



ACT BAR ASSOCIATION

Constitution of The Australian Capital Territory Bar Association

ABN 84 008 481 258

Corporations Act 2001

Adopted on 21 September 2006

CONSTITUTION OF THE AUSTRALIAN CAPITAL TERRITORY BAR ASSOCIATION

1 PRELIMINARY

NAME

1.1 The name of the Company is The Australian Capital Territory Bar Association

DICTIONARY

1.2 When used in this Constitution the following terms shall have the following meanings unless the context or subject matter otherwise requires:

- Act** means the Australian Capital Territory Legal Profession Act 2006;
- Bar Association** means the Australian Capital Territory Bar Association;
- Bar Council** means the Council of the Bar Association elected pursuant to this Constitution;
- Business Day** means any day except a Saturday, Sunday or a public holiday in the Australian Capital Territory (ACT);
- Constitution** means this Constitution for the time being of the Bar Association;
- Election Ballot Paper** means the ballot paper prepared by the Returning Officer for the election of members of the Bar Council in accordance with this Constitution;
- Chief Executive Officer** means the person appointed by the Bar Council to that position;
- Financial year** means the period of 12 months commencing on 1 July and ending on the following 30 June, or such other period as the Bar Council may determine from time to time;
- Government lawyer** means a lawyer as defined in s82 (5) of the Act as it is at 1 July 2006 or as amended from time to time.
- General Meeting** means a meeting of the Bar Association or of members
- Interstate practising barrister** means a barrister whose sole or principal place of legal practice is in a State or Territory of the Commonwealth of Australia other than the Australian Capital Territory and who holds a current interstate practising certificate, but does not hold a practising Certificate under the Act.
- Law** means the Corporations Act 2001 of the Commonwealth as it applies to the Association;

- Legal Practitioner** means a person other than a Local Practising Barrister having a right to practise law as a solicitor, barrister or solicitor and barrister in Australia or in any other country;
- Local Practising Barrister** means a lawyer including a Government lawyer who holds a local barrister practising certificate issued under the Act;
- Member** means a person whose name is entered on the Register as a Member of the Bar Association;
- Office** means the registered office of the Bar Association;
- Officer** means an Officer of the Bar Association within the meaning of the Law and includes an Executive Officer, a member of the Council or an Office Bearer;
- Office Bearer** means a person holding the office of President, Vice President, Treasurer or Secretary;
- Practising barrister** means a person whose principal occupation is the practice of law solely as a barrister;
- Polling officers** means the persons appointed by the Bar Council as the polling officers under this Constitution;
- Returning officer** means the person appointed by the Bar Council as a returning officer under this Constitution;

1.3 INTERPRETATION

In this Constitution unless the context otherwise requires

- 1.3.1 headings are for convenience only and do not affect interpretation;
- 1.3.2 the singular includes the plural and the converse;
- 1.3.3 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.3.4 a reference to any statute, regulation, proclamation, or by law includes all statutes, regulations, proclamations, or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations and by-laws issued under that statute;
- 1.3.5 a reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;

- 1.3.6** a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- 1.3.7** a reference to an act, matter or thing done under the Act includes a reference to that act matter or thing as affirmed, varied or substituted by any legislative body having power to review decisions made by the Bar Association or Bar Council under the Act;
- 1.3.8** in a provision of this Constitution that deals with a matter dealt with by the Law, an expression has the same meaning as in the Law, except so far as the contrary intention appears.

2 APPLICATION OF THE CORPORATION ACT

- 2.1** This constitution is to be interpreted subject to the Corporations Act 2001; however the rules that apply to companies as replaceable rules under the Law do not apply to the Bar Association;
- 2.2** The Bar Association is a Public Company Limited by Guarantee and not having a share capital

3 STATEMENT OF OBJECTS

- 3.1** The objects of the Association are:
- 3.1.1** To promote the administration of justice;
- 3.1.2** To promote the rule of law within Australia and in particular within the Australian Capital Territory;
- 3.1.3** To promote, maintain and improve the interests and standards of Local Practising Barristers;
- 3.1.4** To promote fair and honourable practice amongst barristers; to suppress, discourage and prevent unsatisfactory professional conduct and professional misconduct; subject to the Act and in so far as the law permits to inquire into and decide questions relating to the professional conduct and professional etiquette of barristers; to make rules with regard to matters of professional conduct and etiquette of barristers including rules for the imposition on members of penalties, including expulsion, suspension from membership or fines or to censure any member guilty of unsatisfactory professional conduct or professional misconduct or a breach of professional etiquette; to give rulings with respect to matters of professional conduct or etiquette and, if deemed necessary, in the absence of any provision of the Act in respect thereof to inform the Supreme Court of the Australian Capital Territory or the Disciplinary Tribunal established pursuant to the Act.
- 3.1.5** To exercise such powers as may be conferred upon the Bar Association by the Act;
- 3.1.6** To maintain in the public interest a strong and independent Bar in the Australian Capital Territory;

