

**DISABILITY ADVOCACY AND COMPLAINTS SERVICE
OF SOUTH AUSTRALIA INCORPORATED**

C O N S T I T U T I O N



November 2018

1. NAME

The name of the incorporated association is the Disability Advocacy and Complaints Service of South Australia Inc ('**DACSSA**') referred to herein as the '**Association**'.

2. DEFINITIONS

Act means the *Associations Incorporation Act 1985 (SA)*.

Annual General Meeting means a General Meeting of members of the Association convened in accordance with these rules once per calendar year.

Association means the Disability Advocacy and Complaints Service of South Australia ('**DACSSA**').

Board means the committee of management of the Association as provided for in the Act.

Board Member means a member of the committee of management of the Association as provided for in the Act.

Financial Year means the 12 month calendar period from 1 July of a calendar year to 30 June of the following calendar year.

General Meeting means a general meeting of members of the Association convened in accordance with these rules.

Member means a member of the Association, being a Board Member.

Notice means both written and electronic forms of communication including fax, email, Short Message Service ('**SMS**') and letter.

Month means a calendar month.

Ordinary Resolution means an ordinary resolution defined in the Act.

Special General Meeting means a special general meeting of members of the Association convened in accordance with these rules.

Special Resolution means a special resolution as defined in the Act.

Year means calendar year unless stated otherwise.

3. OBJECTS OF THE ASSOCIATION

- (a) To provide an advocacy service that aims to promote and protect the human, legal, civil and consumer rights of people living with a disability;
- (b) To facilitate the effective and timely resolution of individual complaints or systemic issues related to grievances of people living with a disability; and

- (c) To provide systemic advocacy support for people living with a disability in a manner that aims to promote agency, empowerment and support, and to alleviate inequity and disadvantage experienced by people living with a disability.

4. POWERS OF THE ASSOCIATION

The powers of the Association shall be the powers contained in section 25 of the Act. Without limiting those powers, the Association shall be entitled to hold real or personal property, open and operate bank accounts, and enter into any beneficial or necessary contract including a contract of employment.

5. EXERCISE OF POWER

The Board shall be entitled to exercise the full powers of the Association.

6. MEMBERSHIP

The Members of the Association shall be the Board Members. A Member ceases to be a Member when the Member is no longer a Board Member.

7. REGISTER OF MEMBERSHIP

A register of Members must be kept and contain:

- (a) The name, postal address and email address (if applicable) of each Member;
- (b) The date on which each Membership commenced;
- (c) The preferred method of communication for each Member;
- (d) If applicable, the date and reason(s) for termination of Membership.

8. THE BOARD

8.1 Powers and duties

- (a) The affairs of the Association shall be managed and controlled by the Board.
- (b) The Board has the management and control of the funds and other property of the Association.
- (c) The powers of the Board shall be the powers contained in the Act. Without limiting those powers the Board may exercise all such powers and do all such things as are within the objects of the Association excepting things which are required by the Act or the rules to be done by the Association in a General Meeting.
- (d) The Board has the authority to interpret the meaning of these rules and any other matter relating to the affairs of the Association on which these rules are silent.

- (e) The Board shall appoint a public officer as required by the Act.
- (f) Notice of appointment and any change in the identity or address of the public officer are to be lodged within one month after the change (Form 10) with Consumer and Business Services.

8.2 Appointment

- (a) The Board shall be comprised of no less than three (3) and no more than nine (9) Board Members.
- (b) A Board Member shall be a natural person.
- (c) A Board Member shall hold office for three (3) years and the Board shall vote on the acceptance of that Board Member's nomination.
- (d) If it is reasonably practicable to do so, the Association aims to appoint at least one (1) Board Member with lived experience of disability issues.
- (e) A Board Member shall only serve a maximum of three (3) terms as described in rule 8.2 (c) without a break.
- (f) A Board Member shall be eligible to stand for re-election. No other person shall be eligible to stand for election unless a Member of the Association has nominated that person before the Annual General Meeting by delivering the nomination of that person to the secretary of the Association, or delegate. The nomination shall be signed by the proposer and the nominee.
- (g) Nominations for Board positions will be accepted in writing until 12 noon seven (7) days prior to the General Meeting.
- (h) The Board may co-opt a person, and such a Board Member shall hold office for three (3) years and the Board shall vote on the acceptance of that Board Member's nomination.
- (i) Not more than four (4) Members shall be co-opted to the Board following an Annual General Meeting.

8.3 Office bearers

- (a) The office bearers of the Board shall be elected every calendar year at the first Board meeting following an Annual General Meeting.
- (b) The Board office bearers shall include a chairperson, deputy chairperson, and secretary.
- (c) The outgoing chairperson shall chair the meeting at which the Board office bearers are elected.
- (d) Where an office bearer vacancy exists, it may be filled, by co-opting a person who a majority of Board Members vote to co-opt.

