

# EXPLANATORY MEMORANDUM

Proposed changes to the Constitution of Vision Australia Limited (ABN 67 108 391 831)

## Introduction

It is proposed the constitution of Vision Australia Limited (the **Organisation**) be amended. This Explanatory Memorandum provides you, our members, with information to help you consider the proposed changes. In addition, consultations will be held in June 2023, seeking engagement with and contributions from members. Consultation will be conducted via Zoom and led by:

- Mr Andrew Moffat, Chair;
- Mr Bill Jolley, incoming Chair;
- Mr Darren Fittler, Board Director and Partner at Gilbert + Tobin (**G+T**);
- Mr Ron Hooton, Chief Executive Officer (**CEO**);
- Ms Justine Heath, Company Secretary; and
- Ms Danielle Frost, Board Secretary.

For those unable to access Zoom, the Organisation welcomes written feedback on the changes proposed.

Once member feedback has been received and taken into consideration, the final proposed changes will be put to a vote by our members via a Postal Ballot. Under section 136(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**), amendments to the Organisation's governing document may only be made through a special resolution of the members. A special resolution requires at least 75% of those members voting to be in favour. As per our constitution, a resolution approved by the requisite majority of the members voting in such Postal Ballot will have the same force and effect as if the resolution had been carried by that majority at a duly constituted general meeting of the Company.

You are encouraged to read this Explanatory Memorandum in full in conjunction with the proposed Constitution prior to deciding how to vote on the resolution when the time comes. A copy of the proposed Constitution has been made available for review and comment (in each member's preferred accessible format) and on the Organisation's website [www.visionaustralia.org/sgm](http://www.visionaustralia.org/sgm)

## **Recommendation**

The Board recommends members approve the adoption of the proposed Constitution.

## Constitution History

The Constitution was adopted on the Organisation's formation c. 2004. Since that time, the Organisation has grown in size and complexity, the Australian Charities and Not-for-profits Commission (**ACNC**) has become the regulator of charities, and governance practices and approaches have developed. Whilst the Organisation's Constitution has been updated on several occasions, it has not been subject to a comprehensive review or update for almost 20 years. The Board is pleased to present a new constitution for your review and input.

The proposed new Constitution has been prepared by G+T. The Board have been working closely with Mr Fittler, to ensure that the proposed Constitution complies with the Organisation's charity registration with the ACNC under the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* (**ACNC Act**) and reflects modern and current best practice in corporate governance for an Organisation in the charity and not-for profit sector (the **Sector**).

The proposed constitution preserves many of the current constitutional provisions, albeit in a different order and in more modern language. Gender-specific language has been removed and concepts allowing for more inclusive governance have been included. There are however, a small number of more substantive changes in the following general areas:

- Members and membership;
- Directors and secretary; and
- Payments to directors.

In addition to being good practice to periodically review and update (and even sometimes replace) a constitution, the Board believes such a replacement is necessary to ensure the Organisation retains a strong foundation and to help it thrive in a competitive market and an environment with increasing compliance and regulatory requirements.

# PROPOSED CHANGES

The table below summarises the primary differences between the new proposed Constitution and the current Constitution of the Organisation. This table does not include every single minor change, and instead summarises the key changes and provides reasons for that change. We therefore encourage you to read the proposed Constitution in addition to this summary table.

## Part C – Members and membership

The following tables has been converted to a list, each table contains 5 columns headed: **Item: TOPIC: CLAUSES/RULES: DESCRIPTION OF CHANGE:** and **REASON FOR CHANGE.**

Table start

### **Item: 1.**

**TOPIC:** Becoming a member

**CLAUSES/RULES:** New rule – 4.1, 4.2

Current clause - 2.3

**DESCRIPTION OF CHANGE:** The time requirement and the obligation to provide reasons when a membership application has been rejected, have been removed.

This rule also now provides directors may, at their complete discretion, choose to postpone the assessment of all (but not some) membership applications received during the period between calling of a general meeting and the holding of the general meeting to which the notice relates, or any adjournments of that meeting.

