

Proposed changes to the Constitution, August 2021

Background

In July 2021 the SA Attorney - General's Department requested changes to the constitution when assessing the Association's application to change its name. The request is shown below.

Proposed changes to the constitution were submitted, and were accepted by the Attorney - General's Dept in August 2021, and the new name was approved and registered. The proposed changes to the rules are shown below.

A special general meeting of members at 12:30 pm on 27 September 2021 will consider a proposed motion that the changes to the constitution accepted by the SA Attorney General's Department in August 2021 be adopted by the Association.

Request for changes

RE: LODGEMENT OF AN APPLICATION FOR REGISTRATION OF ALTERATION TO RULES OF AN INCORPORATED ASSOCIATION – 'SOUTH AUSTRALIAN GOVERNMENT SUPERANNUATED EMPLOYEES ASSOCIATION INCORPORATED'

I refer to the application for registration of alteration to rule(s) of an incorporated association – 'South Australian Government Superannuated Employees Association Incorporated' originally received via on 17 May 2021 by Consumer and Business Services ("CBS").

The application for registration of alteration to rule(s) of 'South Australian Government Superannuated Employees Association Incorporated' is deemed deficient under Section 7 of the Associations Incorporation Act 1985 ("the Act"), on the basis that it does not comply with the requirements of the Act, and has therefore been returned to you for completion.

Please attend to all matters listed below, and return the amended constitution to:

associations@sa.gov.au

1. Clause 1 of Constitution should state the proposed name, that is "**The Association of Public Sector Superannuants Incorporated**".
2. Please also revise the title of the document to reflect the above change, including "trading as PS SUPERANNUANTS".
3. Please be advised it is recommended that the trading name (business name) be approved by ASIC first before we process your constitution. Please supply us with the certificate of business name once this is completed.

3. The objects of the association need to be clearer. It is recommended that you insert clauses stating the objects of the association in clear terms in clause 4 of the constitution.
4. Unless the association intends to limit the power clause, it is recommended that you revise clause 5 to state: *“the Association shall have all powers conferred by section 25 of the Associations Incorporation Act 1985 “The Act” to further the objects of the association, including power to...”*.
5. In addition to the above, I require further information on the operation of clause 27.1 of the constitution. The problem with this is twofold:
 - a. If the Committee is “trustee” of the association in a legal and technical sense, the instrument establishing the trust should have been supplied to the CBS alongside the application, as required by sections 19(2)(c) or 19(2)(ca). If, however, this is not intended to operate in a legal and technical sense, it is recommended that you avoid this choice of word.
 - b. Moreover, the property may not be vested in the committee as trustee **if** this applies during the winding up process. The clause seems to suggest this, as it appears under the heading of the “property and dissolution”. I would recommended inserting this clause under the clause 6.6.
6. Please revise clause 23 to state “Consumer and Business Services” instead of the previously known “Office of Consumer and Business Affairs”.

All of the matters outlined above must be addressed within 21 days of the date of this email, by close of business Thursday 5 August 2021.

If you have any questions in relation to the above please contact the Associations Team on associations@sa.gov.au.

Changes proposed

~~CONSTITUTION OF~~

~~THE SOUTH AUSTRALIAN GOVERNMENT SUPERANNUATED EMPLOYEES ASSOCIATION INCORPORATED~~

~~Trading as~~

~~SA SUPERANNUANTS~~

CONSTITUTION OF

THE ASSOCIATION OF PUBLIC SECTOR SUPERANNUANTS INCORPORATED

1 NAME

1.1. ~~The name of the Association shall be "The South Australian Government Superannuated Employees Association Incorporated" (in these rules hereinafter called "the Association").~~

The name of the Association shall be "The Association of Public Sector Superannuants Incorporated" (in these rules hereinafter called "the Association").

2 ASSOCIATION'S OFFICE

2.1. The office of the Association shall be at such place as the Committee may from time to time determine.

3 MEMBERSHIP

3.1. The members of the Association shall consist of those persons who being eligible to join have met their financial commitments to the Association.

3.2. To be eligible to join the Association, a person must be in receipt of or be eligible to receive a pension or an annuity from a Commonwealth or South Australian Government Superannuation fund or such other public sector fund as might from time to time be recommended by the Executive Committee and approved at an Annual General Meeting or a Special General Meeting.

3.3. A member may resign from membership of the Association by giving written notice thereof to the Secretary of the Association.

4 OBJECTS

~~The objects of the Association shall be to deal with any matters affecting or likely to affect the welfare of its members.~~

The objects of the Association shall be to deal with any matters affecting or likely to affect the welfare of its members and their partners, and in particular to protect and improve the economic and social security in retirement of participants in public sector defined benefits superannuation schemes.