- 3.1.7** To arrange and promote legal education including continuing professional development for members and the Australian Capital Territory legal profession and reading programs for those seeking to become a Local Practising Barrister;
- 3.1.8** In furtherance of these objects, to make suggestions upon legislation, law reform, rules of Court, and business and procedure of Courts, and the accommodation and condition of Court buildings;
- 3.1.9** To confer with the ACT Law Society or any other body of persons concerned with the practice or administration of the profession of law in the Australian Capital Territory;
- 3.1.10** To confer with bodies representing the profession of law or its administration in Australia or countries outside the Australia as to matters affecting the profession of law;
- 3.1.11** To join any body concerned with the practice and administration of the profession of law in Australia or overseas;
- 3.1.12** To promote and assist with law reporting;
- 3.1.13** To encourage social relations amongst its members and between Members and members of any other society or body concerned with the practice and/or administration of the profession of law in the Australian Capital Territory or elsewhere;
- 3.1.14** To promote research into ways in which the profession of law might best in future serve the community and the maintenance of the rule of law;
- 3.1.15** To assist indigent and necessitous members or ex-members of the Bar Association, or the spouses, children or other dependants of such members or ex-members or of deceased members who are in need of assistance, and to assist or promote any organisation having for its object the financial assistance of such persons or any of them;
- 3.1.16** To purchase lease license or in exchange hire or otherwise acquire real or personal property and any rights and privileges which may be deemed necessary or convenient for any of the purposes of the Bar Association;
- 3.1.17** To construct maintain and alter any buildings or premises necessary or convenient for the purposes of the Bar Association;
- 3.1.18** To sell improve manage develop exchange lease mortgage place under option dispose of turn to account or otherwise deal with either absolutely conditionally or for any limited interest all or any part of the property and assets of the Bar Association for such consideration as the Bar Association may think fit with power on any sale to allow any time or times for the payment of the whole or any part of the purchase money arising from such sale either with or without interest in the meantime and if with interest then at such rate or rates as the Bar Association may think fit and either with or without security and if with security then with such security as the Bar Association may think fit;
- 3.1.19** To grant create and transfer or reserve such easements of way drainage light air or support or any other easements of any kind whatsoever over upon or affecting the property of the

Bar Association or any part or parts thereof as to the Bar Association may appear necessary or expedient and to surrender or accept the surrender of any easement;

- 3.1.20 To invest any moneys of the Bar Association not immediately required for any of its objects in such manner as may from time to time be determined;
- 3.1.21 So far as it may be necessary so to do for or incidental to the purposes of the Bar Association to make draw accept endorse or negotiate cheques promissory notes bills of exchange or other negotiable or transferable instruments;
- 3.1.22 To borrow or raise money in such manner as the Bar Association may think fit for any of its objects and in particular by mortgage or other securities of the Bar Association with power if thought fit to charge such mortgages or other securities upon all or any of the property of the Bar Association present or future;
- 3.1.23 To arrange superannuation and pension schemes and life, sickness and accident insurance for the benefit of its members and employees and their dependants, to arrange insurance for members against proceedings for negligence or other actions including disciplinary and criminal proceedings arising from the conduct of their profession, donations for charitable purposes and for the advancement of legal education;
- 3.1.24 To make levies on members for the purposes of the Bar Association as approved by a majority of members present and voting at a General Meeting of the Bar Association;
- 3.1.25 To do all such things as are incidental or conducive to the attainment of the above objects or any of them.

4 MEMBERSHIP

4.1 Types of membership

A person admitted as a member of the association shall be admitted as :

- (a) an Ordinary Member class A or class B;
- (b) a Life Member;

4.2 Ordinary Members –Class A

4.2.1 Class A is divided into the following parts:

- (a) Part I: Local Practising Barristers; and
- (b) Part II Members who were ordinary members immediately prior to 4 July 2002 and who do not fall within Part I. (including an interstate practising barrister who was an ordinary member as at 4 July 2002). The qualification of a member under this Part II ceases upon cessation of membership as an Ordinary Member - Class A under this Constitution.

4.2.2 In addition to any other rights conferred upon Ordinary Members by this Constitution, Ordinary Members – Class A have the right to:

- (a) be nominated for election to the Bar Council;
- (b) nominate a member for election to the Bar Council; and
- (c) vote at an election of the Bar Council.

4.3. Ordinary Members-Class B

4.3.1 Class B is divided into the following parts:

- (a) Part I Interstate Practising Barristers other than barristers that are Ordinary Members – Class A Part 11;
- (b) Part II Non Practising Barristers; and
- (c) Part III Judges, magistrates, retired judges, retired magistrates, retired practising barristers and such other persons as the Bar Council may from time to time determine either individually or as a group.