**REASON FOR CHANGE:** There is no time requirement for the assessment of a membership application in the Corporations Act. Removing this time requirement provides more flexibility for dealing with and tending to membership applications as may be required.

Consistent with common practice, the directors should provide applicants notice of whether they are or are not to be admitted into membership and not to provide reasons.

The postponement of membership application assessment is common practice within the Sector, providing organisations with greater flexibility surrounding membership applications and certainty of membership numbers at a finite point in time before the Annual General Meeting (**AGM**).

## **Item: 2.**

**TOPIC:** Membership fees

**CLAUSES/RULES:** New rule– 4.6c(i)

Current clause - 2.2

**DESCRIPTION OF CHANGE:** This rule provides directors the flexibility to set the annual fee to a different amount and simplifies the membership fee and indexation calculation.

**REASON FOR CHANGE:** The current annual membership fee is set at \$25, however given that the logistics surrounding membership fees and low fees collected from memberships, it is sensible for the proposed Constitution to include a mechanism where the Board can set a different fee e.g. \$0 in the future if deemed appropriate.

In addition, the proposed Constitution simplifies the process for indexing the membership fee.

## **Item: 3.**

**TOPIC:** Disciplining, suspension and expulsion of members

Appeal of directors' decision to expel a member

**CLAUSES/RULES:** New rules – 5.4-5.5

Current clauses – 2.5, 2.7

**DESCRIPTION OF CHANGE:** Rule 5.4 clarifies where a Member Disciplinary Resolution relates to the expulsion of a member, such resolution must be passed as a special resolution of the directors. Any other Member Disciplinary Resolution may be passed by an ordinary resolution of the directors.

Rule 5.5 clarifies the onus is on the member who is the subject of the Expulsion Notice to request in writing that a resolution to reject the member's expulsion be put to the members in a general meeting.

**REASON FOR CHANGE:** The proposed Constitution provides a clearer and modernised process for disciplining of members, including due process in the consideration of any concerns about member conduct. This process is in alignment with good governance and common practice.

**Item: 4.**

**TOPIC:** Voting rights

**CLAUSES/RULES:** New rule– 6.8

Current clause - 4.16

**DESCRIPTION OF CHANGE:** Rule 6.8 provides each member has the right to exercise one vote by either a Show of Preference at a meeting of members, a poll or by way of a written ballot or postal vote.

**REASON FOR CHANGE:** The amended rule reflects good governance and common practice. As currently drafted, clause 4.16 is more onerous than necessary with imposed time stipulations not required under the Corporations Act. These changes provide more flexibility and gives the Organisation the right, but not the obligation, to have a postal vote.

Table end

## Part E – Directors and secretary

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Table start

### **Item: 5.**

**TOPIC:** Number of directors

**CLAUSES/RULES:** New rule– 8.1

Current clause – 6.2

**DESCRIPTION OF CHANGE:** The clause has been amended to set the minimum number of directors to three.

**REASON FOR CHANGE:** Public companies (including companies limited by guarantee) must have a minimum of three directors (under the Corporations Act) and at least two of those directors must ordinarily live in Australia.

### **Item: 6.**

**TOPIC:** Directors' term of office and term limits

**CLAUSES/RULES:** New rule – 8.4

Current clauses – 6.4 – 6.7

**DESCRIPTION OF CHANGE:** Following the expiry of the maximum term for a director (currently three terms of three years with provision for a fourth three year term for the Chair), rule 8.4 allows directors to return and serve on the Vision Australia board if the directors resolve by special resolution to allow that director to nominate for re-election by the members or where three years have passed.

**REASON FOR CHANGE:** Allowing directors to stand for re-election can have many advantages. Circumstances may arise where particular skills, experience or

organisational history and institutional knowledge is required by the Board at a certain point in time, i.e. where succession planning is required. However, this should nevertheless require a higher threshold of commitment which is why a special resolution of 75% or more of the board is required and even then, the members still get the final say during the election process.

