

# ABA Australian Bar Association Limited

ABN 14 605 949 148

## CONSTITUTION

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## **PART 2 – NAME, OBJECTS AND POWERS**

### **2. Name**

The name of the company is “ABA Australian Bar Association Limited” (in this constitution, “the ABA”).

### **3. Objects**

The objects of the ABA are:

- (a) to maintain and promote the rule of law;
- (b) to promote the effective administration of justice;
- (c) to encourage the continued existence and growth of an independent Bar in all States and Territories of Australia;
- (d) to promote the interests of members;
- (e) to maintain and improve the standards of members;
- (f) to form a bond of union among members of the Bar in Australia, and to provide means by which:
  - (i) their views can be easily ascertained and expressed;
  - (ii) exchange of information and views on matters affecting barristers may be facilitated; and
  - (iii) common standards or rules may be adopted;
- (g) in relation to Commonwealth and other courts and tribunals, to form a common policy for the Bar in Australia regarding all matters of concern to barristers, where considered desirable;
- (h) to maintain and improve standards of instruction and training for barristers and those intending to become barristers;
- (i) to assist other jurisdictions internationally with advocacy training;
- (j) to liaise and co-operate with the Law

Council of Australia and other bodies, as determined by the Council;

- (k) to arrange and promote continuing professional development, promulgate Best Practice Guidelines to promote these objectives, and to undertake the occasional publication of papers; and
- (l) to make representations on behalf of barristers to Commonwealth and other government departments and bodies.

### **4. Legal Capacity and Powers**

4.1 The ABA has:

- (a) the legal capacity and powers of an individual; and
  - (b) all the powers of an incorporated body.
- See section 124 of the Corporations Act.

4.2 The ABA may only:

- (a) exercise its powers; and
  - (b) use its income and assets (including any surplus)
- for
- (c) its objects; and
  - (d) purposes incidental or ancillary to its objects.

### **5. Not For Profit**

5.1 The ABA must not distribute any surplus, income or assets directly or indirectly to its members.

5.2 Clause 5.1 does not prevent the ABA from paying its members:

- (a) reimbursement for expenses properly incurred by them; and
- (b) for goods supplied and services provided by them,

if this is done in good faith on terms no more favourable than if the member were not a member.

## **PART 3 – MEMBERSHIP**

### **6. Categories**

The ABA has two categories of membership:

- (a) constituent bodies – see clause 7; and
- (b) individual members – see clause 8.

### **7. Constituent Bodies**

The constituent bodies of the ABA are:

- (a) Bar Association of Queensland,

- (b) The New South Wales Bar Association,
- (c) The Victorian Bar Incorporated,
- (d) The South Australian Bar Association Incorporated,
- (e) The Western Australian Bar Association,
- (f) The Australian Capital Territory Bar Association,
- (g) Northern Territory Bar Association Incorporated, and
- (h) The Tasmanian Independent Bar Incorporated.

## 8. Individual Members

There are three subcategories of individual membership:

- (a) practising barristers – see clause 9,
- (b) life members – see clause 10, and
- (c) honorary members – see clause 11.

## 9. Practising Barristers

- 9.1 In this constitution, “practising barrister” means a person who practises in Australia only as a barrister and not as a solicitor.
- 9.2 All practising barristers who are members of a constituent body are individual members of the ABA, subject to this constitution.
- 9.3 In order to give effect to clause 9.2, the constitution of each constituent body must include a provision to the following effect:

By becoming and remaining a member of the [*insert name of constituent body*], the member agrees to become and remain a member of ABA Australian Bar Association Limited (“the ABA”), subject to the constitution of the ABA. A member who ceases to be a member of the [*insert name of constituent body*] ceases to be a member of the ABA, unless otherwise provided by the constitution of the ABA.

## 10. Life Members

The Council may appoint a member or a former member of the ABA as a life member of the ABA for exceptional service to justice, the law or the profession.

## 11. Honorary Members

The Council may appoint any person as an honorary member of the ABA for exceptional

service to justice, the law or the profession.

