**Review of ANBG Friends Constitution**

**Discussion paper**

**Background**

The Friends are incorporated under the ACT *Associations Incorporation Act 1991* and its Constitution is based on the model rules in Schedule 1 of the *Associations Incorporation Regulation 1991*.

The Friends and its Public Fund are also included on the Register of Environmental Organisations (REO) administered by the Commonwealth under the *Income Tax Assessment Act 1997* (ITA Act). This allows the Friends, through the Public Fund, to receive tax deductable gifts from the public. Legislative changes to the ITA Act in September 2021 require non-government deductible gift recipients (DGRs) to be a registered charity from 14 December 2021 through the Australian Charities and Not for Profits Commission (ACNC). The Friends are already registered as a charity with the ACNC.

The [Friends Constitution](http://friendsanbg.org.au/sites/default/files/pdf/Constitution%20%20-%20October%202015%20Final.pdf) has not been reviewed since it was modified in October 2015 but a review has found some inconsistencies between it and current best practice as contained in relevant legislation and a template Constitution prepared by the ACNC.

Clause 13.6 of the Constitution states that: “An amendment of this Constitution shall be made by resolution at an annual general meeting or special general meeting of the Friends by at least a three-quarters majority of voting members present at the meeting after members have been given at least twenty-one (21) days’ notice of the proposed amendment.”

Council would welcome Members’ comments on this discussion paper before resolutions are formalized and put before a general meeting later this year. Comments on this discussion should be sent to [ayliffelynden@gmail.com](mailto:ayliffelynden@gmail.com)by 30 April 2022**.**

**Issues**

**1. Clarifying definitions, refining language and bringing the Constitution in line with legislative requirements**

**(a)** **Clause 1.2.1. Definition of Common Seal and Clause 13.2 Common Seal**

Section 22 of the *Associations Incorporation Act 1991* has recently been amended to provide that an incorporated association “may have a common seal”. As there is no longer a requirement under law to have and use a Common Seal on documents, and in practice the Friends have rarely used the Common Seal, it is recommended that this definition and subsequent clause relating to the Common Seal be *deleted***.**

**(b)** **Clause 1.2.1 Definition** **of a Member**

This clause defines a **member** as *a member, however described, of the Friends.* Clause 5.2 Eligibility for Membership clearly states *any person, group or organisation that is committed to and supports the purposes and objectives of the Friends shall be eligible for membership*. Clause 5.3.1 specifies that the membership categories are *Individuals, Households (which means persons residing at the same address) and Botanical Interest Groups and other Organisations.*

Throughout the Constitution, there are references to **members** as members, life members, complimentary members, voting members and financial voting members. There are also references to **memberships** that include multiple members (Household members, Botanical Interest Group and Organisational Members).

Some terms are defined (member, voting member) while others are not (financial member).

An issue arises when considering rights (to nominate for Council and vote) and benefits (parking, *Fronds*, E newsletter, discounts). Individual members that are financial are entitled to all rights and benefits. However, Household, Group and Organisational members receive a mix. Households, Groups, and Organisations receive up to 4 cards that allow discounts **but only** two (Households) or three parking permits (Groups and Organisations) and two votes. Life members receive all rights and benefits and are deemed financial members. Complimentary members receive benefits for a year but not the right to nominate for Council or vote.

This can be further confused by members within Household, Group and Organisational Memberships having the same membership number. This can include up to four people. As only two persons in these groups can vote, it is suggested that the first two members of these be nominated as eligible to vote so that their eligibility to vote can easily be confirmed at AGM or special general meetings when voting occurs.

To avoid confusion, it is suggested that references to members be *clarified*by:

***Clause 1.2.1 Definitions***

***Clause 1.2.1 A member means a person who holds membership of the Friends either as an individual (through Individual, Life or Complimentary membership) or as a nominated member of a household, group or organisation as described in Clause 5.2.***

***Clause 1.2.1 A financial member means all members that have paid fees in accordance with Clause 5.7(b) and Life Members.***

***Clause 1.2.1 Voting Member means financial members entitled to vote at a meeting in accordance with Clause 7.2.6 (b) and (c).***

***Clause 5.3.1 Membership***

***Members include:***

***(a) Individuals;***

***(b) Nominated members of Households (which means persons residing at the same address); and***

***(c) Nominated members of Groups and Organisations (as described in Clause 5.2).***

Consequentially references in the following clauses need to be simplified to delete reference to “financial voting members”. A voting member is a financial member.

***Clause 7.2.2(b) A special general meeting shall be called by the Secretary on the written request for such meeting signed by twenty-five (25) members or five (5) per cent, whichever is the fewer, of voting members*** ***of the Friends.***

***Clause 7.2.5(a) A quorum shall be twenty-five (25) voting members of the Friends~~.~~***

There are consequential changes needed to Clause 7.2.6 – please see page 6of this paper about voting.