4.3.2 Ordinary Members - Class B have the same rights as Ordinary Members – Class A except the rights set out in clause 4.2.2;

4.4 Life Members

4.4.1 A life member shall be a member or former member who is by virtue of his or her services to the Bar Association, the law or to the legal profession in the Australian Capital Territory entitled to be bestowed the privileges of life membership of the Association;

4.4.2 Upon being made a life member any such person is exempted from payment of the annual subscription fee;

4.4.3 A life member has the same entitlements as that of an Ordinary Member Class – A, to vote at any meetings;

4.4.4 A life member shall not be entitled to bear any office of the Bar Association; and

4.4.5 The decision to appoint any person as a life member shall only be made on the recommendation of the Bar Council and shall require the resolution of the Bar Association at an Annual General Meeting or Extraordinary General Meeting.

4.5 Change of category

The Bar Council may, of its own motion or upon request of a member transfer membership from Ordinary Member - Class A to Ordinary Member - Class B or the converse.

4.6 Transitional Positions

- 4.6.1 A person who, immediately before the adoption of this Constitution, was an Ordinary Member Class A becomes on adoption of this Constitution an Ordinary Member –Class A in whichever part of that class for which he or she qualifies.
- 4.6.2 A person who immediately before the adoption of this Constitution was an Ordinary Member Class B or a non practising member becomes on adoption of this Constitution an Ordinary Member - Class B in whichever part of that class for which he or she qualifies.
- 4.6.3 A person who immediately before the adoption of this Constitution was a Life Member shall continue to have the same status of membership on adoption of this Constitution.

4.7 Register

- 4.7.1 The Bar Association will keep and maintain a Register of Members;
- 4.7.2 The Register shall be kept at the office of the Association and shall include the Member's name, address, and class of membership.
- 4.7.3 The Register may be kept in electronic form.
- 4.7.4 The book document and/or electronic format in which the Members were recorded immediately prior to the adoption of this Constitution shall be the Register provided that the Executive Officer may change the format of the Register subject to the approval of the Bar Council.

4.8 Duties of Members

- 4.8.1 Subject to this Constitution, each member who practises law as a barrister in the Australian Capital Territory shall abide by the rules and decisions made by the Bar Council in relation to practice as a barrister in the Australian Capital Territory.
- 4.8.2 If a Member damages or loses any property of the Bar Association, the Member shall make good the damage or loss to the satisfaction of the Bar Council. If any other person, not being a Member, damages or loses any property of the Bar Association as a consequence of his or her introduction by a Member to any premises of the Bar Association or any function held by it that Member shall make good the damage or loss to the satisfaction of the Bar Council.

4.9 Membership not transferable

Membership of the Bar Association is personal and is not transferable.

5 ADMISSION TO MEMBERSHIP

- 5.1 The Bar Council has full discretion to admit any eligible person as a member.
- 5.2 An application for membership shall be in a form approved by the Bar Council.
- 5.3 The Bar Council shall not admit a person as an Ordinary Member – Class A, Part I unless

- (a) it is satisfied that the person;
 - i. intends to practise law in the Australian Capital Territory only as a barrister
 - ii. does not intend to carry on, engage in or practise any business, profession or occupation that is inconsistent with practise as a barrister;
 - iii. does not intend to practise as a barrister in partnership with any person or as an employee of any person;
 - iv. does not intend to share profits from practise as a barrister with any other person;
- (b) it has obtained from the person such undertakings as are or may be required pursuant to this Constitution; and
- (c) it is satisfied the person is a fit and proper person to be a barrister.

5.4 When a candidate for membership has been admitted to membership by the Bar Council the Secretary of the Bar Association or an agent appointed by the Bar Council shall as soon as possible send to him or her at the address given upon his or her application for membership a request for payment of any entrance fee and first annual subscription. Upon payment of any entrance fee and first annual subscription an admitted candidate shall become a member of the Bar Association. If within two months of the date of the forwarding to the member of the said request the candidate has not complied with that request the Bar Council may in its discretion cancel the Member's admission to membership.

5.5 A Member remains a Member until membership is terminated in accordance with this Constitution.

6 MEMBERSHIP FEES

6.1 Annual membership fees.

6.1.1 The entrance fee and annual subscription for all ordinary and non-practising members shall be set by the Bar Council

6.1.2 The Bar Council may at its discretion fix different entrance fees and subscriptions for different parts and classes of members provided that the Bar Association in general meeting may revoke or vary any such determination by the Council and provided further that the entrance fee and annual subscription fixed for non-practising members shall never exceed those fixed for ordinary members.

6.1.3 Membership fees are payable in full annually in advance in respect of each financial year on the first day of the financial year. Payment may be made within one month of the due date (or such other date as the Bar Council may from time to time determine).

6.1.4 Without limiting the discretion of the Bar Council to set annual subscription fees otherwise, a member's annual subscription fee may include an amount in respect of the member's participation

in any group scheme for superannuation, temporary or permanent disability insurance or life insurance, as the case may be, provided or arranged by the Bar Association.¹

6.2 Failure to pay annual membership fees

- 6.2.1** Any Member whose annual subscription remains unpaid for a period of one month after it has become due and who does not pay such subscription within one month after the Secretary, or a person appointed by the Bar Council to do so, has caused to be posted to him or her at his or her address as shown in the Register at the time of such posting, notice of the fact that such subscription has remained so unpaid shall be liable at the discretion of the Bar Council to have his or her membership forfeited.
- 6.2.2** No Member who is in arrears in respect of any subscription shall be eligible to be nominated as a candidate for the Bar Council or to take part in any elections for the Bar Council or to vote at any meeting of the Bar Association.

