

Constitutional changes

Introduction

The board proposes some changes to the constitution. These changes are special motions to be considered by the AGM.

Constitutional changes can only be made by the members in general meeting.

- 21 days notice of the meeting must be given (clause 8.4)
- The notice of meeting must state the proposed special resolution (clause 8.6)
- 75% of members must vote in favour (clause 9.15.a).

The changes are about 3 things. Each is explained below.

1. Circulating resolutions of the Board and the majority required

The Constitution currently states:

14.15. Circulating resolutions

The Board may pass a resolution without a Board meeting being held if all the Directors who are entitled to vote on the resolution sign a document, including a document conveyed electronically, containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

This wording reflects section 248A of the Companies Act. However, this is a replaceable rule under section 135, so the ASID members can change the rule.

The proposed wording is:

The Board may pass a resolution without a Board meeting being held if seventy five percent or more of the Directors who are entitled to vote on the resolution sign a document, including a document conveyed electronically, containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the seventy five percent majority is achieved.

2) Divisional Committees no longer compulsory, and international members

There is currently no WA Divisional Committee and other Divisions have struggled to function from time-to-time. The Constitution should recognise that Divisional Committees might not exist.

Another issue is that members of ASID sometimes live outside Australia and Aotearoa New Zealand. However, the Constitution assumes that all members live in these two countries. It requires all members be divided into the current divisions.

The current wording of clause 3 is:

3. STRUCTURE

3.1. ASID Divisions

The Company shall be organised as follows:

- a) The Membership shall be divided into Divisions (see clauses 3.2 and 4)*
- b) Each Division shall be represented by a Divisional Committee (see clause 11)*
- c) The Board shall be ultimately responsible for the governance and operation of the Company (including the Divisional Committees).*

The proposed wording of clause 3 is:

3. STRUCTURE

3.1. ASID Divisions

The Company shall be organised as follows:

- a) The Membership shall be divided into Divisions (see clauses 3.2 and 4), with the exception of members who do not live in Australia and New Zealand who will not be attached to a Division*
- b) Each Division may be represented by a Divisional Committee (see clause 11)*
- c) The Board shall be ultimately responsible for the governance and operation of the Company (including the Divisional Committees).*

The current wording of Clause 11.1 is:

11. 1 Divisional Committees

A Divisional Committee shall be formed and maintained for each Division.

The proposed wording of Clause 11.1 is:

11. 1 Divisional Committees

A Divisional Committee may be formed and maintained for each Division.

3) Excluding a member of a Division Committee

Clause 11.4 of the Constitution gives the process for Election of Divisional Committees. Clause 11.5 gives the process in relation to Casual Vacancies. The Constitution does not currently specify any process whereby a Divisional Committee can exclude a member.

Some legal judgments suggest that Courts will state that excluding someone can only be done in accordance with the rules of procedural fairness (also known as natural justice). The rules of procedural fairness are:

- 1) the rule against bias: the decisionmaker cannot be biased, and
- 2) the hearing rule: before any detrimental action is taken against someone, the person must be heard and their views considered.

These rules, which sound fair, can cause unnecessary complications in an all-volunteer group such as an ASID Divisional Committee.

The proposed change is to insert a new sub-clause into the Constitution:

11.6 Exclusion of a member from a Division

a) A Divisional Committee may exclude a member, including a person who is a Divisional Committee member, from the work of a Division for a period of up to 3 years.

b) The Division Committee may make the decision by a simple majority vote.

c) In making this decision, a Divisional Committee may observe the principles of procedural fairness but does not have to do so.

d) If the person who is excluded is a current Divisional Committee member, their Divisional Committee membership ceases, and they are ineligible for re-election for the period of exclusion established by the Committee unless the Committee revokes the resolution.

e) A member so excluded may appeal their exclusion to the Board.