**(c)** **Clause 1.2.2** **Interpretation**

In this clause, sub clause (a) states*words importing any gender include all other genders*. To make the Constitution gender neutral, it is proposed that this sub clause be deleted and alterations made to several clauses that refer to **he/she (his/her).** These clauses are:

|  |  |
| --- | --- |
| Clause 6.7.2 | Delete ***he/she*** and replace with ***the member*** |
| Clause 6.7.2 (b) | Delete ***his or her office*** and replace with ***their office*** |
| Clause 6.7.2 (f) | Delete ***he/she*** and ***his or her*** and replace with ***the member*** *and* ***the member’s*** |
| Clause 7.1.6 Introduction | Delete ***he or she*** and replace with ***the member*** |
| Clause 7.1.6 (b) | Delete ***he or she*** and replace with ***the member*** |
| Clause 7.1.8 (a) | Delete ***his or her direction*** and replace ***with their direction*** and delete ***he or she*** and replace with ***the member***. |
| Clause 9.4 (b) | Delete ***his or her office*** and replace with **their office** |
| Clause 9.4 (f) | Delete ***he or she*** and ***his or her*** replace with ***the member*** and ***the member’s*** |
| Clause 10.4.3 | Delete ***in his or her custody, or under his or her control*** and replace ***within their custody, or under their control.*** |

**(d)** **Clause 6.4.4 Voting**

This clause is misplaced since it concerns voting for Council members at an annual general meeting. Voting at annual general and special general meetings is covered at Clause 7.2.6. Accordingly, it is recommended that clause 6.4.4 be *deleted***.**

**(e)** Two clauses currently refer to a person ceasing to be a member of Council, or the Public Officer, if he/she “suffers from mental or physical incapacity”. This phrasing is not in line with ACT legislation and it is recommended that the references be *changed* as follows:

***Clause 6.7.2 A person shall cease to be a member of Council if the person:***

***(e) is not physically or mentally fit to exercise the functions of office;***

***Clause 9.4 Grounds for Office Becoming Vacant***

***The office of Public Officer becomes vacant if the person holding that office***

***(e) is not physically or mentally fit to exercise the functions of office;***

**(f)** **Public Fund**

Some confusion has arisen about the rules governing the Public Fund. Recent advice from the REO confirms that it is the Friends of the ANBG Public Fund that has DGR status and not the Public Fund Trust. The use of tax-deductible donations to the Public Fund must be for its principal purpose. At present the specific purpose of the Fund is to support the environmental purposes and objectives of the Friends. The objectives of the Friends are broader than the mandatory principal purpose set out in the REO Guidelines. It is accordingly suggested that the following clauses be *changed*as this is a Commonwealth requirement**:**

***Clause 6.1 The Council …***

***(c) has the power to perform all acts and do all things that appear to the Council to be necessary or desirable for the proper and effective management of the affairs of the Friends, including, but not limited to, the administration of the Public Fund in accordance with its principal purpose; and***

***Clause 11.1 (a) The Friends shall establish and maintain a public fund called the “Friends of the ANBG Public Fund” for the principal purpose of:***

***(i) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or***

***(ii) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.***

***Clause 11.3 Ministerial Rules***

***The Friends agree to comply with all rules made by the Commonwealth Treasurer and the Minister with responsibility for the environment to ensure that gifts made to the Public Fund are only used for its principal purpose.***

***Clause 11.4 Not-for-Profit***

***The income and property of the Fund will be used and applied solely in the promotion of its principal purpose, and no portion shall be distributed, paid or transferred directly or indirectly by way of a dividend, bonus or by way of profit to members of the Friends, or any management committee of the Fund.***

***Clause 11.6 Winding-up***

***If the Fund is wound up, all surplus assets are to be transferred to another Fund on the Register of Environmental Organisations that has a similar principal purpose.***

***Clause 11.8 (a) the objective of the Fund is to support its principal purpose.***

***Clause 11.8(b) members of the public will be invited to make gifts of money or property to the Fund to support its principal purpose.***

**Clause 11.8** **(g)** also states that “a committee of management (trustees) of no fewer than three persons shall administer the Fund.” Recent legal advice indicates that members of this committee are not trustees. This being the case, the word “trustees” should be *deleted*.

