



Australian Communications Consumer Action Network

Constitution Amendments

Motion

That the ACCAN Members approve the following changes to the Constitution.

Background

ACCAN's Constitution was drafted in 2008 and last amended in 2012. In 2019, the Board decided that ACCAN's 10th anniversary represented a good opportunity to undertake another review in order to ensure the Constitution remained relevant for the organisation and reflects contemporary best practice.

ACCAN engaged Maddocks Lawyers (who drafted the original Constitution) to undertake the review and advise on any specific areas requiring updating. These amendments were endorsed at the August 2019 Board meeting. Additional amendments were made following changes to the life membership process endorsed by the Board over a series of meetings in 2019 and 2020.

The Board now recommends these changes to ACCAN's members. The current version can be accessed at http://accan.org.au/files/Constitution_2012.pdf.

Clause 1.1 - Definitions

The following definitions are added:

Alleged Conduct means a matter identified in clauses 11.1.1, 11.1.2, or 11.1.3.

Distinguished Service includes, but is not limited to, the following:

A longstanding member and supporter of ACCAN and/or its predecessor organisations who:

- (a) Has been an outstanding advocate on issues or committees; and/or
- (b) Has been an exceptional contributor to ACCAN campaigns and policy work; and/or
- (c) Has made a significant contribution to ACCAN as an organisation

Law means any law, statute, regulation, ordinance, by-law, order or proclamation, and the common law and any authorisation, ruling, judgment, order, decree or other requirement of any Authority, and includes (without limitation):

- (a) The *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (b) The *Income Tax Assessment Act 1997* (Cth); and
- (c) The Act

The definition of Business Day is amended to read:

Business Day means Monday to Friday excluding public holidays in New South Wales.

Clause 7.4.2 – Life Members

Replace existing Clause 7.4.2 with:

- 7.4.2 To be admitted as a Life Member, the person must be:
- 7.4.2.1 nominated to the Board by the Membership Committee; and
 - 7.4.2.2 endorsed for admission as a Life Member by the Board; and
 - 7.4.2.3 elected by a two thirds majority of Voting Members at a General Meeting.

Any Voting Member may make nominations to the Membership Committee.

Clause 11 – Disciplinary Action

Replace existing Clause 11 with:

11 DISCIPLINARY ACTION

11.1 Grounds for taking disciplinary action

The Board may take disciplinary action against a Member (**Breaching Member**) in accordance with this clause if it determines that the Breaching Member:

- 11.1.1 has failed to comply with this Constitution;
- 11.1.2 has acted in a way which indicates that the member will not support the principal purpose of the Company; or
- 11.1.3 has engaged in conduct prejudicial to the Company.

11.2 Disciplinary subcommittee

11.2.1 The Board may appoint a subcommittee (**Disciplinary Subcommittee**) to determine whether the Alleged Conduct has occurred and what, if any, action to take against the Breaching Member.

11.2.2 The members of the Disciplinary Subcommittee:

- 11.2.2.1 may be Directors, Members or third parties; but
- 11.2.2.2 must not be biased against or in favour of the Breaching Member.

11.3 Notice to Member

11.3.1 The Disciplinary Subcommittee must hold a meeting to consider the proposed disciplinary action against the Breaching Member (**Disciplinary Meeting**).

11.3.2 The Secretary must give a written notice to the Breaching Member which sets out:

- 11.3.2.1 that the Board has made a determination of the kind described in clause 11.1;
- 11.3.2.2 details of the Alleged Conduct and the grounds for the proposed determination;
- 11.3.2.3 the date, place and time of the Disciplinary Meeting;
- 11.3.2.4 that the Breaching Member may do one or both of:
 - 11.3.2.4.1 attending the Disciplinary Meeting and addressing the Disciplinary Subcommittee at that meeting; and

- 11.3.2.4.1 giving a written statement to the Disciplinary Subcommittee at any time before the Disciplinary Meeting; and
 - 11.3.2.5 the Breaching Member's appeal rights under clause 11.5.
- 11.3.3 The Secretary must give the notice described in clause 11.2.3 to the Breaching Member at least 10 Business Days, and no more than 20 Business Days, before the date of the Disciplinary Meeting.
- 11.4 Decision of Disciplinary Subcommittee**
 - 11.4.1 At the Disciplinary Meeting, the Disciplinary Subcommittee must:
 - 11.4.1.1 give the Breaching Member an opportunity to be heard; and
 - 11.4.1.2 consider any written statement submitted by the Breaching Member.
 - 11.4.2 If it has complied with clause 11.4.1 at the Disciplinary Meeting the Disciplinary Subcommittee may determine:
 - 11.4.2.1 to take no further action against the Breaching Member;
 - 11.4.2.2 to reprimand the Breaching Member;
 - 11.4.2.3 to suspend the Membership of the Breaching Member for a specified period; or
 - 11.4.2.4 that the Breaching Member's Membership will cease.
 - 11.4.3 The Disciplinary Subcommittee must not fine the Breaching Member.
 - 11.4.4 The suspension or cessation of the Breaching Member's Membership will take effect at the end of the Disciplinary Meeting.
 - 11.4.5 A Member whose Membership has been suspended has a right to receive notices, but no right to vote, at any general meeting during the term of the suspension.
- 11.5 Appeal rights**
 - 11.5.1 A Breaching Member whose Membership has been suspended or which has ceased under clause 11.4.2 may appeal the suspension or cancellation by giving notice (**Appeal Notice**):
 - 11.5.1.1 to the Disciplinary Subcommittee immediately after the Disciplinary Meeting; or
 - 11.5.1.2 to the Secretary within 48 hours after the end of the Disciplinary Meeting.
 - 11.5.2 If a Breaching Member has given an Appeal Notice as required by clause 11.5.1, the Board must call a meeting of Members (**Disciplinary Appeal Meeting**) in accordance with clause 13.2.
 - 11.5.3 Notice of the Disciplinary Appeal Meeting must be given as soon as practicable to each member of the Disciplinary Subcommittee and each Member who is entitled to vote and must include:
 - 11.5.3.1 the time and date of the Disciplinary Appeal Meeting;
 - 11.5.3.2 the name of the Breaching Member;
 - 11.5.3.3 the grounds for taking disciplinary action; and
 - 11.5.3.4 that, at the Disciplinary Appeal Meeting, the Members must vote on whether the decision to suspend or cease the Breaching Member's Membership should be upheld or revoked.
 - 11.5.4 A Member may not vote by proxy or attorney at a Disciplinary Appeal Meeting.
- 11.6 Conduct of Disciplinary Appeal Meeting**
 - 11.6.1 At a Disciplinary Appeal Meeting:

