

Notice to members of Environment Victoria Inc. Special Resolutions to change the Rules of the Association

Date of notice	9 October 2019
Details of meeting to debate Special Resolutions	The Special Resolutions contained in this notice will be debated at the Annual General Meeting of Environment Victoria Inc. to be held at 5:30pm on Wednesday 30 October 2019 at the Australian Nursing and Midwifery Federation, Auditorium, 535 Elizabeth St Melbourne, VIC 3000
Voting procedure	This notice contains six (6) proposed Resolutions, labelled (A) to (F). Each will be proposed as a Special Resolution at the meeting specified above. To pass, each Special Resolution will require the support of at least 75 % of the members voting at the meeting (either in person or by proxy). Each Special Resolution will be voted on separately.

BACKGROUND

- The Environment Victoria (EV) Rules ('the Rules') are the organisation's Constitution or Rules of Association. The Rules were last reviewed in 2011.
- The EV Board's Governance Committee has undertaken a review of the Rules, drawing on input from EV's management team and pro bono legal advice from leading law firm Arnold Bloch Leibler (ABL). We thank ABL for their generous support.
- The purpose of the review was twofold: to ensure the Rules remain compliant with the relevant regulatory requirements which change from time to time; and to identify opportunities to improve the Rules in line with best practice and the needs of the organisation.
- The EV Board has considered the Governance Committee's recommendations and proposes the following changes to the Rules.
- Under the *Associations Incorporation Reform Act 2012*, changes to the Rules require a special resolution passed by at least 75% of members voting at a General Meeting (either in person or by proxy).
- A marked up copy of the Rules, showing the proposed changes, is provided as an Attachment for reference.
- The *Associations Incorporation Reform Act 2012* can be read here: http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/num_act/aira201220o2012422/

FEEDBACK AND QUESTIONS

- The AGM will include time to discuss and debate each resolution. We are also keen to hear your feedback and answer your questions in advance. This will help us all make the best use of our time together at the AGM and ensure we can provide you the information you need in order to make an informed vote. If you have any feedback or questions, please lodge them [here](#) before COB Monday 21 October.

THE PROPOSED RESOLUTIONS

Proposed Special Resolution (A) – Preamble acknowledging that we live & work on Aboriginal land

Rationale

- The EV Board and staff acknowledge that we live and work on Aboriginal land. We understand that colonisation has been an unjust and often brutal process that continues to impact on First Nations peoples and their country today. As people living and working on Aboriginal land, we believe it is incumbent on us to play our part in righting this historical wrong.
- This belief underpins Environment Victoria's work and is expressed in our Strategic Plan and our First Nations Solidarity Action Plan. It is consistent with our values of courage, respect, community and wisdom.
- We believe that the act of incorporating this commitment into the EV Rules would solidify the organisation's commitment to respectful engagement with First Nations, and set an example to other organisations to do the same.

Text of Special Resolution (A)

This meeting resolves, by Special Resolution, that the following changes be made to the Rules of Environment Victoria Inc.:

- Insert a Preamble before Rule 1, as follows:

Environment Victoria acknowledges that we live and work on Aboriginal land and that this country has been cared for since time immemorial by traditional owners, whose sovereignty has never been ceded.

We pay our respect to Victoria's traditional owners, past, present and future. We respect their leadership in caring for country, and support treaties that empower them to continue to do so.

We understand that colonisation has been an unjust and often brutal process that continues to impact on Aboriginal and Torres Strait Island peoples and their country today. As people living and working on Aboriginal land it is incumbent on us to play our part in righting this historical wrong. Indeed, our vision of a society living in harmony with a healthy environment depends upon it.

Proposed Special Resolution (B) – Rule 4: Membership of Association

Rationale

- Members are the guardians of Environment Victoria and therefore membership should only be open to people who are committed to the fundamental purpose of our organisation, which is laid out in Appendix 5 of the EV Rules and is, in summary, to bring about a society living harmony with a health environment.
- This change strengthens our defences against parties opposed to the activities of EV who could threaten the stability or direction of EV by seeking to add blocks of new members with destructive intent.

Text of Special Resolution (B)

This meeting resolves, by Special Resolution, that the following changes be made to the Rules of Environment Victoria Inc.:

- Amend Rule 4.1 to replace the words ‘natural person’ with ‘eligible person’.
- Insert a new Rule 4.1(c) as follows:
4.1(c) The Board may, in its absolute discretion, require the applicant to provide evidence of eligibility.
- Insert the following definition in Rule 2.1:
“eligible person” means a person who supports the purposes of the Association.