5 POWERS

~~The Association shall have power to do all things necessary and incidental to its objects, including power to~~

The Association shall have all powers conferred by section 25 of the Associations Incorporation Act 1985 "The Act" to further the objects of the association, including power to

- 5.1. institute and take action which is deemed necessary to carry out its objects,
- 5.2. raise monies by subscriptions and levies for the purpose of carrying out its objects, and
- 5.3. disburse, use and invest monies for the purpose of carrying out its objects.

6 EXECUTIVE COMMITTEE

- 6.1. The affairs of the Association shall be managed by a Committee comprising all the officers of the Association and up to six ordinary Committee members of whom not less than two will be women and not less than two will be men.
- 6.2. The officers of the Association shall be:
 - (a) President
 - (b) Vice-President
 - (c) a Secretary
 - (d) a Treasurer
 - (e) an Assistant Secretary
 - (f) a Membership Officer
 - (g) a Speaker Coordinator.
- 6.3. All officers and ordinary Committee members shall be elected at the annual general meeting of the Association in each year, shall hold office until the annual general meeting next after the date of his/her election, and are eligible for re-election.
- 6.4. Members who were formerly members of the Superannuated Commonwealth Officers Association and retired public servants (post 30 June 2019) may stand for positions of officer or ordinary member of the Executive Committee. However, these numbers for the time being should be restricted to a maximum of four members of that Committee or such number as may be determined by the Executive Committee from time to time.
- 6.5. In the event of a casual vacancy occurring, the Committee may appoint a member of the Association to fill the vacancy, and the member so appointed shall hold office until the ensuing annual general meeting.
- 6.6. The Committee
 - (a) shall control and manage the business and affairs of the Association, and

(b) hold all property of the Association, and

(c) has the power to perform all such acts as appear to the Committee to be essential for the proper management of the business and affairs of the Association.

6.7. The office of a committee member shall become vacant if the committee member is expelled from membership, or disqualified by the provisions of the legislation concerning the administration and control of incorporated associations.

6.8. The Executive Committee may from time to time create Standing Subcommittees. The Annual General Meeting must be informed of the existence of such sub-committees and their terms of reference

7 SUBSCRIPTIONS AND LEVIES

7.1. Each member shall contribute to the funds of the Association, subscriptions as determined by the members at the annual general meeting.

7.2. Separate rates shall be set for annual membership and life membership. In the event of the death of a member who has paid an annual or life membership fee the corresponding membership rights shall pass to that person's surviving spouse or putative spouse as defined in the South Australian superannuation legislation.

7.3. Subscription rates shall remain in operation for the whole of a financial year and may only be altered by providing notice of motion in writing to the Secretary at least eight weeks prior to the annual general meeting, together with agreement to the alteration being recorded at that annual general meeting. If agreed to, the amended rate shall be effective immediately. All fees in advance paid prior to the annual general meeting shall be valid for the relevant period.

7.4. Honorary life membership may be granted by resolution at the annual general meeting to members whose service is considered to have been worthy of such an award. To be eligible for the distinction, a member must have served for a minimum of five years on the Executive Committee and receive the recommendation of the Committee.

7.5. If, in the opinion of the Committee, it is at any time necessary to augment the funds of the Association, or to provide funds to meet any extraordinary expenditure lawfully incurred, or for any special purpose consistent with the objects of the Association, the Committee shall have power to impose a levy or levies upon all or any of the members of the Association, provided that in any one financial year, the levy or levies imposed on each member shall not exceed in amount one year's subscription.

8 FUNDS

- 8.1. The funds shall be banked in a separate banking account in the name of the Association and used under the direction of the Committee and shall be operated upon by the President, the Vice-President, the Treasurer, the Secretary and the Membership Officer, provided that all cheques and negotiable instruments shall be sufficiently endorsed if signed by any two of the above mentioned officers.
- 8.2. A duly audited annual financial statement showing receipts and payments and assets and liabilities shall be presented to the annual general meeting.
- 8.3. The income and property of the Association shall be applied solely towards the promotion of the objects of the Association, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise, howsoever by way of profit, to members or relatives of members of the

Association, provided that nothing herein shall prevent the payment in good faith of remuneration to any officer or servant of the Association or to any member of the Association for any service actually rendered to the Association, or reasonable and proper rental for premises let by any member to the Association.

9 AUDITOR

The Committee shall each year appoint an Auditor who shall not be a member of the Association.

10 FINANCIAL YEAR

The financial year of the Association shall be the period beginning on the first day of January in each year and ending on the thirty-first day of December next following.

