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## EXPLANATORY MEMORANDUM

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### RESTRUCTURE OF THE BARRISTERS' BENEVOLENT ASSOCIATION OF VICTORIA AND NEW CREDIT CARD FACILITY

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This explanatory memorandum accompanies the Notice of Annual General Meeting (the **Notice**) of the members of the Barristers' Benevolent Association of Victoria (**BBAV**) to be held on 28 October 2019. It provides information relevant to the agenda items to be considered at the AGM and should be read in full.

#### Annual General Meeting of BBAV

The BBAV's current structure is an unincorporated association governed by rules last amended in 1954 (the **Rules**). The Committee of Management of BBAV (i.e. the Victorian Bar Council) is required to give notice of the meeting to BBAV members who are eligible to vote pursuant to Rule 16 of the Rules.

The BBAV will hold its next AGM on **28 October 2019**, which will follow immediately after the Victorian Bar Inc. AGM to be held in the Neil McPhee Room, Level 1, Owen Dixon Chambers East, 205 William Street, Melbourne VIC 3000 at 4:30pm on the same date.

At the BBAV AGM, the following items will be considered:

- Resolution 1:** Verification of the minutes from the last AGM;
- Resolution 2:** Receipt and adoption of the Annual Report and Financial Statement for the last financial year; and
- Resolution 3:** A resolution to alter the Rules as specified in the Notice.

#### Explanation for Resolution 3

On 21 March 2019, the Committee of Management resolved to approve the retention of Herbert Smith Freehills (**HSF**) to advise and act for the BBAV in respect of its proposed restructure.

The primary reason for the restructure is that the current structure fails to satisfy ACNC and ATO requirements for a registered charity and necessitous circumstances fund (i.e. public fund). BBAV's endorsement as a tax-exempt deductible gift recipient is held on the basis that it constitutes a necessitous circumstances fund, however its Rules do not expressly refer to this character. Further, the Rules do not comply with the requirements under s30-125(6) of the *Income Tax Assessment Act 1997* (Cth) that, upon winding up, the BBAV's surplus assets are to be distributed to another deductible gift recipient. The proposed restructure will remedy these defects.

Further, it is proposed that the fund be structured as a trust (Barristers' Benevolent Foundation of Victoria) with a company limited by guarantee (Barristers' Benevolent Foundation of Victoria Ltd) as its trustee (**BBFV**). Unlike the current structure, BBFV will have juridical personality and legally compliant, modern rules. The BBFV will in all other respects function as BBAV currently does.

Resolution 3 is necessary to alter the Rules of BBAV to allow for the winding up of BBAV and the transfer of its surplus assets to BBFV. Members should note that if a majority of not less than three-fourths of the members present at the AGM pass the Resolution 3, a second general meeting of the BBAV will be called in order to confirm the alteration to the Rules. It is anticipated that the second meeting will be held on 14 November 2019 at 4:45pm in the Bar Council Chamber.

### **Committee of Management resolutions**

At the 19 September 2019 meeting of the Committee of Management, it was resolved:

- 1) to approve the BBFV constitution and trust deed to establish a necessitous circumstances fund; and
- 2) to approve a draft resolution to be included in the Notice of AGM to amend the Rules to allow for the transfer of surplus assets to BBFV following the wind up of BBAV.

It is noted that wind-up and asset distribution could only occur once BBFV is a registered charity with ACNC and endorsed as a deductible gift recipient by the ATO.

### **Credit card facility**

We would like to take this opportunity to inform you that the BBAV has implemented an online credit card payment facility for receiving donations. It is the quickest and easiest way to make a donation to assist your colleagues who find themselves in difficult circumstances.



**Dr Matt Collins AM QC**  
President



**Sam Hay**  
Treasurer

Sub-Committee of Management of the Barristers' Benevolent Association of Victoria

**Annexures**

[BBFV Trust Deed as approved by the Committee of Management](#)

[BBFV Constitution as approved by the Committee of Management](#)