7 CESSATION OF MEMBERSHIP

- 7.1** If an Ordinary Member- Class A ceases or has ceased to practise as a barrister only and if thereupon he or she becomes a non-practising barrister he or she shall cease to be an Ordinary Member-Class A and may become an Ordinary Member-Class B without payment of any further entrance fee or any further subscription for the then current subscription year provided that the Bar Council may in its discretion allow an Ordinary Member –Class A so ceasing to practise to continue as an Ordinary Member-Class A. If a Member commences to practise in the Australian Capital Territory otherwise than as a barrister only he or she shall upon such commencement cease to be a member of the Association. If a non-practising member becomes eligible to be an Ordinary Member–Class A he or she may on his or her application in that regard with the approval of the Bar Council thereupon become an Ordinary Member-Class A without the payment of any further entrance fee or any further subscription for the then current subscription year.

7.2 Resignation

- 7.2.1** Subject to this Constitution, a Member may resign from membership by a Notice in writing to the Executive Officer.
- 7.2.2** Upon receipt of the resignation notice, the Member’s name may be removed from the Register by the Executive Officer and the Executive Officer shall record in the Register that the removal of the Member’s name was at the request of the member, unless;
- (a) there are proceedings (contemplated, pending or occurring) against the Member for unsatisfactory professional conduct or professional misconduct under the Act, or for breach of any of the provisions of the Constitution;
 - (b) a requirement of the Bar Council, including a requirement to pay membership fees or any other moneys owing to the Bar Association, has not been complied with by the Member, or is still in operation;

¹ Passed at members Extraordinary General meeting on 20 March 2012.

- (c) the membership of the Member has been terminated or the Member's name has been ordered to be struck off by the Supreme Court or has been recommended to be struck off under the provisions of the Act;
- (d) the Bar Council has not decided to deal with the resignation; or
- (e) any other condition or stipulation made by the Bar Council from time to time (whether before or after the date of the receipt of the resignation) is not satisfied;

in which case the Member's name may only be removed from the Register by a resolution of the Bar Council.

7.3 Death

The name of a Member who dies shall be removed from the Register and the Executive Officer shall record in the Register that the Member has died.

7.4 Termination of membership by resolution of the Bar Council or Members

7.4.1 Subject to this Constitution, the Bar Council or Members in General Meeting may at any time terminate the membership of any Member if the Member;

- (a) ceases to qualify for admission to membership of the Bar Association;
- (b) refuses or neglects to comply with this Constitution or any rules made by the Bar Council;
- (c) engages in conduct which in the opinion of the Bar Council is unbecoming of a member or is prejudicial to the interests of the Bar Association; or
- (d) fails to pay any debt due to the Bar Association for a period of three months after the due date of payment.

7.4.2 The name of any person whose membership is terminated shall be removed from the Register.

7.5 Continuing obligations

Any person who has ceased to be a member shall continue to be liable in respect of all liabilities to the Bar Association incurred by him or her up to the time of ceasing to be a member.

8 GENERAL MEETINGS

8.1 Annual General Meeting

8.1.1 The Bar Council shall in each calendar year call an Annual General Meeting to be held in addition to any other meetings in that year.

8.1.2 The Annual General Meeting of the Association shall be held no later than 30 September in each year.

8.2 General Meeting

The Bar Council may whenever it thinks fit and shall on a requisition made by members in accordance with the Law convene and arrange to hold a General Meeting.

8.3 Notice of General Meetings

8.3.1 Subject to the Law, if it is proposed to pass a special resolution, not less than 21 days notice and in other cases not less than 14 days notice of a General Meeting, must be given to all Members.

8.3.2 A notice of a General Meeting shall specify:

- (a) the date time and place of the meeting;
- (b) the general nature of the business to be transacted at the meeting;

8.3.3 It is not necessary for a notice of an Annual General Meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial reports, the reports of the Bar Council or the appointment of or reports of auditors or the fixing of any auditors remuneration.

8.3.4 A member may waive notice of any General Meeting by notice in writing to the Bar Association.

8.3.5 The non receipt or failure to give notice of a General Meeting to any person entitled to receive such notice under clause 8.3.1 does not invalidate any act, matter or thing done or resolution passed at the General Meeting:

- (i) if the non receipt or failure occurred by accident or error; or
- (ii) before or after the meeting , the person:
 - (a) waives notice of that meeting; or
 - (b) notifies the Bar Association of the person's agreement to that act, matter, thing or resolution by notice in writing to the Bar Association.

8.3.6 A person's attendance at a General Meeting;

- (a) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
- (b) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

8.4 Any Member eligible to vote may at any General Meeting propose any motion relative to the objects of the Association provided that notice is given to the Secretary at least seven days prior to the giving of notice of such meeting and provided that the notice of such meeting specifies the general nature of the business referred to in the motion.