11 GENERAL MEETINGS

- 11.1. Regular monthly General meetings shall be held at such time and place as the members determine.
- 11.2. An annual general meeting shall be held in February of each year and shall be in addition to any other general meetings that may be held. All members shall be advised of the date and time of the annual general meeting at least two weeks in advance of the meeting. The ordinary business of the annual general meeting shall be to
 - (a) confirm the minutes of the preceding annual general meeting,
 - (b) receive reports from the President, the Treasurer and the Auditor,

- (c) receive an audited annual financial statement,
- (d) elect the officers and the ordinary Committee members for the ensuing year, and
- (e) transact any special business of which notice is given in accordance with these rules.

11.3. A special general meeting may be convened by the Secretary upon direction from the President or the Committee, or upon a written request signed by not less than twelve members, who must state clearly the purpose of such meeting. No business other than that for which the special general meeting is convened shall be brought forward at this meeting.

11.4. Thirty members personally present (being members entitled under these rules to vote thereat) constitute a quorum for the transaction of the business of any general meeting.

12. NOTICE OF PROPOSED ELECTIONS TO THE COMMITTEE

Notice of all persons seeking election to the Committee at the annual general meeting shall be given to the Secretary by 5 p.m., Central Standard Time, on or before 21 January in every year.

12.1. The notice of the annual general meeting shall contain the names of all persons seeking election to the Committee, which notice shall be given to all members at least two weeks in advance of the meeting.

13 COMMITTEE MEETINGS

13.1. The Committee shall meet at such place and at such times as the Committee may determine.

13.2. Special meetings of the Committee may be convened by the President or any four of its members. Notice shall be given to the members of the Committee of any special meeting specifying the general nature of the business to be transacted, and no other business shall be transacted at such a meeting.

13.3. Any four members of the Committee constitute a quorum for the transaction of the business of a meeting of the Committee.

13.4. In a situation where the President believes that a decision needs to be made as a matter of urgency, he may call a meeting by telephone or video-conference or circulate a resolution to all committee members by facsimile,

mail or email. A matter dealt with by circulating a resolution, is decided when a majority of members have indicated their support or opposition to the resolution by returning by facsimile, mail or email a signed copy of the circulating resolution to the President within the timeframe specified in the circulating resolution.

14 CHAIRPERSON

- 14.1. The President, or in his/her absence, the Vice-President, shall preside as Chairperson at every meeting of the Association or of the Committee.
- 14.2. If the President and the Vice-President are both absent from a meeting, the members present (or in the case of a Committee meeting, the remaining members of the Committee present) shall elect one of their number to preside as Chairperson thereat.

15 VOTING

- 15.1. Upon any question arising at a general meeting of the Association or at a committee meeting, a member at a general meeting and each officer and committee member at a committee meeting has one vote only.
- 15.2. All votes shall be given personally.
- 15.3. Each motion put to the vote of the meeting shall be resolved by a simple majority by a show of hands or, if demanded, by secret ballot.
- 15.4. A secret ballot demanded on any resolution shall be taken in such manner as the Chairperson shall direct, and the result of the poll shall be deemed to be the resolution of the meeting.
- 15.5. In the case of an equality of voting on a question, the Chairperson of the meeting is entitled to exercise a second or casting vote.
- 15.6. A member shall not be entitled to appoint a natural person who is also a member of the Association to be their proxy, at any general meeting of the Association.

DUTIES OF OFFICERS

16 PRESIDENT

The duties of the President shall be to

- 16.1. preside at all general meetings and Committee meetings and preserve order thereat, and upon the minutes being confirmed, to sign the Minute Book in the presence of the meeting,
- 16.2. enforce the rules, and have control of the meeting at which he/she presides; and use all necessary power to secure and enforce order and expedition in the conduct of the business and good order of the members thereat,
- 16.3. conduct all meetings in accordance with the Standing Orders as may be from time to time determined by the Committee,
- 16.4. serve ex-officio as a member of all committees appointed by the Executive Committee, and
- 16.5. act in all matters of urgency in conjunction with the Secretary.

17 VICE-PRESIDENT

The duties of the Vice-President shall be to

- 17.1. preside over meetings and perform the duties of the President in his/her absence, and
- 17.2. assist in preserving order.

18 SECRETARY

The duties of the Secretary shall be to

- 18.1. attend all general meetings and Committee meetings,
- 18.2. attend to and keep a copy of all correspondence,
- 18.3. keep minutes of all meetings and records of other business transacted by the Association,
- 18.4. convene all general meetings and Committee meetings, and
- 18.5. discharge all such other duties and services as may be assigned to him/her by the Committee.