## 12. Contributions

- 12.1 The Council must by regulation\* set the contributions to be paid by constituent bodies each year.
- 12.2 The amount of the contribution and the date or dates of payment may vary according to criteria set by the council in the regulation\*.
- 12.3 The voting and other rights of constituent bodies who have not paid the contribution by the date for payment are suspended until the contribution is paid.
- 12.4 There are no subscriptions or other contributions to be paid by individual members in respect of membership of the ABA.

## 13. Rights and Obligations

- 13.1 The rights of members are not transferable, and end when the member ceases to be a member in accordance with clause 16.
- 13.2 Members must at all times comply with the constitution and regulations\*.
- 13.3 This constitution is an enforceable contract between the ABA and each member.
- See section 140 of the Corporations Act.

## 14. Liability

- 14.1 The liability of members is limited to the amount specified in clause 14.2.
- 14.2 If:
- (a) the ABA is wound up, and
  - (b) its assets are insufficient to meet its debts and liabilities,
- each member undertakes to contribute up to \$10 to the ABA’s property.
- 14.3 In clause 14.2, “member” includes a former member who was a member at any time during the year ending on the day of the commencement of the winding up, subject to clause 14.4.
- 14.4 Former members need not contribute in respect of a debt or liability of the ABA contracted after they ceased to be a member.

## 15. Discipline

- 15.1 The Council may by resolution reprimand, suspend or expel an individual member for conduct prejudicial to the ABA.
- 15.2 The Council must not pass a resolution under clause 15.1 unless the member has been:
- (a) informed of the conduct alleged to be

\* see definition in clause 67.1

prejudicial to the ABA; and

- (b) given a reasonable opportunity to be heard.

15.3 The ABA may not fine members.

## 16. Cessation

Members cease to be members:

- (a) on expulsion or death; and
- (b) for individual members who are practising barristers – if the member
  - (i) ceases to be a member of a constituent body, and
  - (ii) is not a life member or honorary member.

## 17. Register of Members

17.1 The ABA must keep a register of members in which are entered:

- (a) the name of each member,
- (b) the address of each member,
- (c) the category or subcategory of membership,
- (d) the date of becoming a member in that category or subcategory, and
- (e) in the case of former members – the date of ceasing to be a member.

See section 169 of the Corporations Act.

17.2 For individual members who are practising barristers:

- (a) the address of the member is care of the constituent body of which they are a member; and
- (b) each constituent body must provide the ABA with the names of:
  - (i) new members and the date they became a member of the constituent body, and
  - (ii) former members and the date they ceased to be a member of the constituent body.

## PART 4 – GENERAL MEETINGS

### 18. Annual General Meeting

18.1 The President or the Council must convene\* the annual general meeting to be held within 5 months after the end of the ABA's financial year.

See section 250N of the Corporations Act.

18.2 The ABA must send to each constituent body and director with the notice of the annual general meeting a copy of the financial report, directors' report and auditors' report for the last financial

year referred to in clause 57.

Compare section 316A of the Corporations Act.

18.3 If any individual member requests, the ABA must send a hard copy or electronic copy of the financial report, directors' report and auditors' report to the member:

- (a) at least 21 days before the annual general meeting, and
- (b) within 4 months after the end of the ABA financial year.

See section 316A of the Corporations Act.

18.4 The Council must lay before the annual general meeting the financial report, directors' report and auditors' report for the last financial year.

See section 317 of the Corporations Act.

18.5 The ordinary business of the annual general meeting is:

- (a) to verify the minutes of:
  - (i) the last annual general meeting, and
  - (ii) any special general meetings since the last annual general meeting; and
- (b) to consider the financial report directors' report and auditor's report (including questions and comments from members on the management of the ABA).

See section 250S of the Corporations Act.

18.6 The annual general meeting may only consider other business of which notice has been given in accordance with clause 20.2(c).

### 19. Special General Meetings

19.1 The Council may convene\* a special general meeting.

19.2 The Council must convene\* a special general meeting if requested by constituent bodies in accordance with the Corporations Act.

See section 249D of the Corporations Act.

19.3 Constituent bodies may themselves convene\* a special general meeting in accordance with the Corporations Act.

See section 249F of the Corporations Act.

19.4 Special general meetings may only consider business of which notice has been given in accordance with clause 20.2(c).