8.5 C cancelling, Postponing and Adjourning General Meetings

8.5.1 The Bar Council may, by notice to everyone entitled to notice of the meeting:

- (a) postpone an Annual General Meeting or a General Meeting called by the Bar Council as required by s.249 D of the Law, but not so as to contravene the Law; and
- (b) postpone or cancel any other General Meeting called by the Bar Council.

8.5.2 The person chairing a General Meeting at which a quorum is present:

- (a) may adjourn the meeting with the consent of the meeting by Ordinary Resolution; and
- (b) must adjourn the meeting if directed by ordinary Resolution.

8.5.3 The only business that an adjourned General Meeting may deal with is business unfinished at the General Meeting that was adjourned.

8.5.4 Notice of an adjourned General Meeting must be given if the adjournment is more than one month.

9 PROCEDURE AT A GENERAL MEETING

9.1 Quorum at a General Meeting

9.1.1 No business shall be transacted at any Annual or Extraordinary General Meeting unless a quorum of Members is present and such quorum shall consist of seven or more Members entitled to vote.

9.1.2 If within twenty minutes from the time appointed for the commencement of any Annual or other General Meeting or a longer period allowed by the Chair, a quorum of members is not present, such meeting, if convened by a requisition of members or otherwise than by the Bar Council, shall be dissolved and in any other case it shall stand adjourned to the same day in the following week at the same hour and place or another time or place determined by the Chair and if at such adjourned meeting a quorum of members is not present within fifteen minutes from the time fixed for the commencement thereof it shall be adjourned to a date to be fixed.

9.1.3 The President or in his or her absence the Vice-President shall be the Chair of every Annual or other General Meeting provided that in their absence Members present at such meetings who are entitled to vote may elect some other person present at the meeting to be the Chairman thereof.

- 9.1.4 At any Annual or other General Meeting unless a poll is demanded by not less than five Members present and having the right to vote at the meeting a resolution put to the Meeting shall be decided on a show of hands. A declaration by the Chair that a resolution has been carried or carried by a certain majority and an entry to that effect in the Minutes of the meeting shall be conclusive evidence of the fact or facts so declared without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 9.1.5 If a poll is demanded it shall be taken immediately and such poll shall be deemed to be the resolution of the meeting in respect of the business for which such poll shall have been demanded.
- 9.1.6 On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointer.
- 9.1.7 No person shall be entitled to act as proxy unless he is a Member entitled to vote at the Meeting.
- 9.1.8 The instrument appointing a proxy shall be deposited at the registered office of the Bar Association not less than twenty four hours before the time appointed for the commencement of the meeting or adjourned meeting at which such proxy shall be by virtue of his appointment as such proxy authorised to vote.
- 9.1.9 Every instrument appointing a proxy shall be in the following form:-

I, of
Being an Ordinary Member-Class A of the Australian Capital Territory Bar
Association hereby appoint

Of

As my proxy to vote for me and on my behalf at the General Meeting of the
Association to be held on the

Day of

And at any adjournment thereof.

Signed this day of 20
In the presence of.

10 BAR COUNCIL

10.1 There shall be a Bar Council which shall consist of:-

- (a) The President;
- (b) One Vice-President;
- (c) The Secretary;
- (d) The Treasurer, and
- (e) Five Council Members.

- 10.2** All members of the Bar Council shall be Ordinary Members-Class A
- 10.3** All members of the Bar Council shall retire annually at the Annual General Meeting and each retiring member of the Bar Council shall be eligible for re-election.
- 10.4** No member shall be eligible to hold the office of President for more than two (2) consecutive years unless the members shall resolve prior to the Annual General Meeting that the member holding the office of President be eligible to hold that office for a single further term of one year.
- 10.5** For the purposes of the Law each member of the Bar Council shall be deemed to be a Director of the Bar Association.
- 10.6** The Bar Council shall have power at any time and from time to time to appoint any member to be a member of the Bar Council to fill a vacancy. Any member so appointed shall hold office until the next Annual Meeting.
- 10.7** The Bar Association may resolve to remove any member of the Bar Council before the expiration of his or her period of office and may resolve to appoint another member in his or her place. A member so appointed shall hold office until the next Annual General Meeting.
- 10.8** A member of the Council shall be deemed to have vacated office if:
- (a) the person becomes bankrupt or makes any arrangements of composition with the person's creditors generally;
 - (b) the person becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (c) the person resigns office by notice in writing to the Bar Council;
 - (d) the person for more than three (3) months is absent without permission of the Bar Council from meetings of the Bar Council held during that period;
 - (e) the person ceases to be a member of the Bar Association;
 - (f) there happens any event which disentitles the person to practise as a barrister.

