

AUSTRALIAN COUNCIL FOR HEALTH PHYSICAL EDUCATION & RECREATION (NSW) INCORPORATED

Summary of key Constitution changes

Due to the scope of changes required and formatting issues with the current Constitution, the proposed new Constitution is a fresh document. It is not an amendment of the current Constitution. The proposed new Constitution achieves greater clarity by removing complexity, repetition and contradicting clauses. The table below highlights the key proposed changes to the Constitution.

New Clause	Subject	Comments	Reasons for change
GENERAL			
	Reference	Reference to the Association (ACHPER NSW) in the Constitution	The current Constitution currently refers to ACHPER NSW as the “State Branch”, this is a peculiar term to use as it implies that ACHPER NSW is a subset of a national entity rather than a separate legal entity in its own right, therefore the proposed new Constitution will refer to ACHPER NSW as the “Association”.
4	Charitable Objects	The objects of an Association describe the reason that it exists and influence its taxation status.	As ACHPER NSW has recently attained charity status based on the current Objects, the main intent and contents of the clause is retained with some minor refinements to the wording.
5	Not-for-profit	Similar clause to current clauses 20.3 and 20.4	Not-for-profit clauses moved earlier in document to better highlight not-for-profit status
6	Powers of the Association	Similar clause to current clause 4	This clause is drafted to highlight the Association’s powers.
MEMBERSHIP			
7	Membership	<p>The Constitution provides for three classes of membership:</p> <p>a) Full Members (including Fellows and Life Membership)</p> <p>b) Life Members</p> <p>c) Concession Members (including Graduates and Retired)</p>	<p>The new membership structure reflects the current practice of ACHPER NSW with voting membership being open to Fellows and Life Members.</p> <p>A Full Member (including Fellow and Life members) may or may not apply to be transferred to become a Retired Member on their retirement from employment.</p>

New Clause	Subject	Comments	Reasons for change
		<p>d) Non-voting members: persons who do not otherwise qualify for voting membership</p> <p>The Board may provide for additional categories of Membership within each class</p>	<p>In the case, where they apply to become a Retired Member: they will be classified under Concessional member and possess all the rights of a Concessional Member where they will retain their voting rights in General Meeting however, will not be entitled to vote in Director Elections or be elected as a Director.</p> <p>In the case where they do not apply to become a Retired Member: they will continue to be a Full Member and possess the rights of a Full Member.</p> <p>The Non-voting Members will include Student Members and any other non-voting category created by the Board.</p>
9	Life Members	New clause that outlines membership aspects of Life Members.	This clause gives power to the Board to confer Life Membership upon any Full Member who meets certain criteria as determined by the Board which include but is not limited to substantial experience in matters promoted by the Objects and/or significant service and contribution to the Association. Life Membership will possess the rights of Full Members. Life Members will be exempt from paying the membership fees.
12	Rights of Members	Clause 9 outlines the rights of Members in accordance with the proposed new membership structure specified in clause 7	<p>In addition to the distinctive rights applicable for Full or a Concessional Membership, a Full or a Concessional Member has the following rights:</p> <ul style="list-style-type: none"> a) submit items of business for consideration at a General Meeting b) have access to the minutes of General Meetings and other documents of the Association c) Inspect the Register of Members. <p>Rights of Members are distinct from Member services, benefits and fee discounts. Member services, benefits and discounts are operational matters and are not mentioned in the proposed new Constitution.</p>

New Clause	Subject	Comments	Reasons for change
13	Applying for Membership	An application for membership must be in a form prescribed by the Board. The Board may approve or reject an application of membership. The Board may refuse any application for membership without being compelled to give the reasons. The Board may delegate the consideration and determination of any membership application.	Membership is no longer administered by ACHPER National. Therefore, the proposed new Constitution reflects the transfer of membership matters to ACHPER NSW.
14	Cessation of membership	This clause outlines standard situations when a Member automatically ceases to be a Member.	This is a standard clause in Constitutions of membership bodies. In the current Constitution only few cases leading to cessation of membership have been envisaged like death, resignation and expulsion. However, there may be other reasons for cessation of membership such as conviction of Member for an indictable offence, ceasing to satisfy the criteria to be a Member etc which have not been provided for.
18	Membership Fees	The Board may determine from time to time to charge Members fees which may include joining fees, annual subscriptions or specific purpose levies and charges.	Under the current Constitution, ACHPER National sets the membership fees. The proposed new Constitution will provide for membership fees to be determined by the Board, not by ACHPER National.
20	Disciplining a Member	Similar to current clause 9 but with less wordy and more rationality. In the event of a disciplinary procedure, the proposed new Constitution gives Member a possibility to be accompanied by a person as an observer who need not necessarily be a Member to the proceedings.	The clause is refined keeping in mind procedural fairness to both the sides.
BOARD AND GOVERNANCE			
24	Board of Directors	There will be a maximum of 12 Directors comprising: (i) Between 6-10 Elected Directors, all of whom are elected by and from the Full Members; and (ii) Up to 2 Appointed Directors – appointed by the Board who may be but do not necessarily have to be Members.	The current Board composition is 12 Directors all of whom are elected by and from the Full Members. Further, there are no Appointed Directors. The proposed new Constitution will structure the Board to be primarily Elected Directors with the option for up to 2 Appointed Directors.