### 20. Notice

20.1 At least 21 days notice in writing\* of general meetings must be given to:

\* see definition in clause 67.1

- (a) each constituent body,
- (b) each Council member, and
- (c) the ABA's auditor.

See sections 249H(1), 249J(1) and 249K of the Corporations Act.

20.2 The notice must state:

- (a) the date, time and place (or places) of the meeting,
- (b) if the meeting is to be held at more than 1 place – the technology that will be used,
- (c) the general nature of the meeting's business, and
- (d) if a special resolution\* is to be proposed:
  - (i) the proposed resolution, and
  - (ii) that it is intended that the resolution be proposed as a special resolution\*.

See section 249L(1) of the Corporations Act.

20.3 The notice must include under clause 20.2(c) any business that any constituent body has requested in writing\* be considered at least 14 days before the notice is sent.

20.4 The notice must also include a statement that:

- (a) each constituent body may appoint:
  - (i) an individual to represent it – see clause 21, or
  - (ii) any person as a proxy to vote on its behalf – see clause 22,at general meetings, and
- (b) proxies need not be members.

See section 249L(1) of the Corporations Act.

20.5 If a general meeting is adjourned for 1 month or more, new notice of the resumed meeting must be given.

20.6 Despite clause 20.1, the accidental omission to give notice of the meeting to a person entitled to notice, or the non-receipt of notice of the meeting by a person entitled to notice does not invalidate the meeting, except as provided by the Corporations Act.

See section 1322(3) of the Corporations Act.

## 21. Representatives

21.1 Each constituent body may appoint an individual who is a member of that constituent body to represent it at general meetings.

See section 250D of the Corporations Act.

21.2 The representative may also be the director appointed by the constituent body under clause 29.

21.3 Appointments of representatives must be:

- (a) in writing\*, naming the individual (or individuals, in order) appointed;
- (b) sealed by, or signed on behalf of, the constituent body making the appointment; and
- (c) sent to the ABA or given to the chair of the meeting before the commencement of the meeting.

21.4 Representatives may exercise all the rights of constituent bodies at general meetings.

## 22. Proxies

22.1 Each constituent body may appoint any person as a proxy to vote on its behalf at general meetings.

See section 249X(1) of the Corporations Act.

22.2 Appointments of proxies must be:

- (a) in writing\*, naming the person (or persons, in order) appointed;
- (b) sealed by, or signed on behalf of, the constituent body making the appointment; and
- (c) sent to the ABA or given to the chair of the meeting before the commencement of the meeting.

22.3 Appointments of proxies are valid if they contain the information required by clause 22.2.

Compare section 250A(1) of the Corporations Act.

22.4 Proxies may exercise all the rights of constituent bodies at general meetings

## 23. Use of Technology

General meetings may be held at more than 1 place, provided that the technology used enables each representative, proxy and Council member present at all places the meeting is held to communicate clearly and simultaneously with every other such person.

## 24. Quorum

24.1 The quorum for general meetings is the presence by representative or proxy of at least 5 constituent bodies.

24.2 If a quorum is not present within 1 hour from the time of the meeting of which notice has been given, the meeting must not proceed.

## 25. Chairing

25.1 The President is entitled to chair general meetings.

\* see definition in clause 67.1

- 25.2 If the President is not present, or does not wish to chair the meeting, either Vice- President is entitled to chair.
- 25.3 If neither the President nor either Vice- President is present, or if none wishes to chair the meeting, the meeting must elect another office-bearer or a representative or proxy to chair.
- 25.4 The chair of the meeting does not have a casting vote.

## 26. Voting

- 26.1 Only constituent bodies are entitled to vote at general meetings.
- 26.2 Each constituent body has 1 vote, subject to clause 12.3.
- 26.3 Constituent bodies may vote by representative or by proxy.
- 26.4 Unless a poll is demanded, voting is by show of hands.
- 26.5 If an equal number of votes are cast for and against a proposed resolution or amendment, the chair of the meeting must declare the proposed resolution or amendment lost.
- 26.6 A challenge to a right to vote:
- (a) may only be made at the meeting; and
  - (b) must be determined by the chair of the meeting, whose decision is final.