- (e) In the event of any office bearer vacancies, the Board may continue to operate and exercise its powers so long as the number of Board Members is not reduced below quorum.
- (f) Where a conflict of interest may exist, the member with such a conflict shall declare it, shall abstain from voting and may be required to remove themselves from the Board discussion relating to the particular topic that is the subject of the conflict of interest.

9. PROCEEDINGS OF THE BOARD

- (a) The Board shall meet at least eight (8) times per calendar year to ensure effective governance of the Association.
- (b) Questions arising at any meeting of the Board shall be decided by a majority of votes, and in the event of an equality of votes the chairperson shall have a casting vote in addition to a deliberative vote.
- (c) A quorum for a meeting of the Board shall be either three Board Members or one half of the Board (whichever is greater).
- (d) A Board Member having a direct or indirect pecuniary interest in a contract or proposed contract with the Association must disclose the nature and extent of that interest to the Board as required by the Act, as soon as the Board Member becomes aware of the interest, and shall not vote with respect to that contract or proposed contract. The member of the Board must also disclose the nature and extent of his or her interest in the contract at the next Annual General Meeting of the Association.

10. DISQUALIFICATION OF BOARD MEMBERS

The office of a Board Member shall become vacant if a Board Member is:

- (a) disqualified from being a Board Member by the Act;
- (b) expelled as a member under this Constitution;
- (c) permanently incapacitated by ill health;
- (d) absent without apology from more than four meetings in a financial year; or
- (e) resigns as a Board Member.

11. THE SEAL

- (a) The Association shall have a common seal upon which its corporate name shall appear in legible characters.
- (b) The seal shall not be used without the express authorisation of the Board, and every use of the seal shall be recorded in the minutes of the Association.

- (c) The affixing of the seal shall be witnessed by two (2) Board members.

12. GENERAL MEETINGS

12.1 Annual General Meetings

The Board shall call an Annual General Meeting in accordance with the Act and these rules. The order of business at the meeting shall be:

- (a) The confirmation of the minutes of the previous Annual General Meeting and of any Special General Meeting held since that meeting.
- (b) The consideration of the accounts and reports of the Board and the auditor's report.
- (c) The election of Board Members.
- (d) The appointment of auditors (see rule 22 of this Constitution).
- (e) The conduct of any other business placed on the agenda by the Members before the commencement of the meeting.

12.2 Special General Meeting

The Board may call a Special General Meeting of the Association at any time where:

- (a) all of the Board members agree and pass a resolution to hold such a meeting in a Board meeting; or
- (b) at least three (3) Board Members request such a meeting in writing.

13. NOTICE OF GENERAL MEETINGS

- 13.1 At least 14 days' Notice of any General Meeting shall be given to Members. 21 days' notice of any meeting is required to be given to Members for any meeting at which a Special Resolution is proposed.
- 13.2 The Notice shall set out where and when the meeting will be held and particulars of the nature and order of business to be transacted at the meeting.
- 13.3 A Notice may be given by the Association to any Member by serving the Member with the notice personally; or by sending it by post to the address appearing in the register of Members; or by emailing it to the email address appearing the register of Members where this was selected by the Member as preferred method of communication.
- 13.4 Where a Notice is sent by post:
 - (a) the service is effected by properly addressing, prepaying and posting a letter or packet containing the notice: and

- (b) unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of post.

14. PROCEEDINGS AT GENERAL MEETINGS

- (a) The quorum for General Meetings shall be 80 percent of the Members present.
- (b) If within 30 minutes after the time appointed for the meeting a quorum of Members is not present, a meeting convened at the request of Members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting the Members present shall form a quorum.
- (c) Subject to rule 14(d) the chairperson of the Board shall preside as chairperson at a General Meeting of the Association.
- (d) If the chairperson is not present within five (5) minutes after the time appointed for holding the meeting, or if the chairperson is present but retires from the chair or declines to take it, the Members may choose a Board Member to be the chairperson of that meeting.

15. VOTING AT GENERAL MEETINGS

- (a) A question for decision at a General Meeting must be determined by a show of hands unless, by show of hands, Members request a poll.
- (b) Persons with special interests or knowledge relevant to the Association may be invited to attend any General Meeting and to speak at the discretion of the Chairperson but such persons may not vote.
- (c) Subject to these rules, every Member of the Association has only one vote at a meeting of the Association.
- (d) Subject to these rules, a question for decision at a General Meeting, other than a Special Resolution, must be determined by a majority of Members who vote in person or by proxy, at that meeting.
- (e) In the case of an equality of votes on a question at a General Meeting, the chairperson of the meeting is entitled to exercise a casting vote.