## **Item: 7.**

**TOPIC:** Payments to directors

**CLAUSES/RULES:** New rule – 8.6

Current Clause – 1.4

**DESCRIPTION OF CHANGE:** The current Constitution prevents the remuneration of directors, other than the Chair. Under rule 8.6, subject to prior approval of the members, directors may receive remuneration for the services they provide to the Organisation as directors.

**REASON FOR CHANGE:** The last twenty years have seen the mix of directors of complex Not-For-Profits like Vision Australia changing materially. We still need passionate and committed retired people bringing their skills and experience. But the increased and constantly changing strategic, technological and regulatory demands we face mean that we also need directors in the middle of their careers. These directors, working in leadership roles elsewhere, bring current skills and insights relevant to the issues we must manage. There is a real opportunity and financial cost for such people to devote the time that Vision Australia requires. It is increasingly hard to ask prospective Directors to bear that cost; nor does it seem fair.

This constitutional provision does not mean that payments will be made, but simply gives the Board the ability to ask Members to approve payments – and the Board will certainly not make such a request during the current year. Should the Board do so in the future, a directors' remuneration policy will also be prepared and implemented to ensure there are processes in place to ensure that director's fees are appropriate and suitably reflect current industry practice (through benchmarking), market expectation and the complexity of the work and responsibilities of the directors.



## **Item: 8.**

**TOPIC:** Committees

**CLAUSES/RULES:** New rule – 8.16(d)

Current clause – 9

**DESCRIPTION OF CHANGE:** The proposed Constitution removes reference to the Client Reference Group (**CRG**)

**REASON FOR CHANGE:** The current Constitution is very prescriptive in the establishment and governance of the CRG, which is unusual within a high level governance document like a constitution.

The Organisation is very happy with the CRG and has no plans to change the current structure of the CRG, and believes client engagement is essential. So, while the specific detail will be included in separate stand-alone policies and procedures, the board was of the strong view a general commitment to always have a client-related forum should be hard-wired. Taking the specific detail out of the Constitution is also important in the Sector where rules and regulations are frequently reviewed and updated and will help the Organisation to adapt to its ever-growing and changing compliance obligations.

Table end

## **Various Amendments**

The following tables has been converted to a list, each table contains 5 columns headed: **Item: TOPIC: CLAUSES/RULES: DESCRIPTION OF CHANGE:** and **REASON FOR CHANGE.**

Table start

## **Item: 9.**

**TOPIC:** Chair of general meetings

Committees

**CLAUSES/RULES:** New rule – 6.5 (Current clause – 4.7)

New rule – 8.16(d) (Current clause – 9)

**DESCRIPTION OF CHANGE:** The substance of these clauses remains the same.

**REASON FOR CHANGE:** The language has been updated to provide clarity and remove unnecessary references.

**Item: 10.**

**TOPIC:** Convening of meeting of directors

Quorum for directors' meetings

**CLAUSES/RULES:** New rule – 8.10 (Current clause – 8.2)

New rule – 8.12 (Current clauses – 8.6, 8.7)

**DESCRIPTION OF CHANGE:** Rule 8.10 now provides a meeting of directors may be convened by the Chairperson or any two of the directors, rather than one director.

Rule 8.12 now provides a quorum is a majority of current directors rather than four directors.

**REASON FOR CHANGE:** These clauses have been updated in alignment with good governance and common practice.

**Item: 11.**

**TOPIC:** Directors may create and vary classes and class rights

Persons eligible to be elected as director

Directors attending by proxy

Chief Executive Officer

Arrangements with directors and former directors

**CLAUSES/RULES:** Current clauses – 2.4, 6.8, 8.9, 10, and 13.3.

**DESCRIPTION OF CHANGE:** These clauses have been removed in the proposed Constitution.

**REASON FOR CHANGE:** These clauses have been removed in the proposed Constitution, as they are no longer relevant to the governance practices of the Organisation, are not a requirement under the Corporations Act, not aligned with good governance practices or are already implied.

These updates streamline the proposed Constitution, provide flexibility in and remove unnecessary burden from the Organisation's governance practices

Table End