## 27. Poll

- 27.1 The chair of the meeting or any representative or proxy may demand a poll on any resolution, other than a resolution concerning:
- (a) the election of the chair of the meeting, or
  - (b) the adjournment of the meeting.
- 27.2 The poll may be demanded:
- (a) before a vote is taken,
  - (b) before the voting results on a show of hands are declared, or
  - (c) immediately after the voting results on a show of hands are declared.
- 27.3 The poll must be taken when and in the manner the chair of the meeting directs.
- 27.4 On a poll, proxies:
- (a) need not cast any or all of their votes as proxies, unless they are the chair of the meeting;

- (b) may cast their votes in different ways; and
- (c) if:
  - (i) they do cast votes as proxies; and
  - (ii) the appointment of proxy specifies the way the proxy is to vote on a proposed resolution;
  - (iii) must vote that way.

- 27.5 A demand for a poll may be withdrawn.

## Part 5 – Directors and Company Secretary

### 28. Positions

- 28.1 The directors of the ABA are:
- (a) 1 director appointed by each constituent body under clause 29, and
  - (b) the President, Vice-Presidents and Treasurer elected under clause 36 (if those office-bearers are not already directors under paragraph (a)).
- 28.2 Before being appointed or elected, each director must give the ABA a signed consent to act as director.

See section 201D of the Corporations Act.

### 29. Appointment

- 29.1 Each constituent body may appoint 1 director.
- 29.2 The director must be a member of the constituent body appointing him or her.
- 29.3 The director may also be the representative of the constituent body under clause 21.
- 29.4 The constituent body may specify the term of office of the director.
- 29.5 The constituent body may remove the director at any time.

### 30. Term of Office

- 30.1 Directors appointed by constituent bodies hold office:
- (a) for the term of office specified under clause 29.4, or
  - (b) until removed under clause 29.5, subject to clauses 30.3–30.6.
- 30.2 The President, Vice-Presidents and Treasurer hold office as directors for their term of office in those office-bear positions, subject to clauses 30.3–30.6.
- 30.3 Directors may be re-appointed and re-elected.

- 30.4 Directors may resign by writing\* to the ABA.
- 30.5 Directors cease to hold office if they:
- (a) cease to be an individual member who is a practising barrister;
  - (b) fail to attend 3 consecutive Council meetings without leave of absence under clause 51;
  - (c) receive any payment from the ABA otherwise than in accordance with this constitution; or
  - (d) become disqualified under the Corporations Act.

See Part 2D.6 of the Corporations Act.

- 30.6 Directors may be removed by a general meeting in accordance with the Corporations Act.

See section 203D of the Corporations Act.

- 30.7 A vacancy in directors may be filled:
- (a) for directors appointed by a constituent body – by the constituent body under clause 29, and
  - (b) for the President, Vice-Presidents and Treasurer – by the office-bearer position being filled under clause 37.5.
- 30.8 The Council may continue to act despite any vacancy in directors.
- 30.9 Even if it is subsequently found that a person who has acted as a director was not properly appointed or elected, the validity of:
- (a) the acts of that person as a director, and
  - (b) decisions of Council meetings in which that person has participated;

is not affected.

See section 201M of the Corporations Act.

### 31. Duties

- 31.1 Each director has the duties prescribed by the Corporations Act, including those of:
- (a) reasonable care and diligence,
  - (b) good faith and proper purpose,
  - (c) proper use of position, and
  - (d) proper use of information.

See Part 2D.1 of the Corporations Act.

- 31.2 Without limiting clause 31.1, each director also has a fiduciary duty to act in the best interests of the ABA as a whole.

### 32. Alternate Directors

- 32.1 Each constituent body may appoint an alternate director to act in place of the director appointed by that constituent body as specified by the constituent body.
- 32.2 Clauses 29–31 apply to alternate directors as for directors.
- 32.3 In this constitution, “director” includes an alternate director acting in that capacity.

### 33. Company Secretary

The Council must appoint a company secretary of the ABA in accordance with the Corporations Act.

See Part 2D.4 of the Corporations Act.

### 34. Notification to ASIC

The ABA must notify ASIC\* within 28 days of any change in its directors, alternate directors and company secretary, or their personal details.