**2. Updating procedures**

**(a)** **Membership clauses**

Part 5 of the Constitution is silent on when a person becomes a member and the process outlined does not match current practice. At present a team of people receives and process applications, simply reporting numbers of members (new and renewed) to Council each month. This is not consistent with legislation that requires the Secretary to be responsible for processing applications and referring such applications to Council for decision. It is therefore proposed that Clause 5.5 of the current Constitution be altered to require the Secretary to refer applications to Council. Council may then delegate any decisions to the Membership Team in line with Clause 6.9 of the Constitution. It is also recommended that clause 5.5(b) be deleted as names are entered in a Register which is accessible to Council on request (Clause 6.3.3.3) and replaced with a new subsection (b) articulating when a person becomes a member:

***5.5 Dealing with Membership Applications***

***(a) The Secretary shall coordinate the processing of membership applications and must refer applications to Council.***

***(b) An applicant becomes a member when Council accepts an application, the appropriate membership fees are paid where applicable, and details are entered in the register****.*

**(b)** **Clause 6.4.1 Nominations**

The Friends’ current practice of the advertising of vacant Council positions amongst the wider membership is not enshrined in our Constitution. Also missing is the ACNC requirement that Council members declare that they are responsible people. In practice Council members do declare that they are responsible after being elected or re-elected. It would be difficult if someone was elected and then fails to declare that they are a responsible person. To remedy this situation, it is recommended that Clause 6.4.1 be*expanded* as following:

***Clause 6.4.1 Nominations***

***Nominations for Council shall be solicited among all members and:***

***(a) made in writing, signed by two members of the Friends and be accompanied by the prescribed declaration form(s) completed and signed by the candidate; and***

***(b) given to the Secretary not less than seven (7) days before the date fixed for the annual general meeting at which the election is to take place.***

**(c)** **Removal of Council Members**

Clause 6.8 currently refers to the removal of Council members at a general meeting of the Friends. The Friends only hold Annual General Meetings and may hold Special General Meetings. It is recommended that Clause 6.8 be *replaced* with:

***Clause 6.8 Removal of Council Members***

***The Friends in either an Annual General Meeting or a Special General Meeting may by resolution, subject to section 50 of the Act (rules of natural justice), remove any member of Council before the end of the member’s term of office.***

**3. New Provisions in line with current Legislation and ACNC best practice**

**(a) Proxy Voting**

The Constitution currently does not allow proxy voting (see clause 7.2.6 (d)). This disadvantages members who are not able to attend a meeting, is inconsistent with principles of fairness and equity, and is inconsistent with the ACT legislation and ACNC template. An additional new clause 7.2.7 should be *inserted*as follows:

***Clause 7.2.7 Appointment of a Proxy***

***(a) A voting member is entitled to appoint another voting member as proxy by notice given to the Secretary no later than 24 hours before the time of the meeting for which the proxy is appointed.***

***(b) An appointment of proxy (proxy form) must be signed by the member appointing the member and must contain:***

1. ***the member’s name and address***
2. ***the proxy’s name and address***
3. ***the meetings at which the appointment may be used; and***
4. ***directions on how to vote, if any.***

***(c) A proxy appointed to attend and vote for a member does not have the authority to vote at a meeting while the member is at the meeting.***

This means current Clause 7.2.7 becomes Clause 7.2.8.

**To reflect proxy voting, three other consequential changes are necessary and are discussed below.**

**(b) Clause 7.2.6 Voting**

As indicated above, this clause requires amendment to cover proxy voting and should also clarify member entitlements. It is recommended that the current clause 7.2.6 be *replaced* with:

**Clause 7.2.6 Voting**

***(a) Voting at an annual general or special general meeting shall be decided by:***

***(i) a show of hands, or***

***(ii) a secret ballot if before the vote is taken a motion is carried by twenty-five percent (25%) of voting members present requesting this form of vote.***

***(b) Members with Individual or Life membership will have one vote if present at the meeting or by proxy.***

***(c) The first two nominated members from each Household, Group, or Organisation (as described in clause 5.2) may vote if present at the meeting or by proxy.***

***(d) Before a vote is taken, the Chairperson must state whether any proxy votes have been received.***

***(e) No member may hold more than 5 proxies.***

***(f) Decisions shall be by majority vote, and if votes are divided equally on any question, the Chairperson may exercise a second or casting vote.***

**(c) Clause 5.8 Rights not Transferable**

Clause 5.8 (a) should be *amended* to allow for proxy voting at AGM and special general meetings:

***(a) cannot be transferred or transmitted to another person except for the right to vote at meetings of Friends (Annual General and Special General Meetings) in accordance with Clause 7.2.7; and***

**(d) Clause 7.2.3 Notice of Meetings**

Information provided to members prior to meetings also needs changing to refer to proxy arrangements at an AGM or special general meeting. It should also refer to the use of technology if applicable. Accordingly, it is recommended that Clause 7.2.3 be *expanded* as follows:

**Clause 7.2.3 Notice of Meetings**

***The Council shall give members at least twenty-one (21) days’ notice in writing of:***

***(a) the provisional agenda, place, day and time for an annual general or special general meeting;***

***(b) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;***

***(c) if applicable, any special resolution to be proposed and the words of that resolution; and***

***(d) the form approved for the appointment of a proxy.***