

ADDENDUM A

AGENDA ITEM 16.3 - SPECIAL RESOLUTION C

Proposed changes to the Australian Acupuncture and Chinese Medicine Association Ltd Constitution (2018).

PREAMBLE – Explanatory Memorandum and rationale for review and proposed changes.

The current Australian Acupuncture and Chinese Medicine Ltd (AACMA) Constitution was passed by members at an Extraordinary General Meeting on 11th February 2018. It has served the Association well in the last year, however, as it is and should be a living document, it was stated by the then Board that after one year there would be a review of the Constitution to ensure that it continued to serve members in a compliant and accessible manner.

The Board with administration, considered such matters as election timelines after the trial of electronic voting, the ability to provide flexibility in a changing governance and electronic environment and how best to provide services to our membership by enhancing policy, guidelines and By-Laws.

In order to assist the Board in this review, the document with the Board's proposed changes was sent to experienced constitutional advisors from the Associations Forum Pty Ltd of which AACMA are now members. The Associations Forum has been providing advice as well consulting to and providing education and training for hundreds of associations over the last decade.

The Constitution and proposed changes received a positive endorsement from those reviewers as well as suggested enhancements to the document to provide the desired flexibility to move with any changes to legislative or governance requirements.

It has been our aim to provide a document which is not only compliant but accessible, easy to follow and best practice for a member based not for profit association such as ours. The proposed changes do not change the intent of the current document to serve its members or change the rights of Members, but they do improve compliance and increase opportunity for consistently improving member services.

We trust that members will accept these changes as we progress into the future of AACMA as the leading Association for Chinese Medicine Practitioners.

PROPOSED SPECIAL RESOLUTION C

Should the membership agree to the proposed motion below, these changes, (items 1-16 in the Addendum A in the 41st AACMA AGM Agenda) will be passed en bloc.

Rationale: These numbered items are to further align the Constitution with both ASIC compliance and current standards of good governance as required by the annual review of the Constitution.

Motion:

Members are asked to consider and if thought appropriate, pass that the following proposed changes (items 1-16 in Addendum A) to the current Australian Acupuncture and Chinese Medicine Association Ltd. (AACMA) Constitution, provided with the Notice of Meeting of Members of the Association, be adopted as amendments to the 2018 Constitution of the Association. (If accepted the clauses within the Constitution shall be renumbered accordingly.)

Resolutions for proposed changes to the Australian Acupuncture and Chinese Medicine Association Ltd Constitution (2018).

Resolutions 1 to 16 (Under item 15.3 Special Resolution C in the Agenda)

1. That clause 3.1.2 and 3.1.3 be removed from the Constitution.

Rationale: While the rights of members such as voting rights must be clear in the Constitution, **services** that members may enjoy do not need to be in the Constitution as currently occurs in 3.1.2 and 3.1.3. For example, access to insurance or attendance at events could be a service which the Board can change or enhance as needed, whereas, rights of membership can only be changed via membership special resolution and constitutional change.

2. That Clause 7.3.1 regarding the administration of membership applications be removed.

Rationale: This is an operational manner which is not required to be in the Constitution.

3. That Clause 7.12.6 be removed.

Rationale: This Clause is a remnant from the previous Association Regulations and By-Laws (2014) and is not required, as requirements for membership are already outlined in the Constitution.

4. That 7.22.1 be deleted.

Rationale: This clause states that a Member whose membership fee is overdue by more than one month is not entitled to vote at a general meeting. This is inconsistent with clauses **7.7.2**, **7.8.2** and **9.11.2** which state that a Member is not entitled to vote if any outstanding fees are owing to the Association.

5. That Clause 9.11.8, which reads as:

The Chair of a General Meeting shall have a second or casting vote if the vote on any resolution is tied.

Shall be changed to read as:

In the case of an equality of votes on a resolution at a general meeting, the motion shall be lost as it has not achieved a majority vote.