11 ELECTION OF MEMBERS OF THE COUNCIL

- 11.1** The election of members to council shall be by a postal ballot;
- 11.2** The Bar Council must be elected once in each financial year;
- 11.3** Only Ordinary Members - Class A are entitled to vote in an election of the Bar Council;
- 11.4** Candidates for membership of the Council shall be proposed and seconded in writing by members of the Bar Association and the nomination forms shall not be valid unless they bear the written assent of the candidate to his or her nomination;

- 11.5** The election shall be conducted by a secret ballot under the supervision of the Secretary or of a Returning Officer appointed by the Bar Council;
- 11.6** The Returning Officer shall send to each member entitled to vote a notice:
- (a) Specifying the dates of the opening and the closing of the ballot for the forthcoming election of councillors;
 - (b) Calling for nominations of eligible members as candidates for the forthcoming election of councillors to be received by the returning officer or left at the office not later than 21 days after the date of the notice given; and
 - (c) No later than 6 weeks prior to the annual general meeting;
- 11.7** At the expiration of the time for receiving nominations the Returning Officer shall prepare a list containing the names of all duly nominated and eligible candidates. If there is only one nomination for any of the positions of President, Vice-President, Secretary or Treasurer, then the person so nominated shall be deemed to be elected to that position.
- 11.7.1** Within the time prescribed by the Returning Officer for distribution of ballot papers the Returning Officer shall send to each member eligible to vote at the election an election ballot paper
- 11.7.2** The election ballot paper shall be in the form prescribed by the Returning Officer from time to time and shall include the names of all duly nominated and eligible candidates and such other information as the Bar Council shall determine and shall specify the day prescribed by the Returning Officer for the closing of voting in the election;
- 11.7.3** The non receipt of notice of election or election ballot paper by any member does not invalidate the election;
- 11.7.4** A vote is cast by a member eligible to vote by:
- (a) In relation to the offices of President, Vice President, Secretary and Treasurer, placing a cross, tick or other mark opposite the names of the nominated members on the election ballot paper for whom the voting member wishes to vote.
 - (b) In relation to the members of the Bar Council other than those referred to in (a) above, by placing on the election ballot paper opposite the names of the candidates for whom the voting member wishes to vote numbers in order of preference starting with the number "1" up to the number of vacant positions. Members may place numbers beyond their first preference against the names of the candidates up to the number of candidates standing at their option but a ballot which does not at least contain a "1" against the member's first preference candidate will be deemed to be informal.

- (c) Placing the election ballot paper in the member's own envelope or in the envelope provided by the returning officer.
- (d) If the election ballot paper is placed in the member's own envelope placing that envelope in the envelope provided by the Returning Officer.
- (e) Legibly writing his or her name and signing his or her name on the outside of the envelope provided by the Returning Officer which carries the address to which completed ballots must be sent and sealing that envelope.
- (f) Returning that envelope to the Returning Officer so that the envelope containing the complete ballot is received by the Returning Officer not later than 5pm on the day prescribed for the closing of voting in the election.

11.8 A vote may be cast only on the election ballot paper.

11.9 If before the time prescribed for the closing of voting in the election any nominated member:

- (a) withdraws his or her nomination;
- (b) ceases for any reason to be eligible to be elected to the Bar Council; or
- (c) dies.

the ballot remains valid and any other votes for the nominated member shall be disregarded by the Returning Officer.

11.10 After the ballot has closed the Polling Officer shall count the votes cast for each candidate in accordance with the provisions of Appendix "A" to this Constitution and shall certify the result on the count in writing to the Returning Officer.

11.11 The Returning Officer shall declare the elected members by causing particulars of the declaration to be open for inspection at the Office of the Bar Association or such other place as the Bar Council determines and the results should be announced at the Annual General Meeting.

11.12 The Returning Officer shall have the conduct of the election for the Bar Council and:

- (a) Shall receive the certificate of the polling officers;
- (b) Declare who was elected;
- (c) Determine any questions arising in relation to the election;
- (d) The election ballot papers shall be held by the secretary for three business days after the result of the election is declared

and then be destroyed unless the Bar Council determines otherwise.

12 POWERS AND DUTIES OF THE BAR COUNCIL

- 12.1 The business of the Bar Association shall be managed by the Bar Council;
- 12.2 The Bar Council may exercise all the powers of the Bar Association and may do all acts or exercise all powers that the Bar Association may do or exercise which are not required to be done or exercised in General Meeting by the Law or by this Constitution;
- 12.3 The Bar Council may employ or engage the services of any person as an employee or contractor on such terms as it may think fit;
- 12.4 The Bar Council shall meet at least every month except January at a time and place set by the Bar Council. Three members of the Bar Council shall constitute a quorum;
- 12.5 The Bar Council shall hold such other meetings as the President or the Bar Council from time to time shall consider desirable;
- 12.6 The Council shall have power to make rulings upon all matters of professional conduct, practice and etiquette to be observed by members in the practice of their profession as barristers;
- 12.7 The ruling of the Council upon any matter of professional conduct, practice or etiquette shall be binding on members;
- 12.8 The Council shall have power from time to time to make amend or repeal rules:
 - (a) for regulating the conduct of its own business; and
 - (b) for regulating the professional conduct of members.