- 11.6.1.1 no business other than the question of the appeal may be conducted; and
- 11.6.1.2 the Breaching Member must be given an opportunity to be heard.
- 11.6.2 If clause 11.6.1 is complied with, the Members present and entitled to vote at the meeting must vote by secret ballot on the question whether the decision to suspend or cancel the Breaching Member's Membership should be upheld or revoked.
- 11.6.3 A decision to suspend or cease the Breaching Member's Membership is upheld if at least 75% of the Members voting at the Disciplinary Appeal Meeting vote in favour of the decision.

Clause 20.2 – Composition of the Board

Replace existing Clauses 20.2.1.1 and 20.2.1.2 with:

- 20.2.2 an understanding of, or experience in, one or more of the sectors listed in clause 20.2.3 and/or the capacity to consult with one or more of the sectors listed in clause 20.2.3

Amend existing clause 20.2.2 to read 20.2.3, and the reference to clause 20.2.1 within this clause to read 20.2.2.

Clause 27.1.3 – Proceedings of the Board

Replace existing Clause 27.1.3 with:

- 27.1.3 A meeting of the Board may be called at the request of the Chairperson or Deputy Chairperson by way of reasonable notice served upon each Director.

Clause 27.2.1 – Use of Technology in Conferencing

Delete the words 'facsimile' and 'computer'.

Clause 36 – Indemnity and Insurance

Replace existing Clause 36 with:

36 INDEMNITY AND INSURANCE

36.1 Definition of Liability and Officer

In this clause 36:

36.1.1 **Indemnified Liability** means, in relation to any fact, matter or circumstance:

- 36.1.1.1 all Liability arising out of or in connection with that fact, matter or circumstance; and
- 36.1.1.2 all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

36.1.2 **Liability** means costs, losses, liabilities and expenses.

36.1.3 **Officer** means a Director, secretary or other officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

36.1.4 A reference to Officer includes a reference to a former Officer.

36.2 Indemnity of Officers

36.2.1 Subject to clause 36.2.2, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Liability of the Officer as a result of or in connection with that person's role as an Officer.

36.2.2 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.

36.2.3 The obligation of the Company in clause 36.2.1:

36.2.3.1 is enforceable without the Officer having to first incur any expense or make any payment;

36.2.3.2 is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the relevant company; and

36.2.3.3 does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.

36.2.4 The obligation of the Company in this clause 36.2 will not apply to the extent that:

36.2.4.1 the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;

36.2.4.2 an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or

36.2.4.3 the Company is not allowed by Law to make a payment for legal costs.

36.3 Insurance

To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Liability incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.

Explanatory Notes

Clause 1.1 - Definitions

1. Definition of **Alleged Conduct** is inserted to align with amended clause 11.1.
2. **Business Day** definition has been amended to remove reference to Victoria.
3. Definition of **Distinguished Service** is inserted to correlate with the reference in the amended Life Membership nomination process in clause 7.4.2.
4. Definition of **Law** inserted by Maddox Lawyers to reflect current best practice.

Clause 7.4.2 – Life Members

This clause is amended to reflect changes to the life membership nomination process. The new clause provides greater clarity to this process in that nominations for life membership now vests with the Board. Previously, any voting member could make direct nominations. This never occurred in the preceding 10 years.

Clause 11 – Disciplinary Action

This section has been updated and replaces the previous s 11. There is now a wider scope of disciplinary action available, rather than just expulsion as was the case with the previous version. There is also now capacity for a Board sub-committee to be appointed to address the disciplinary action in the first instance, and an appeal mechanism to a meeting of members.

Clause 20.2 – Composition of the Board

Minor technical amendments to align the cross referencing.

Clause 27.1.3 – Proceedings of the Board

Minor amendment to clarify who can call a meeting. This fixes the previous anomaly of the Board calling a meeting without at first having a meeting to call the meeting.

Clause 27.2.1 – Use of Technology in Conferencing

'Facsimile' is not an effective medium for the conduct of Board meetings. 'Computer' is not a means of communication.

Clause 36 – Indemnity and Insurance

The Indemnity section has been replaced and the clause expanded to include Insurance and better align with the requirements of the *Corporations Act 2001* (Cth).