Rationale: It is now regarded as good governance that no Director or individual should be given more votes than other members or Directors. In the event of a motion being proposed and resulting in a tied vote, the motion should be lost as it has not received a majority of votes.

**6. That Clause 9.12.6 regarding the time for receipt of Proxy forms be changed to read as:
A proxy is valid if the instrument of proxy is correctly completed and received by the time specified in the notice convening the meeting, or if no time is specified, at least 48 hours prior to the meeting.**

Rationale: Under the Corporations Act, proxy forms must be received at least 48 hours before the meeting. The constitution may reduce the 48-hour period but may not increase it. This allows a greater time for members to submit their proxy forms.

7. That Clause 10.1.3 be deleted and replaced with a new Clause 10.1.3 which reads as:

The Board of Directors must comprise:

- a) **one Chair (referred to as President for public or ceremonial purposes);**
- b) **one Deputy Chair (referred to as Vice President for public or ceremonial purposes);**
and
- c) **a minimum of three other Elected Directors.**

Rationale: The voluntary role of the Secretary as suggested in Clause 10.1.3 is outlined in Clause 14 of the Constitution regarding the appointment of a Company Secretary. In the case of an Association which has an administrative staff, the duties of Company Secretary are more commonly passed to the CEO, a senior staff member or an external professional (e.g. Accountant). This is because the duties of the Company Secretary are to be the main liaison between AACMA and the entity regulators such as ASIC. It is more practical for this role to be filled by someone constant rather than potentially a new Director every couple of years. This does not preclude the Board appointing a Board Member or other to be a minute's secretary who may also manage correspondence.

With regard to the voluntary role of the Treasurer as outlined in 10.1.3, many professional staffed associations do not include a Treasurer in their constitution. This is because the financial responsibility for the Association is shared by all Directors and the duties of a Treasurer is performed by the Financial Officer. The removal of the office of Treasurer is compensated by having the Finance and Audit Committee.

8. That Clause 10.3.3:

The election for rotational vacant board positions shall occur in advance of the AGM each year to enable finalisation of the election process at least ten (10) days prior to the AGM.

Shall be changed to read as:

The election for rotational vacant board positions shall occur in advance of the AGM each year to enable finalisation of the election process at least forty-eight (48) hours prior to the AGM.

Rationale: The introduction of electronic voting and the ability to calculate voting outcome allows for timelines to be shortened for the process of both counting and checking eligibility of votes.

9. That Clause 10.3.9:

Any Member wishing to lodge a vote must lodge the vote with the Secretary or the Returning Officer at least ten (10) days prior to the AGM.

Shall be changed to read as:

Any Member wishing to lodge a vote must lodge the vote with the Secretary or the Returning Officer at least forty-eight (48) hours prior to the AGM.

Rationale: The introduction of electronic voting and the ability to calculate voting outcome allows for timelines to be shortened for the process of both counting and checking eligibility of votes.

10. That Clause 10.4.6:

At a General Meeting or AGM, the Members may by a special resolution remove an Elected Director elected by them under this Constitution and may by ordinary resolution elect a new Elected Director.

The person so appointed will be subject to retirement at the same time as if he/she had become an Elected Director on the day on which the Director in whose place he/she was appointed was last elected or became an Elected Director.

Shall be changed to read as:

At a General Meeting or AGM, the Members may by an ordinary resolution remove an Elected Director elected by them under this Constitution and may by ordinary resolution elect a new Elected Director. The person so appointed will be subject to retirement at the same time as if he/she had become an Elected Director on the day on which the Director in whose place he/she was appointed was last elected or became an Elected Director.

Rationale: Clause 10.4.6 regarding the removal of a Director by Members requires a special resolution for such a removal of a Director. This is now inconsistent with section 203D of the Corporations Act which requires an ordinary resolution only not a Special resolution.

