

Proposals for SIRA to adopt the NSW Model Constitution for Associations and to amend Membership Qualifications at the 2019 AGM

SIRA’s constitution is very dated. It was amended and updated in February 2011 but it contains many antiquated elements, such as the role of a minute secretary which SIRA is obliged to have but has not done so in living memory. The NSW government has created a model constitution for associations. This helps to promote consistency in the internal governance of associations. Adopting the model constitution is optional for associations, and associations may adopt the model with the modifications of its choosing.

In recent months SIRAC has drafted a new constitution by taking the model constitution and modifying it. The new document has all of the new features of the NSW model, but retains the unique aspects that we feel should be kept, such as retaining the category of Life Member. We have also amended the membership qualifications to remove some anomalies. There is more information on the membership qualification change at the end of this document. There is a table below that is a complete summary of how the existing 2011 SIRA Constitution differs from the new Model Constitution.

SIRAC will be putting two resolutions to the Annual General Meeting on 17 November 2019;

1. That the Membership Qualifications in the constitution of SIRA be;

“Membership of the association shall be open to any natural person aged 18 years or more who is either or both of the following:

 - (a) A full or part time resident of Scotland Island;
 - (b) An owner of land on Scotland Island, either solely or jointly with any other person or persons. If the owner is a corporation, then only one nominated person for that property may be admitted as a member.

If a member becomes ineligible to be a member by reason of their ceasing to be a resident of Scotland Island, then the committee by ordinary resolution may grant that person full member status for the period through to and until the next annual general meeting.”
2. That the new constitution entitled “Constitution of the Scotland Island Residents’ Association Incorporated” be adopted by the association and that the former constitution dated 2011 no longer apply.

SIRA’s 2011 Constitution	NSW Model Constitution
Has no contents page	Has a clear contents page
Has a statement of Objects	Has no objects in the template but allows the addition of objects
C1. In the Definitions section, ASIC is listed and the “Commission” is referred to in the body of the constitution. This is an obsolete reference. ASIC is federal and has no power over NSW associations, refer https://asic.gov.au/about-asic/contact-us/how-to-complain/companies-limited-by-guarantee-disputes-about-members-rights/ “Incorporated associations are formed under, and must comply with, the relevant legislation of their state or territory. We do not generally regulate the internal affairs of incorporated associations. If you have concerns	C1. The model constitution correctly references the NSW Associations Incorporation Act 2009 and the NSW Associations Incorporation Regulation 2016.

about an incorporated association, you should contact the Fair Trading or Consumer Affairs office in your state or territory.”	
There is a Life Membership category.	Life Membership category continues in the modified Model.
C1. Incorrectly states that “ordinary member” means a member of the committee who is not an office-bearer of the association	C1. States that “ordinary <i>committee</i> member means a member of the committee who is not an office-bearer of the association.”
C1. Incorrectly refers to "the Regulation" as meaning the Associations Incorporation Regulation, 2010. It needs to be updated to 2016.	C1. Has been updated.
C2. Membership qualifications. Membership is open to ‘persons’ who are not natural persons.	C2. Members must be natural persons.
C2. Membership open to full or part time residents of Scotland Island, or an owner of land.	C2. Updated membership requirement discussed below.
C3. Application for membership. Makes no provision for electronic applications. It refers to a template application at Appendix 1 that is no longer used and has an incorrect membership fee amount. It also assumes ‘household’ membership. We have received legal advice that this is not acceptable membership category.	C3. Membership applications may be electronic.
C6. Resignation of Membership. There is an ambiguous clause that a member can only resign if they are financial members.	C6. There is no requirement for a member to be financial before they resign.
C8. Fees. Typo in part 1; “becoming a will” should be “becoming a member will”	
There is no clause covering Resolution of Disputes	C10. Resolution of Disputes
C10. Disciplining of Members	C11. Disciplining of Members. The model gives an ‘out’ to the committee; “The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature”
C13 is incorrectly headed “Constitution of Membership” when it should be “Composition and membership of the Committee”.	
C13. Office bearers includes ‘minute secretary’ and there are 6 office-bearers. The ordinary members of the committee shall be between 5 and 10 inclusive – so a total up to 16.	C14. 4 Office bearers and 3 ordinary committee members. It is proposed that this be amended to 5 office-bearers (ie as it is now but with minute secretary removed), and ordinary committee members between 5 and 10 inclusive (no change).
C17. Casual Vacancies – refers to a defunct definition in the Companies (NSW) Code. It is now the Corporations Act 2001.	C18. Has correct reference to the Act.
C17. Uses antiquated term; person “of unsound mind”	C18. Updated term “mentally incapacitated”

C18. Removal of Member (2) contains typo	
C19. Quorums – 5 members is a quorum	C20. Model says 3 members is a quorum. However modified Model retains the quorum at 5.
There is no provision for the appointment of association members as committee members to constitute a quorum.	C21. Appointment of association members as committee members to constitute a quorum.
There is no provision for a committee meeting to use technology to allow the meeting to occur at two or more venues.	C22. Use of technology at committee meetings is permitted at the discretion of the committee.
C21. Voting (1). Typo; “committee sub-committee” should be “committee or of any sub-committee”	
C21. (3) Makes no sense!	C24 (3) Subject to clause 20 (5), the committee may act despite any vacancy on the committee.
C23 (1) Incorrect reference to rule 22 of the Act.	C26 (1) Correct reference to the Act, clause 25.
C25 Notice (1) Specifies a requirement to put notices on ferry sheds and at Church Point.	C28 Notice (1) Allows the secretary to decide the means of communication.
C26 AGM quorum is 20, or failing that, 12 at the adjourned meeting.	C29 Model says AGM quorum is 5, or failing that, 3 at the adjourned meeting. The modified Model retains the current quorum requirement of 20, or failing that, 12 at the adjourned meeting.
C29 Making of Decisions – a person may vote if they are eligible to be a member.	C32 and C34 – a person must be a paid up member to vote.
C30 Special Resolutions – 75% majority, but this is overruled by section 39 of the Act	C33 – must be in accordance with section 39 of the Act
Electronic ballots – not covered, left unclear	C36 Electronic ballots are permissible at the discretion of the committee
General Meetings across more than one venue – unclear	C37 General Meetings may use electronic technology at the committee’s discretion
C33 (2) Money received must be deposited at a bank.	C39 (2) “bank or other authorised deposit-taking institution account”.
Not clear that the Association is non-profit	C41 Association is non-profit
C36 Public Officer shall keep all records under their custody.	
C37 Inspection of Books, no privacy condition	C45 allows the committee to refuse access to confidential or personal information of members.
C38 Service of Notices, may be handed personally or posted.	C46 allows electronic delivery.

Proposal for changes to Membership Qualifications

At present, the Constitution states that;

“Membership of the association shall be open to any person aged 18 years or more who is either or both of the following:

- (a) A full or part time resident of Scotland Island;
- (b) An owner of land on Scotland Island, either solely or jointly with any other person or persons or with a corporation, or who is a director of a corporation which owns land on Scotland Island solely or jointly.”

This gives rise to anomalies, such as;

Renters who may be temporarily and unintentionally displaced from their Scotland Island home cannot be members and cannot serve out their current term on the committee.

Any director or shareholder of a company that owns property on Scotland Island may be a member, and this includes investment companies and large public corporations. There is no limit to how many directors and shareholders of the corporation may join as members (eg: arguably, any shareholder of a public company that owns a property on Scotland Island can be a member!).

SIRAC proposes an amended membership qualification as set out in resolution 1 above.

If you have any comment to make on the proposals prior to the meeting on 17 November, please send them to secretary@sira.org.au