19. TREASURER

The duties of the Treasurer shall be to

- 19.1. keep all financial records of the Association, and in particular to
- (a) have the charge and custody of all current receipts of money belonging to the Association and ensure the prompt payment of such monies into the appropriate bank account of the Association,
 - (b) keep a correct account of all monies received and expended,
 - (c) ensure all payments are made by cheque, and
 - (d) produce any books and records for inspection at all reasonable times when requested by the Committee or the Auditor, and supply such information to the Committee and the Auditor regarding financial matters as they may require,
- 19.2. furnish at each meeting a statement showing the financial position of the Association and such reports as may have been made by the Auditor,
- 19.3. furnish to the Annual General Meeting of the Association a financial statement as provided for in clause 8, and
- 19.4. prepare and submit to the Australian Tax Office any statement of income required by law.

20 ASSISTANT SECRETARY

The duties of the Assistant Secretary shall be to

- 20.1. generally assist the Secretary in his/her allotted duties, and
- 20.2. perform any other duties and services assigned to him/her from time to time by the Committee.

21 MEMBERSHIP OFFICER

The duties of the Membership Officer shall be to

- 21.1. keep a register of all members of the Association, and
- 21.2. receive and bank membership fees, issue receipts for fees to members in accord with arrangements determined by the Committee and notify the Treasurer of all deposits made into the Association bank account, and

21.3. provide a list of members' addresses when this is required for the dispatch of newsletters or other communications to members.

22. SPEAKER COORDINATOR

The duties of the Speaker Coordinator shall be to

22.1. arrange for a Guest Speaker for every General Meeting and the Annual General Meeting, and

22.2. meet and greet all Guest Speakers to each meeting and formally introduce them to the meeting, and

22.3. contact the Guest Speaker some days before the General Meeting as a reminder and to enquire if they have any special requirements.

23 PUBLIC OFFICER

The Committee shall appoint a Public Officer; the appointment to be recorded on the register of the Association kept by the Office of Consumer and Business ~~Affairs~~ **Services**.

24 THE SEAL

The Association shall have a common seal upon which its corporate name shall appear in legible characters. The seal shall not be used without the express authorisation of the Committee, and every use of the seal shall be recorded in the minutes of the Association. The affixing of the seal shall be witnessed by any two members of the Committee who shall print their names beneath their respective signatures.

25 AMENDMENT TO THE CONSTITUTION

The constitution of the Association shall not be altered, amended or added to except by resolution to an annual general meeting or at a special general meeting convened for that purpose.

26. EXPULSION of A MEMBER

26.1 Subject to giving the subject member an opportunity to be heard or to make a written submission, the Committee may resolve to expel a member upon a charge of misconduct detrimental to the interests of the Association.

26.2 Particulars of the charge shall be communicated to the member in writing, and served upon the member, either personally, or by registered post at that member's last known address, together with an Advice of Receipt Card for signature by the recipient and return by the postal service to the Secretary.

26.3 The particulars of the charge shall carry an endorsement at the foot thereof specifying a date and place of the expulsion hearing, such date to be not less than 31 days after the personal service or estimated day of postal service.

26.4 In the event that service is established, but the subject member fails to attend at the appointed day and place, or such other day and place as subsequently agreed, the Committee shall proceed to a determination ex parte. The Committee shall thereupon serve a written copy of the determination upon the member and record in the Association Minutes the date and method of service as being either personal or by registered post.

26.5 In the event of an adverse determination, expulsion shall, subject to an appeal pursuant to 26.6 below, take effect 31 days after service of the determination to expel.

26.6 It shall be open to a member to appeal the expulsion to the Association at a General Meeting. The intention to appeal shall be communicated in writing, with specified grounds, to the Secretary or Public Officer of the Association within 14 days after the determination of the Committee has been communicated to the member.

26.7 In the event of an appeal under 26.6 above, the appellant's membership of the Association shall not be terminated unless the determination of the

Committee to expel the member is upheld by the members of the Association. In such case expulsion operates from the date of the General Meeting decision.

26.8 The hearing of the appeal shall be notified in the Agenda of the General Meeting, and the General Meeting shall be provided with:

- (i) A copy of the particulars of the charge.
- (ii) A copy of the determination of the Committee to expel.
- (iii) A copy of the member's grounds of appeal.

27 ~~PROPERTY AND DISSOLUTION~~

27.1. ~~All property of the Association shall be vested in the Committee of the Association which will act as trustee.~~

If upon the winding-up or dissolution of the Association, there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among members of the Association, but shall be

distributed to such other body or bodies having similar objects, or to such charitable body or bodies, such as shall prohibit the distribution of income and property to members.