See section 205B of the Corporations Act.

## PART 6 – OFFICE-BEARERS

### 35. Positions

The office-bearers of the ABA are:

- (a) President,
- (b) 2 Vice-Presidents,
- (c) Treasurer,
- (d) Chair of the ATC\*, and
- (e) Chair of Conferences.

### 36. Election

- 36.1 The office-bearers must be elected at the first general meeting each year (except where vacancies are being filled).
- 36.2 Only individual members who are practicing barristers and are nominated by a constituent body are eligible to be elected as office-bearers.
- 36.3 Directors appointed by constituent bodies are eligible to be elected as office-bearers.
- 36.4 The method of election must be determined by the general meeting.

### 37. Term of Office

- 37.1 Office-bearers hold office:
- (a) from the end of the general meeting at which they are elected,
  - (b) until their successor is elected, subject to clauses 37.2–37.4.
- 37.2 Office-bearers may resign by writing\* to the

\* see definition in clause 67.1

ABA.

37.3 Office-bearers cease to be office-bearers if they:

- (a) cease to be an individual member who is a practising barrister; or
- (b) fail to attend 3 consecutive Council meetings without leave of absence under clause 51.

37.4 Office-bearers may be removed by resolution of a general meeting.

37.5 The Council must as soon as practicable fill vacancies in office-bearer positions for the remainder of the term.

## **PART 7 – AUSTRALIAN BAR COUNCIL**

### **38. Membership**

38.1 The voting members of the Council are the directors of the ABA.

38.2 The non-voting members of the council are the Chair of the ATC\*, Chair of Conferences, and the company secretary.

### **39. Responsibility and Powers**

39.1 The Council is responsible for the governance and management of the ABA, subject to clauses 39.4 and 40.1.

39.2 The Council may exercise all powers of the ABA on its behalf.

39.3 The Council may:

- (a) establish committees with such membership and terms of reference as it considers appropriate; and
- (b) delegate its powers as it considers appropriate.

39.4 A general meeting may by resolution direct the Council on any matter within its powers.

### **40. Executive**

40.1 Without limiting clause 39.3, the Council delegates the day-to-day management of the ABA to the Executive.

40.2 The voting members of the Executive are the President, Vice-Presidents and Treasurer.

40.3 The company secretary is a non-voting member of the Executive.

40.4 The Executive may determine its own procedure, subject to the Council.

### **41. Australian Bar Advocacy Training Council**

41.1 Without limiting clause 39.3, the Council must appoint (and may remove) the members of the

Australian Bar Advocacy Training Council (in this constitution, the “ATC”), other than the Chair.

41.2 The Chair of the ATC\* must be elected under clause 36.

41.3 The responsibilities of the ACT\* are:

- (a) to provide a forum for:
  - (i) the development and dissemination of good practice in relation to advocacy training for the Bar; and
  - (ii) communication between advocacy training providers as to the provision of advocacy training for the Bar;
- (b) to provide advice, support and encouragement to advocacy trainers to assist them to become more efficient trainers;
- (c) to provide advice, support and encouragement to providers of advocacy training within the constituent bodies to enable them to develop courses for barristers and those enrolled in vocational training for barristers;
- (d) to promote the development of course materials for advocacy training, to maintain a library of training materials, and to provide materials to trainers subject to appropriate consent;
- (e) to liaise with and provide assistance to other jurisdictions in respect of advocacy training if requested to do so; and
- (f) to consult with constituent bodies with a view to establishing a system whereby pupils of advocacy may be assessed.

41.4 The ATC\* must, unless otherwise directed by the Council, confine its activities to those concerning barristers and persons who are undertaking training to become barristers.

### **41A ABA Conferences**

41A.1 The Chair of Conferences must be elected under clause 36.

41A.2 The Chair of Conferences shall have responsibility for the organisation of conferences to be held in the name of the ABA and conferences held in conjunction with other associations with objectives complimentary to those of the ABA.

41A.3 The Chair of Conferences shall act consistently with any direction given by the Council.