Proposed Special Resolution (C) – Rule 6: Entrance fees and annual subscription

Rationale

- Under Rule 6, as it stands currently, when an individual member has not paid their annual subscription by the time of the AGM, their membership automatically lapses. Technically, to regain membership the individual then has to complete a formal application again. On the other hand, group members in the same situation merely have their voting and election rights suspended until the subscription is paid (or the member formally resigns).
- There is no apparent reason to treat individual and group members differently with regards to late payment of a membership subscription.
- It is preferable that the Board (or its delegate) have some discretion to apply a period of grace for a member who is late in paying. This would assist in retention of members and avoid the need to put an existing member through a new formal membership application process just because of an overdue payment.
- It is an important principle of good governance that unfinancial members do not enjoy voting and election rights whilst they remain unfinancial. The proposed changes retain this principle.

Text of Special Resolution (C)

This meeting resolves, by Special Resolution, that the following changes be made to the Rules of Environment Victoria Inc.:

- Amend “Rule 6: Entrance Fee and Annual Subscription” to read as follows:
 - 6.1 *The amount of the annual subscription for each class of individual membership and group membership must be determined by the Board.*
 - 6.2 *The annual subscription is payable in advance and is due in the first place on admission to membership and thereafter on the anniversary of admission to membership unless otherwise determined by the Board (‘due date’).*
 - 6.3 *The rights of a member (including the right to vote) who has not paid the annual subscription by the due date are suspended until the subscription is paid.*
- Add the following clauses to “Rule 8: Resignation of a member”
 - 8.3 *Subject to sub-rule 8.4, a member is taken to have resigned if the member’s annual subscription is more than 6 months in arrears.*
 - 8.4 *The Board may extend the period of time specified in sub-rule 8.3 in its absolute discretion, so long as the period of extension does not exceed 6 months.*

Proposed Special Resolution (D) – Rule 9: Expulsion of member & Rule 37: Disputes & mediation

Rationale

- The *Associations Incorporation Reform Act 2012* contains a set of Model Rules for organisations such as EV. The clauses in these Model Rules are regularly updated by the Department of Justice and are generally considered to reflect contemporary best practice.
- In the current EV Rules, Rules 9 and 37 contain clauses relating to dispute resolution and expulsion of members which are not aligned with the Model Rules, may not fully comply with the Act and have elements considered by the Board to be undesirable and impractical. For example, the Board currently has the powers to fine members for specific conduct.
- The proposed changes to Rules 9 and 37 would bring the EV Rules into line with Divisions 2 & 3 of the Model Rules.

Text of Special Resolution (D)

This meeting resolves, by Special Resolution, that the following changes be made to the Rules of Environment Victoria Inc.:

- Replace Rule 9 in its entirety with the following:

9 – DISCIPLINARY ACTION

9.1 Grounds for taking disciplinary action

The Association may take disciplinary action against a member in accordance with this Division if it is determined that the member—

- (a) has failed to comply with these Rules; or*
- (b) refuses to support the purposes of the Association; or*
- (c) has engaged in conduct prejudicial to the Association.*

9.2 Disciplinary subcommittee

(1) If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Board must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.

(2) The members of the disciplinary subcommittee—

- (a) may be Board members, members of the Association or anyone else; but*
- (b) must not be biased against, or in favour of, the member concerned.*

9.3 Notice to member

(1) Before disciplinary action is taken against a member, the Secretary must give written notice to the member—

- (a) stating that the Association proposes to take disciplinary action against the member; and*
- (b) stating the grounds for the proposed disciplinary action; and*
- (c) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the **disciplinary meeting**); and*

- (d) *advising the member that he or she may do one or both of the following—*
 - (i) *attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;*
 - (ii) *give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and*
- (e) *setting out the member's appeal rights under rule 9.5.*
- (2) *The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.*

9.4 Decision of subcommittee

- (1) *At the disciplinary meeting, the disciplinary subcommittee must—*
 - (a) *give the member an opportunity to be heard; and*
 - (b) *consider any written statement submitted by the member.*
- (2) *After complying with subrule (1), the disciplinary subcommittee may—*
 - (a) *take no further action against the member; or*
 - (b) *subject to subrule (3)—*
 - (i) *reprimand the member; or*
 - (ii) *suspend the membership rights of the member for a specified period; or*
 - (iii) *expel the member from the Association.*
- (3) *The disciplinary subcommittee may not fine the member.*
- (4) *The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.*

9.5 Appeal rights

- (1) *A person whose membership rights have been suspended or who has been expelled from the Association under rule 9.4 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.*
- (2) *The notice must be in writing and given—*
 - (a) *to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or*
 - (b) *to the Secretary not later than 48 hours after the vote.*
- (3) *If a person has given notice under subrule (2), a disciplinary appeal meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.*
- (4) *Notice of the disciplinary appeal meeting must be given to each member of the Association who is entitled to vote as soon as practicable and must—*
 - (a) *specify the date, time and place of the meeting; and*
 - (b) *state—*

- (i) *the name of the person against whom the disciplinary action has been taken; and*
- (ii) *the grounds for taking that action; and*
- (iii) *that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.*