13 FINANCE

- 13.1 The Bar Council must cause proper financial records to be kept in accordance with the Law.
- 13.2 The financial records must be kept at the Office or subject to the Law at such place as the Bar Council determines.
- 13.3 The financial records must be always open to the inspection of Officers.
- 13.4 The financial records shall be available for inspection by members as determined by the Bar Council subject to the Law.
- 13.5 The Treasurer shall at the Annual General Meeting present a balance sheet and statement of receipts and expenditure of the Association for the previous year.

- 13.6 An appointment or removal of an auditor is to be as may be required by the Law and his or her duties regulated as required by the Law.

14 CASTING VOTE

At all meetings either of the Bar Association or of the Bar Council in the case of an equality of votes on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

15 TIME

Where the time for doing any act under this Constitution expires on a Saturday, Sunday or a public holiday the act shall be deemed to have been done within the time prescribed if done on the next day which is not a Saturday, Sunday or public holiday.

16 NOTICES

- 16.1 Any notice required by this Constitution to be given to any member may be given by the Bar Association;

- (a) Personally;
- (b) by sending it by prepaid post to the member at the member's address or if the member's address is outside Australia by airmail;
- (c) by leaving it at the member's address;
- (d) by fax addressed to the member's fax number;
- (e) by email to the member's email address;
- (f) by sending it to the members document exchange number;
- (g) in any other way the Law provides.

17 MEMBER'S ADDRESS

- 17.1 A Member's address is the address shown on the Register as the Member's address or as the address where he may be served;

- 17.1.1 A Member's fax number, email address or Document Exchange Number is that shown on the Register as such;

- 17.1.2 If the Member changes his address or other details of where he or she may be served the Member shall promptly notify the Bar Association of any such change;

- 17.1.3 A notice sent by post to an address inside Australia is taken to be received two days after the date of its posting. If the address is outside Australia it is taken to have been received five days after the date of posting;

17.2 Service by fax

17.2.1 A notice served by fax is not served unless a complete and correct transmission report is received;

17.2.2 A notice sent by fax is taken to be served on the next business day.

17.3 Service by email

17.3.1 A notice served by email is not served if the computer system used reports it was not received or it was returned as not being delivered;

17.3.2 A notice served by email is taken to be served the next business day.

17.4 Service by Document Exchange

A notice served by document exchange is taken to have been served two business days later.

17.5 Signature on Notice

The Bar Association may sign a notice in any way it determines.

17.7 Counting Days

Where a specified period must elapse after giving a notice before an action may be taken the day of giving the notice and the last day of the period are not counted.

17.8 Notice of Meetings

17.8.1 Subject to the Law, a notice of a General meeting or a meeting of the Bar Council is taken to be given on the day of dispatch.

17.8.2 The accidental failure to give a notice of meeting to a Member or Officer will not invalidate the proceedings of the meeting.

18 SEAL

There shall be a common seal (hereafter referred to as “the seal”) of the Bar Association which will include the words “The Australian Capital Territory Bar Association” and which otherwise shall be in such form as the Bar Council shall decide. The Bar Council shall provide for the safe custody of the seal which shall only be used by the authority of the Bar Council or by a Committee of the Bar Council authorised by it and every instrument to which the seal is affixed shall be signed by two members of the Bar Council.

19 APPLICATION OF BAR ASSOCIATION ASSETS

19.1 The income and property of the Bar Association shall be applied solely towards the promotion of the objects of the Bar Association as set out in this Constitution. The Bar Association is prohibited from making any distribution to its members, whether in money,

property or in any other way, of any assets belonging to the Bar Association. This does not prevent the payment in good faith of reasonable and proper remuneration to any officers or servants of the Bar Association or to any member of the Association or other person in return for any services actually rendered to the Bar Association nor prevent the payment of interest on money lent or of reasonable and proper rent for premises demised or let by any member to the Bar Association.

- 19.2** The Bar Association is prohibited from appointing any member of the Bar Council to any salaried office of the Bar Association or any office of the Bar Association paid by fees and from giving any remuneration or other benefit in money or moneys worth to any member of the Bar Council except repayment of out of pocket expenses and interest on money lent or reasonable and proper rent for premises demised or let to the Bar Association.
- 19.3** Clause 19.2 does not apply to any payment to any company in which such member shall not hold more than one per cent of the capital and such member shall not be bound to account for any share of profits he or she may receive in respect of such payment nor shall clauses 19.1 or 19.2 apply to prevent the bona fide relieving or assisting of persons under clause 3.1.15 of this Constitution.

20 WINDING UP

- 20.1** Every member of the Bar Association undertakes to contribute to the assets of the Bar Association, in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member for payment of the debts and liabilities of the Bar Association contracted before he or she ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Twenty Dollars (\$20.00);
- 20.2** If upon the winding up of the Bar Association there remains, after satisfaction of all its debts and liabilities any property it shall not be paid to or distributed among the members of the Bar Association but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Bar Association and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed upon the Bar Association by this Constitution
- 20.3** The institution or institutions, referred to in clause 20.2 must be nominated by special resolution of the Bar Association at or before the time of winding up and in default thereof by the Chief Justice of the Supreme Court of the Australian Capital Territory or a Judge of the Court to whom the question is referred by the Chief Justice and if and so far as effect cannot be given to the aforesaid provision then to some charitable object.