41A.4 The objectives of the ABA in holding conferences by itself or in conjunction with other associations are:

- (a) to use the means of conferences to promote the objectives of the ABA set out in clause 3 of this constitution;
- (b) to provide and facilitate regular conferences throughout Australia which are as accessible as reasonably practicable to all members;
- (c) in particular, other than in a year when there is an international conference as described in sub-clause (f) below, to as far as reasonably practicable hold an annual conference within Australia at which a state of the judicature address will be given by a senior Australian jurist;
- (d) to promote Best Practice Guidelines of the ABA;
- (e) where appropriate, to assist constituent bodies in the holding of conferences;
- (f) to provide and facilitate periodic conferences outside Australia.

#### 42. Regulations

- 42.1 The Council may by resolution passed with at least 6 votes in favour make regulations to give effect to this constitution.
- 42.2 Members must at all times comply with the regulations as if they formed part of this constitution.

#### 43. Public Statements

- 43.1 The Council may by regulation\* or resolution authorise an office-bearer or other person to make public statements on behalf of the ABA.
- 43.2 No person may make any public statement on behalf of the ABA unless authorised by the Council.

### PART 8 – COUNCIL MEETINGS

#### 44. Convening

- 44.1 The President, company secretary or any 3 Council members may convene\* a Council meeting.
- 44.2 Ordinary Council meetings must be held at least 4 times each year.
- 44.3 At least 2 ordinary Council meetings must be face-to-face meetings, 1 of which may be held in conjunction with the annual general meeting.

#### 45. Notice

- 45.1 Each Council member must be given at least 7 days notice in writing\* of Council meetings, subject to clause 41.4.
- 45.2 Notice may be given of more than 1 Council meeting at the same time.
- 45.3 The notice must state the date, time and place (or places) of the meeting, but need not include the business to be considered.
- 45.4 In cases of urgency a meeting may be held without the notice required by clause 45.1, provided that:
  - (a) as much notice as practicable is given to each Council member by the quickest practicable means; and
  - (b) resolutions may only be passed if there are at least 6 votes in favour.

#### 46. Use of Technology

- 46.1 Council meetings may be held at more than 1 place, provided that the technology used enables each Council member present at all places the meeting is held to communicate clearly and simultaneously with every other such Council member.
- 46.2 Without limiting clauses 45.4(a) and 46.1, Council meetings may be convened\* and held by telephone.
- 46.3 By becoming and remaining a director, all directors are taken to consent to this clause.  
See section 248D of the Corporations Act.

#### 47. Quorum

The quorum for Council meetings is the presence in person of at least 6 directors.

#### 48. Chairing

- 48.1 The President is entitled to chair Council meetings.
- 48.2 If the President is not present, or does not wish to chair the meeting, either Vice-President is entitled to chair.
- 48.3 If neither the President nor either Vice-President is present, or if none wishes to chair the meeting, the Council must elect another Council member to chair.
- 48.4 The chair of the meeting does not have a casting vote.

#### 49. Voting

- 49.1 Each director present has 1 vote.
- 49.2 There is no voting by proxy.

\* see definition in clause 67.1

49.3 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.

## 50. Conflict of Interest

50.1 Each Council member who has a material personal interest in a matter that relates to the affairs of the ABA must as soon as practicable after becoming aware of the interest give the other council members notice of the interest at a Council meeting, unless otherwise provided by the Corporations Act.

See section 191(2) of the Corporations Act.

50.2 The notice required by clause 50.1 must include details of:

- (a) the nature and extent of the interest, and
- (b) the relation of the interest to the affairs of the ABA;

and these details must be recorded in the minutes of the meeting.

50.3 Each Council member who has a material personal interest in a matter that is being considered at a Council meeting:

- (a) must not be present while the matter is being considered; and
  - (b) must not vote on the matter;
- except as provided by the Corporations Act.

See section 195 of the Corporations Act.

## 51. Leave of Absence

51.1 The Council may by resolution grant Council members leave of absence from Council meetings for up to 3 months.

51.2 The Council may not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Council member concerned to seek leave of absence in advance.

## 52. Resolutions without Meeting

52.1 A resolution agreed to in writing\* by all directors has the same effect as a resolution passed at a council meeting.