11. That Clauses 10.4.8 and 10.4.9 be removed from the Constitution.

Rationale: Clauses 10.4.8 and 10.4.9 allows the Board to remove a Director (Elected or Appointed). This is inconsistent with section 203E of the Corporations Act which states that a Director cannot be removed by other Directors. Whilst this refers to Public Companies, a not for profit association limited by guarantee is now usually regarded as a public company.

12. That Clause 10.6 referring to Alternate Directors be removed.

Rationale: Alternate Directors are permitted under clause 10.6. The use of Alternate Directors is now neither common nor recommended as it is potentially disruptive to the functioning of the Board. Clause 10.6.1 a) states that a Director may appoint another Director as an Alternate Director, however alternate directors are not considered agents of the appointing directors. Existing Directors are already Directors and cannot be appointed twice nor are they able by default to have two votes on any issue.

13. That Clause 12.3.3 regarding the Chair having a second or casting vote at a Board meeting be deleted.

Rationale: As for Clause 9.11.8, it is now regarded as good governance that no Director should be given more votes than other Directors. In the event of a motion being proposed and resulting in a tied vote, the motion should be lost as it has not received a majority of votes.

14. That Clause 12.4.2 which reads as:

Subject to the Act, in case of an equality of votes on a resolution at a Board meeting, the Chair of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two other Directors are present and entitled to vote on the resolution.

Shall be changed to read as:

In the case of an equality of votes on a resolution at a Board meeting, the motion shall be lost as it has not achieved a majority vote.

Rationale: It is now regarded as good governance that no Director or individual should be given more votes than other members or Directors. In the event of a motion being proposed and resulting in a tied vote, the motion should be lost as it has not received a majority of votes.

15. That Clause 16 regarding the appointment of a CEO be deleted from the Constitution.

Rationale: As this is an employment and contractual matter for the Board there is no requirement for it to be in the Constitution.

16. That Clause 18 regarding State Committees shall be changed to read as:

STATE COMMITTEES

1. The Members ordinarily resident in each State may elect State Committees whose role and function shall be determined by the By-Laws governing State Committees.

2. Each State Committee may have a minimum of three (3) AACMA Members.

3. Members of State Committees will be re-elected each year at a time designated by the Board and may serve for any number of consecutive Terms.

4. It is mandatory for each State Committee to have the following three positions appointed at their first meeting whose roles are outlined in the By-Laws governing State Committees;

- a) Committee Chair;
- b) Minutes Secretary; and
- c) Financial Secretary.

If these positions are not filled, the State Committee will be considered as non-operational, unless specific approval is granted by the AACMA Board of Directors (Board).

5. Individual State Committees may nominate from within the committee, other non-mandatory positions, such as, but not limited to;

- Deputy Chair
- CPD Officer

6. Where the membership of a State is not sufficient to support a full State Committee, the Board may appoint one member to be the State Liaison Delegate for that State.

7. State Committee Members shall have no power to incur expenditure on behalf of a State Committee without the prior authorisation of the State Committee.

8. No State Committee shall have any power to act on behalf of the Association or incur any liability on behalf of the Association or pledge or charge or encumber any asset of the Association except in accordance with a written authorisation by the Board, pursuant to a resolution of the Board.

Rationale: The Board understands the importance of maintaining the requirement for State Committees in the Constitution due to the important role they play in providing local activities and input by members to the Board.

However, in order to allow for flexibility in serving the changing needs of members and the increasing role of online CPD opportunities and services to members, the details regarding their functions and administration should not be in the Constitution.

Remembering that currently changes to these things, currently require a Special Resolution at a general meeting to be passed, the details regarding function and administration of State Committees should, for better governance, be in the separate By-Laws or regulations to allow for flexibility in how they function. These changes have been suggested after consultation with each of the State Committees and review by the Associations Forum advisors.

(CLAUSES SHALL BE NUMBERED ACCORDINGLY IN THE CONSTITUTION SHOULD THE CHANGES BE ACCEPTED.)