New Clause	Subject	Comments	Reasons for change
25	Appointed Directors	New clause to provide for the Board to appoint up to 2 individuals to hold office as Appointed Directors upon such terms and conditions as the Board determines. An Appointed Directors will have specific skills, experience, perspectives or capabilities that the Board considers desirable.	As membership organisations by their nature are democratic in their approach to governance and the selection of Directors, Boards are sometimes constrained by the election process regarding Director recruitment. This means the Board may have limited ability to recruit specifically on skills. A common way to address this is to allow for a number of Directors to be appointed by the Board if the Board so chooses. The Appointed Directors bring in skills and capabilities that the Board does not have and may not necessarily be Members of the organisation. Such appointees may be individuals with financial, marketing or industry expertise (as a few examples).
27	Eligibility of Directors	<p>Elected Directors must be Financial Full Members or Life Members.</p> <p>A person is ineligible for election or appointment as a Director if they are an employee of, contracted by, or on the Board of:</p> <p>a) ACHPER National; or</p> <p>b) any organisation or business that is considered by the Board to be a competitor to the Association.</p>	To manage potential ongoing conflicts of interest, this clause precludes Members who are on the Board of ACHPER National or from a competitor organisation from being on the ACHPER NSW Board.
30	Vacation of office of Directors	Similar to current clause 13.5.1 with addition of g) (if director) is prohibited from being a director under the Corporations Act 2001 (Cth) or the ACNC Act	Reflects ACHPER NSW's charity status
32	Office Bearers	<p>The Board will elect from amongst the Directors the following Office Bearers:</p> <p>(a) the President, who must be a Voting Member; and</p> <p>(b) the Vice President, who must be a Voting Member.</p>	<p>Board to choose the office bearers from among their number. This is because the Board will know who would be best to be in a particular office bearer position as they will work with them first-hand in a close environment.</p> <p>Many associations do not include a Treasurer in their Constitution. This is because the financial responsibility is shared by all directors, and there is a belief that having a Treasurer as a Member on a Board psychologically reduces the attention of the other directors from financial matters.</p>

New Clause	Subject	Comments	Reasons for change
			The removal of the office of Treasurer would be compensated for by a Finance & Audit Committee.
33	Meetings of Board	The Board may meet together for the dispatch of business, adjourn and otherwise regulate its Board meetings as it thinks fit.	The clause in the proposed new Constitution is refined to give administrative flexibility to the Board in regulating meetings than being prescriptive as stated the present Constitution 'not less than once in each quarter'.
33.8	Casting vote	Casting vote by the chairperson is removed. In the event of an equality of votes on any question arising at a Board meeting, the chair of the Board meeting does not have a casting vote and the motion is recorded as failed.	Casting votes are not recommended and the Chairperson should not have more votes than any other member and the proposed new Constitution states that the motion shall be lost because it has not achieved a majority vote.
GENERAL MEETINGS			
47	Appointment of proxies	A Member is entitled to appoint another Member as proxy by notice given to the Association no later than 48 hours before the time of the General Meeting in respect of which the proxy is appointed.	A revision to the current clause 15.8(b) where a Member is entitled to appoint a proxy who may or may not be Member. The proposed new Constitution requires proxy to be a Member of the Association.
OTHER MATTERS			
	Numbering and language	The numbering system for clauses and sub-clauses in the current ACHPER Constitution is inconsistently applied throughout the document.	The numbering system for clauses and sub-clauses is addressed and the proposed new Constitution uses plain English and gender-neutral language. Formatting has been fixed.
61	Transitional arrangements	These clauses outline how the current Membership structure and Board structure will transition to the new structures under the proposed draft Constitution. <u>Membership:</u> a) Full Members will continue as Full Members b) Fellow Members will be classified as Full Members c) Retired Members will be classified as Full or Concessional Member based on their application to continue as Full	These clauses are necessary to outline the transitional arrangements ie how the current membership and Board structure will transition to the proposed new structure.

New Clause	Subject	Comments	Reasons for change
		<p>member or move to Retired member category who will then be classified as Concessional Member</p> <p>d) Graduate Members will be classified as Concession Members</p> <p>e) Student Members and Corporate Members will be classified as Non-voting Members.</p> <p><u>Directors:</u> The Directors in office at the time will continue as Directors and be designated as Elected Directors even if this results in there being more than ten (10) Elected Directors. They will serve out the remainder of their terms and if eligible may be nominated to stand for re-election at the election immediately prior to their term expiring.</p> <p><u>Elections:</u> Prior to the 2023 AGM, elections will be held in accordance with clause 25. Note: this means if 6 elected directors are due to retire, then elections may be held to be fill up to 4 positions.</p> <p><u>Appointed Directors:</u> The Board may appoint up to two (2) Appointed Directors at any time upon this Constitution becoming effective.</p>	