52.2 In clause 51.1, “all directors” does not include those directors who:

- (a) would be prohibited by clause 50.3 from voting on the matter at a Council meeting; or
- (b) have leave of absence from Council meetings under clause 51.

## PART 9 – FINANCIAL AND LEGAL

### 53. Indemnity

The ABA indemnifies its office-bearers, directors and company secretary against any liability incurred in that capacity (other than to the ABA or a related body corporate), unless the liability did not arise out of conduct in good faith.

### 54. Financial Year

The financial year of the ABA is from 1 July to 30 June, unless the Council otherwise determines under the Corporations Act.

See section 323D of the Corporations Act.

### 55. Accounts

The ABA must keep written financial records that:

- (a) correctly record and explain its transactions, and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.

See section 286 of the Corporations Act.

### 56. Auditor

56.1 The Council must appoint an auditor within 1 month of registration of the ABA.

See section 327A(1) of the Corporations Act.

56.2 The first annual general meeting must appoint an auditor.

See section 327B(1)(a) of the Corporations Act.

56.3 The Council must within 1 month fill a vacancy in auditor until the next annual general meeting.

See section 327C(1) of the Corporations Act.

56.4 The annual general meeting must fill any vacancy in auditor.

See section 327B(1)(b) of the Corporations Act.

### 57. Financial Reporting and Audit or Review

57.1 For each financial year, the ABA must prepare:

- (a) a financial report, and
  - (b) a directors’ report,
- in accordance with the Corporations Act.

See Division 1 of Part 2M.3 of the Corporations Act.

57.2 If the revenue of the ABA for the financial year is \$1 million or more, the ABA must have the financial report audited in accordance with the Corporations Act, and

\* see definition in clause 67.1

obtain an auditor's report.

See Division 3 of Part 2M.3 of the Corporations Act.

57.3 If the revenue of the ABA for the financial year is less than \$1 million:

- (a) the ABA may have the financial report reviewed in accordance with the Corporations Act, instead of audited; and

See section 301(3) of the Corporations Act.

- (b) references in this constitution to the auditor are taken to be to the reviewer.

See section 324BE of the Corporations Act.

57.4 The financial report, directors' report and auditor's report must be considered by the annual general meeting in accordance with clause 18.

## 58. Small Company Limited by Guarantee

58.1 If the revenue of the ABA for the financial year is less than \$250,000 (or any other amount prescribed under the Corporations Act), the ABA is a small company limited by guarantee for the purposes of the Corporations Act.

See section 45B of the Corporations Act.

58.2 If the ABA is a small company limited by guarantee, clauses 18.2–18.4, 18.5(b), 56 and 57 do not apply unless otherwise directed by constituent bodies in accordance with the Corporations Act.

See section 294A of the Corporations Act.

## 59. Payments

59.1 All payments by the ABA must be:

- (a) specifically authorised in writing\*, and
- (b) in the case of cheques – signed,

by at least 2 persons nominated by the Council by regulation\* or resolution.

59.2 The Council may nominate a list of individuals or positions for the purposes of clause 59.1.

59.3 Signatories must not sign cheques until the payee and amount have been written in.

59.4 This clause does not apply to credit card and petty cash payments where the amount is within limits set by the Council by regulation\* or resolution.

## 60. Common Seal

60.1 The ABA may have a common seal.

See section 123(1) of the Corporations Act.

60.2 Clauses 60.3–60.7 only apply if the ABA has a common seal.

60.3 The ABA must set out its name and ACN (or ABN) on the common seal.

See section 123(1)(b) of the Corporations Act.

60.4 A document may only be sealed with the common seal if authorised by resolution of the Council.

60.5 The sealing must be witnessed by the signatures of at least 2 office-bearers nominated by the Council by regulation\* or resolution.

60.6 The Council may nominate a list of individuals or positions to be signatories for the purpose of clause 60.5.

60.7 The Council must provide for the safe keeping of the common seal.

## 61. Minutes

The Council must ensure that:

- (a) minutes are taken and kept of all general meetings, Council meetings and resolutions without a meeting; and
- (b) in the case of minutes of meetings – the minutes are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting; or
- (c) in the case of minutes of resolutions without a meeting – the minutes are signed by a director within a reasonable time after the resolution is passed.

