

Motion to change the ASC Constitution – for ASC AGM 2013

Reason for proposed amendments:

Summary:

The definition and regulation of not-for-profit (NFP) entities is changing (see the link below for details). These changing rules caused the ASC to seek legal advice to ensure the association is constitutionally sound both now and in the future. The advice ASC received was that the constitution of the ASC does not adhere to the requirements for NFP status and so changes were recommended.

Major legal changes affecting Australian not-for-profits:

http://www.bartier.com.au/Docs/Bartier_Bulletin_on_ACNC_Oct_2012.pdf

The legal advice ASC has received suggests that regardless of an organisation's legal structure, to be a NFP (whether tax exempt or tax paying):

- i. An organisation cannot operate for the profit of its committee members or members while its operating nor when it is wound up.
- ii. The constitution of the NFP needs to prohibit the distribution of profits or assets to committee members and members while it is operating and when it is wound up (unless the distribution is made to another NFP with a similar purpose).

Obviously the ASC does not operate for the profit of committee members or any members, but this is not defined within the constitution, which governs the way the association is run. The proposed amendments to the constitution will directly address this issue and ensure the ASC is compliant with the requirements of a not-for-profit entity as defined by the regulators at this time.

Motion to change the Constitution – Motion made by Pete Wheeler and seconded by Claire Harris. It is proposed the constitution is amended with the additional outlined below.

Note: This information has been provided to Mills Oakley Lawyers and may change slightly – if changes are suggested by the lawyers, these will be provided to the membership as soon as possible for consideration at the AGM.

Section 8 of the constitution - 'Finances':

Proposed new wording

An additional entry to the list of definitions:

8.0 Finances

8.0.1 8.0.1 As a Not for Profit (NFP) organisation the ASC must not distribute any surplus, income or assets directly or indirectly to its members while it is operating nor when it is wound up (unless the distribution is made to another NFP entity with a similar purpose).

8.0.2 8.0.2 Clause 8.0.1 does not prevent the Association from paying a member—

(a) reimbursement for expenses properly incurred by the member; or

(b) for goods or services provided by the member—

(c) an honorarium

if this is done in good faith on terms no more favourable than if the member

ASC Constitution - proposed amendment relating to the requirements of a not-for-profit entity.

was not a member.

For reference: current version

8.0 FINANCES

8.1 Membership Fees shall be payable within two (2) months of notice of the fees being due after which membership shall be deemed to have lapsed. To rejoin the Association, the person must pay the Joining Fee and Annual Membership Fee.

8.2 The funds of the Association shall be paid into a Bank Account in the name of the Association and shall only be with drawn by cheques signed by such persons as the National Council shall from time to time authorise.

8.2.1 All cheques above such limit as the National Council may from time to time determine shall be countersigned by the Treasurer.

8.3 Nothing in Clause 8.2 shall prevent the National Committee or National Executive from investing any moneys of the Association not immediately required for any of its objects or purposes, in such manner as it may from time to time determine.