21 INDEMNITY OF OFFICERS

- 21.1** To the extent that the Law permits and subject to this rule the Bar Association must indemnify each Officer against any liability that the Officer may incur by being an Officer or in carrying out the business or exercising the powers of the Bar Association.
- 21.2** The liability referred to in clause 21.1 includes, without limitation:
- (a) a liability to another person (except the Bar Association or a related body corporate); and

- (b) a liability for costs or expenses incurred by the Officer:
 - (i) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
 - (ii) in connection with an application, in relation to such a proceeding, in which the Court grants relief to the Officer under the Law.

21.3 The indemnity under this Clause will be limited to the amount of the liability after deducting the amount in respect of which the person is otherwise indemnified by another person including an insurer.

21.4 To the maximum extent permitted by the Law, "liability means all costs, charges, losses, damages, expenses, penalties, and liabilities of any kind, including in particular, legal costs (calculated on a solicitor/client basis) incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.

21.5 Former Officers

The indemnities conferred on Officers by clause 21.1 apply in relation to each person who is at any time an Officer for all the period that person is an Officer. The person may claim on the indemnities in respect of that period even though the person is not an Officer at the time the claim is made.

21.5.1 Further Indemnities

The Bar Association may indemnify or agree to indemnify or enter into (and pay premiums on) a contract of insurance in respect of a person (whether or not that person is or has been, an Officer) to the extent permitted by the Law. This power is not restricted by clause 21.1.

APPENDIX "A"

In relation to offices of President, Vice-President, Secretary and Treasurer, the candidate with the most votes shall be elected to the position. In relation to the election of other Council members, the process of counting votes is a proportional one as follows:-

- (1) Sort all ballot papers to first preferences for each candidate and informal and count the total number of votes in each category.
- (2) The total number of formal ballot papers is divided by one more than the number of candidates required to be elected, and the result increased by one, disregarding any remainder. This is the quota required for election.

- (3) Any candidate who reaches the quota or above on the first count of preferences is elected. If the number of votes for the successful candidate does not exceed the quota, the ballot papers are set aside as being finally dealt with.
- (4) Where the number of votes obtained by any candidate exceeds the quota, each ballot paper counted to the successful candidate at the count at which the candidate became successful is dealt with as follows:-
- (a) if it does not specify a next available preference it is set aside as exhausted;
 - (b) if it specifies a next available preference it is grouped according to the candidate for whom that preference is recorded;
 - (c) the surplus of the elected candidate is divided by the total number of ballot papers transferred and the resulting fraction becomes the transfer value according to the following formula:

Number of surplus votes

Number of ballot papers with further preferences shown; and

- (d) the ballot papers transferred are multiplied by the transfer value, and the result is added to the votes of the continuing candidates.
- (5) Where, after the counting of first preferences or after any transfer, more than one candidate has a surplus, the largest surplus is dealt with first. Where a surplus arises only after a transfer of votes, any surpluses that arose before the transfer should be dealt with first. Where two or more candidates with a surplus have the same number of votes, deal first with the surplus of the candidate who had the most votes at the last count at which they were unequal. If there are no counts at which those candidates had unequal votes, then the returning officer should determine by lot which candidate's surplus is to be dealt with first.
- (6) Where the number of votes obtained by a candidate is raised up to or above the quota by any transfer of votes, the candidate is elected. No vote of any other candidate is to be transferred to an elected candidate at a later count.
- (7) If, after all surpluses have been transferred, candidates still need to be elected, the candidate with the fewest votes (including transfers)

is then excluded, with all of that candidate's ballot papers transferred to the next available candidate in order of preference. Ballot papers transferred from an excluded candidate retain the transfer value they had when received by the excluded candidate.

- (8) Where at any time it becomes necessary to exclude a candidate, and two or more candidates standing lowest on the poll have the same number of votes, exclude that candidate who had fewer votes at the last count at which they were unequal. If there are no counts at which those candidates had unequal votes, then the returning officer should determine by lot the candidate to be excluded.
- (9) The same process of transferring surplus votes of elected candidates and excluding the candidate with the fewest votes should be repeated until all the candidates required are elected.
- (10) Where any surplus arises after a candidate is excluded it should be dealt with before any other candidate is excluded.
- (11) If, after a transfer of votes the number of continuing candidates is equal to the number of positions remaining to be filled, each of those continuing candidates is successful and the scrutiny is finished.
- (12) In determining which candidate is next in the order of the voter's preference, any candidates who have been declared elected or have been excluded should not be considered. Where the ballot paper fails to indicate a preference for a continuing candidate it would be set aside as exhausted.

If in a series of preferences a number is repeated or is missing, the preferences can be counted up until the break in sequence and then the paper is set aside as exhausted.”