9.6 Conduct of disciplinary appeal meeting

- (1) *At a disciplinary appeal meeting—*
 - (a) *no business other than the question of the appeal may be conducted; and*
 - (b) *the Board must state the grounds for suspending or expelling the member and the reasons for taking that action; and*
 - (c) *the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.*
- (2) *After complying with subrule (1), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.*
- (3) *A member may not vote by proxy at the meeting.*
- (4) *The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.*

- Replace Rule 37 in its entirety with the following:

37—GRIEVANCE PROCEDURE

37.1 Application

- (1) *The grievance procedure set out in this Division applies to disputes under these Rules between—*
 - (a) *a member and another member;*
 - (b) *a member and the Board;*
 - (c) *a member and the Association.*
- (2) *A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.*

37.2 Parties must attempt to resolve the dispute

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

37.3 Appointment of mediator

- (1) *If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 37.2, the parties must within 10 days—*
 - (a) *notify the Board of the dispute; and*

- (b) *agree to or request the appointment of a mediator; and*
 - (c) *attempt in good faith to settle the dispute by mediation.*
- (2) *The mediator must be—*
 - (a) *a person chosen by agreement between the parties; or*
 - (b) *in the absence of agreement—*
 - (i) *if the dispute is between a member and another member—a person appointed by the Board; or*
 - (ii) *if the dispute is between a member and the Board or the Association—a person appointed or employed by the Dispute Settlement Centre of Victoria.*
- (3) *A mediator appointed by the Board may be a member or former member of the Association but in any case must not be a person who—*
 - (a) *has a personal interest in the dispute; or*
 - (b) *is biased in favour of or against any party.*

37.4 Mediation process

- (1) *The mediator to the dispute, in conducting the mediation, must—*
 - (a) *give each party every opportunity to be heard; and*
 - (b) *allow due consideration by all parties of any written statement submitted by any party; and*
 - (c) *ensure that natural justice is accorded to the parties throughout the mediation process.*
- (2) *The mediator must not determine the dispute.*

37.5 Failure to resolve dispute by mediation

If the mediation process does not resolve the dispute within 3 months of the date of appointment of the mediator, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

Proposed Special Resolution (E) – Secretary role & Treasurer role

Rationale

- The EV Rules prescribe that the Secretary role be performed by a Board member.
- The *Associations Incorporation Reform Act 2012* requires EV to appoint a Secretary with specific legislative responsibilities including being the main point of contact between the Association and the Registrar and fulfilling administrative and management responsibilities within the organisation.
- Given the heavy administrative load of the Secretary role, the Board believes it is better performed by a non-voting volunteer or a staff member rather than a Board member. This is similar to the Company Secretary model seen in many corporations, both non-profit and commercial.
- The role of Treasurer is prominent in the EV Rules. But the role is not mentioned in Rules 21 & 22 which cover the key Office Bearer roles at EV. The changes proposed below address this incongruity.

Text of Special Resolution (E)

This meeting resolves, by Special Resolution, that the following changes be made to the Rules of Environment Victoria Inc.:

- Replace references to “Secretary” in rules 22.1, 22.2 and 23.6 with “Treasurer”.
- Amend Rule 23.8 to remove the words ‘an officer of the Association’ and replacing them with ‘President, Vice-President or Treasurer’.
- Remove the reference to Secretary in rules 21.3 and 21.4 and amend 21.2 as follows:
21.2 The officers of the Association must be appointed:
(a) by the Board, if the officer is the Secretary; and
(b) in accordance with Rule 23.6 or Rule 23.7, if the officer is not the Secretary.
- Rename “Rule 25: Secretary” as “Rule 25: Minutes of Meetings” and replace references to “Secretary” in it with “President”
- Create a new Rule 25A: Secretary which reads as follows:

25A SECRETARY

25A.1 The Secretary must:

(a) perform any duty or function required under the Act to be performed by the secretary of an incorporated association; and

(b) give to the Registrar notice of his or her appointment under Rule 21.2(a) within 14 days after the appointment.

25A.2 A person ceases to be Secretary if he or she ceases to be a ‘member of the committee’ by operation of section 78 of the Act.

25A.3 If the position of Secretary becomes vacant, the Board must appoint a member to the position within 14 days after the vacancy arises.

Proposed Special Resolution (F) – Rule 7: Register of members

Rationale

- Rule 7 as it currently stands requires the Secretary to maintain the membership register. In practice staff at EV maintain the register on behalf of the Secretary, which is a standard approach taken by many organisations. The *Associations Incorporation Reform Act 2012* merely requires that the association maintain the register, not a specific office bearer. As part of the update of the role of Secretary outlined in Proposed Rule Change E above, we propose to adopt the language contained in the Act, which will have the effect of maintain existing practice.

Text of Special Resolution (F)

This meeting resolves, by Special Resolution, that the following changes be made to the Rules of Environment Victoria Inc.:

- In Rule 7.1, replace the word “Secretary” with “Association.”