and how these are made available for inspection. Also amended to clarify that Members can only inspect documents that they are entitled to inspect by law.	The previous clause entitled Members inspection rights of Financial records. "Financial records" is a very broad term and arguably includes not only annual financial statements but bank statements, general ledgers, receipts, working papers etc. This goes beyond what Members are entitled to under the Corporations Act. Allowing access to material beyond what is required under the Corporations Act could be administratively burdensome on the Company. The Board should have appropriate control of this process to avoid any unnecessary waste of Company resources.
28	Winding up	Amended to include requisite dissolution clause for DGR status	Amended to address legislative requirements.
	Terminology	"Article" changed to "clause" throughout	Reflect contemporary terminology. Articles is an outdated term.