See section 251A(1) of the Corporations Act.

## 62. Records

62.1 The Council must provide for the safe keeping of the records of the ABA.

62.2 Constituent bodies and Council members may inspect the records of the ABA at any reasonable time, subject to clause 62.3.

62.3 Constituent bodies may not inspect the records of the ABA that relate to confidential personal, employment, commercial and legal matters without the permission of the Council.

62.4 Copies of the constitution and regulations\* must be freely available to members and prospective members.

## 63. Amendment

63.1 This constitution may only be amended by special resolution\*.

See section 136(2) of the Corporations Act.

\* see definition in clause 67.1

63.2 Within 14 days after passing a special resolution\* to amend this constitution, the ABA must lodge with ASIC\* copies of:

- (a) the special resolution\*, and
- (b) the amendment.

See section 136(5) of the Corporations Act.

#### 64. Winding Up

64.1 If the ABA is wound up, its surplus assets must not be distributed to any member.

64.2 The surplus assets must be given to an entity that:

- (a) has similar objects to the ABA; and
- (b) also prohibits the distribution of any surplus, income and assets to its members to at least as great an extent as the ABA.

64.3 If the ABA is wound up voluntarily, the entity to which its surplus assets are to be given must be decided by special resolution\*.

64.4 In this clause, “entity” includes body, trust and fund.

#### 65. Notices

65.1 Members who are:

- (a) constituent bodies,
- (b) life members, or
- (c) honorary members,

and Council members must give the ABA their address for notices, and any change in that address.

65.2 The address for notices may include an email address and a fax number.

65.3 The ABA must enter any change in the address of a member in the register of members.

65.4 Notice may be given to a member or Council member by sending it to the address last given by the member or Council member.

65.5 In this constitution a period of notice of a meeting expressed in days:

- (a) does not include the day on which notice is given; but
- (b) includes the day on which the meeting is held.

65.6 Notices sent by prepaid post are taken to have been given on the second business day after posting.

65.7 Notices sent by email or fax are taken to have been given on the business day after sending.

#### 66. Replaceable Rules

The replaceable rules in the Corporations Act do not apply to the ABA, except those in sections 204F, 248G(1), 249M, 249U(4), 249W(2), 250C(2) and 250J(2).

#### 67. Interpretation

67.1 In this constitution, unless the contrary intention appears:

- (a) “the ABA” has the meaning given in clause 2;
- (b) “ASIC” means the Australian Securities and Investments Commission;
- (c) “ATC” has the meaning given in clause 41.1;
- (ca) “Best Practice Guidelines” means guidelines promulgated by the ABA in pursuit of its objects set out in clause 3 of this Constitution.
- (d) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
- (e) “Corporations Act” means the Corporations Act 2001 (Cth);
- (f) “the Council” means the Australian Bar Council;
- (g) “member” has the extended meanings given in clauses 21.4 and 22.4;
- (h) “practising barrister” has the meaning given in clause 9.1;
- (i) “regulations” means regulations of the ABA made under clause 42, and “regulation” has a corresponding meaning;
- (j) “special resolution” means a resolution at a general meeting:
  - (i) of which notice has been given in accordance with clause 20.2(d); and
  - (ii) that is passed by at least 75% of the votes cast by constituent bodies by representative or proxy; and

See sections 9 and 249L(1)(c) of the Corporations Act.

- (k) “writing” includes emails, and forms and other documents sent electronically.

67.2 The headings form part of this constitution.

67.3 The explanatory notes inserted in a smaller font

\* see definition in clause 67.1

size after provisions of this constitution are for guidance only and do not form part of this constitution.

- 67.4 This constitution is to be interpreted in accordance with the Corporations Act, except as otherwise provided in this clause.
- 67.5 The Council is responsible for the interpretation of the constitution and regulations\*.

**68. Transitional**

Until a constituent body has amended its constitution in accordance with clause 9.3:

- (a) clause 9.2 may be satisfied by the constituent body obtaining an individual member’s consent to membership of the ABA; and
- (b) clauses 30.5(a), 36.2 and 37.3(a) apply to directors and other office-bearers who are members of that constituent body only to the extent they are required to be practising barristers.

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