16. POLL AT GENERAL MEETINGS

- (a) If a poll is requested by a show of hands, it must be conducted in a manner specified by the person presiding.
- (b) The result of the poll is the resolution of the meeting on that question.
- (c) A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

17. SPECIAL AND ORDINARY RESOLUTIONS

- (a) A Special Resolution has the meaning given at section 3 of the Act and is passed by not less than 75 percent of the Members present and voting.
- (b) An Ordinary Resolution is a resolution passed by a simple majority at a General Meeting.

18. PROXIES

A Member shall be entitled to appoint in writing a natural person who is also a Member of the Association to be their proxy and attend and vote on the Member's behalf at any General Meeting of the Association.

19. MINUTES

- (a) Proper minutes of all proceedings of General Meetings of the Association and of meetings of the Board, shall be entered within one month after the relevant meeting in minute books kept for the purpose.
- (b) The minutes kept pursuant to this rule must be confirmed by the Board Members at a subsequent meeting.
- (c) The minutes kept pursuant to this rule shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next subsequent meeting at which the minutes are confirmed.
- (d) Unless the contrary is proved, where minutes are entered and signed they shall be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

20. ACCOUNTS TO BE KEPT

- (a) The Association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association in accordance with the Act.
- (b) The accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report, shall be laid before Members at the annual General Meeting.

21. ANNUAL RETURNS

The annual financial return shall be lodged as required with the Australian Charities and Not-for-Profit Commission (the '**ACNC**').

22. APPOINTMENT OF AUDITOR

- (a) At each Annual General Meeting, the Members shall appoint a person to be auditor of the Association. Refer to sections 35(2)(b) and 35(4) of the Act for qualifications of auditor.

- (b) The auditor shall hold office until the next Annual General Meeting and is eligible for re-appointment.
- (c) If an appointment is not made at an Annual General Meeting, the Board shall appoint an auditor for the current financial year.

23. PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS

The income and capital of the Association shall be applied exclusively to the promotion of its objects and no portion shall be paid or distributed directly or indirectly to members or their associates except as bona fide remuneration of a member for services rendered or expenses incurred on behalf of the Association.

24. PROPERTY AND DISSOLUTION

- (a) Persons who by authority accept or incur any pecuniary liability on behalf of the Association shall be held indemnified against any personal loss in respect of such liability.
- (b) The signatories to the bank accounts of the Association shall be Board Members, and the Chief Executive Officer, provided that cheques are to be signed by at least one Board Member who is not an employee of the Association.
- (c) The Association shall not enter into any arrangement to borrow funds except by resolution and vote of at least two-thirds of Members present at an Annual General Meeting or a Special General Meeting.

24.1 Winding up

The Association may be wound up in the manner provided for in the Act.

25. APPLICATION OF SURPLUS ASSETS

25.1 If after the winding up of the Association there remains 'surplus assets' as defined in the Act, such surplus assets shall be distributed to any organisation which:

- (a) has similar objects to the Association;
- (b) imposes rules which prohibit the distribution of its assets and income to its Members; and
- (c) is an organisation endorsed by the Australian Taxation Office as a deductible gift recipient.

25.2 The Association will seek to obtain and maintain endorsement by the Australian Taxation Office as a deductible gift recipient. If, having endorsed the Association as a deductible gift recipient, the Australian Taxation Office later revokes the endorsement, the Association must transfer to another institution with similar objects, which is charitable at law, to which income tax deductible gifts can be made:

- (a) gifts of money or property given to the Association for the principal purpose of the Association;
- (b) contributions made to the Association in relation to an eligible fundraising event held for the Association's principal purpose;

- (c) money received by the Association because of such gifts and contributions referred to in this rule 25.2.

26. AMENDMENT OF CONSTITUTION AND RULES

- (a) This constitution may be repealed, altered or amended by resolution of at least two-thirds of Members present and voting at any Annual General Meeting or special General Meeting of which not less than 21 days written notice including notice of the proposed repeal, alteration or amendment has been distributed.
- (b) Constitutional amendments must be registered, within one month of the resolution being passed, with Consumer and Business Services, Corporate Affairs Commission, as required by the Act.

27. TRANSITION

- (a) Constitutional amendments will come into effect at the time the alteration has passed by Special Resolution, except for any alteration to the name of the Association which shall not come into force until registered by Consumer and Business Services, Corporate Services Commission.
- (b) For the purposes of transition, from this time, the immediate former Board will become the Board under the amended Constitution. All office bearer positions with the exception of chairperson cease at this time. The Board shall then move expeditiously to give effect to rule 9.