



THE VICTORIAN BAR INCORPORATED **CONSTITUTION**

Effective from 5 August 2021

CONSTITUTION

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PART 1 – NAME AND PURPOSES

1. NAME

- 1.1. The name of the association is “The Victorian Bar Incorporated”.
- 1.2. The name and registration number of the association must appear in legible characters in all notices, advertisements and other official publications of the association, and in all its business documents, including letters, invoices and cheques.

See section 23 of the Act.

2. PURPOSES

The purposes of the Victorian Bar are:

- (a) to manage, administer and develop the Victorian Bar as an independent professional association for barristers in Victoria, including by:
 - (i) setting the requirements for entry onto the Bar Roll and membership of the association;
 - (ii) making chambers available, as far as practicable;
 - (iii) providing support services; and
 - (iv) arranging continuing legal education and professional development;
- (b) to regulate aspects of barristers’ practice (including regulation subject to delegation from the Victorian Legal Services Board) and the professional and related conduct of members;
- (c) to promote and support the physical and mental well-being of barristers;
- (d) to maintain a strong and independent bar in Victoria by, among other things:
 - (i) promoting the Victorian Bar, and the distinctive competencies of barristers, to users of legal services and to the community; and
 - (ii) enhancing relationships between the Victorian Bar and others (including governments, the judiciary, the broader legal profession, other professional associations and the community); and
- (e) to promote the administration of and access to justice and to uphold the rule of law and democracy.

3. LEGAL CAPACITY AND POWERS

3.1 The association has the legal capacity of an incorporated body.

See section 29(2) of the Act.

3.2 The association has power to do anything incidental or conducive to the attainment of its purposes.

See section 30(d) of the Act.

3.3 The association may only:

- (a) exercise its powers; and
- (b) use its income and assets (including any surplus),
— for its purposes.

4. NOT FOR PROFIT ORGANISATION

4.1 The association must not distribute any surplus, income or assets directly or indirectly to its members.

See section 33 of the Act.

4.2 Clause 4.1 does not prevent the association from paying its members:

- (a) reimbursement for expenses properly incurred by them; and
- (b) for goods supplied and services provided by them

— if this is done in good faith on terms no more favourable than if the member were not a member.

See section 4 of the Act.

PART 2 – MEMBERSHIP

5. ELIGIBILITY

An Australian lawyer who proposes to practise in Victoria and to practise solely as a barrister may apply to the Bar Council to have that person's name entered on the Bar Roll.

6. APPLICATION

An application for entry onto the Bar Roll must be in writing in the form prescribed.

7. APPROVAL

7.1 No person's name shall be entered on the Bar Roll without the Bar Council's consent by resolution.

7.2 The Bar Council, in its discretion, may resolve that the name of an applicant be entered on the Bar Roll if it is satisfied that the applicant:

- (a) intends to practise law, whether in the State of Victoria or elsewhere, only as a barrister and not as a solicitor or a barrister and solicitor;
- (b) does not intend to carry on, engage in or practise any business, profession or occupation that is inconsistent with practice as a barrister;
- (c) does not, absent dispensation from the Bar Council, directly or indirectly, hold shares or an interest in any legal practice, other than shares representing less than 5% of the votes in a listed company that carries on a legal practice;
- (d) does not intend to practise as a barrister in partnership with any person or as an employee of any person;
- (e) does not intend to share profits from practice as a barrister with any other person;
- (f) has given it such undertakings as are required by any regulations made pursuant to this Constitution;
- (g) satisfies the requirements of the regulations made pursuant to this Constitution; and
- (h) is a fit and proper person to practise as counsel.

7.3 Upon the passage of a resolution pursuant to clause 7.2 above, the applicant becomes a member of the association.

8. DIVISIONS OF THE BAR ROLL

8.1 The Bar Roll shall be divided into Divisions as follows:

DIVISION A – PRACTISING LIST

Comprising all counsel practising as barristers or who are temporarily absent from practising as a barrister.

Such Division shall be divided into Parts as follows:

- Part 1: Victorian Practising Counsel (comprising only barristers holding a current Victorian practising certificate)
- Part II: Crown Prosecutors and Public Defenders
- Part III: Interstate and Overseas Practising Counsel
- Part IV: Victorian Practising Counsel who are temporarily absent from practice and do not hold a current practising certificate.

Unless the Bar Council otherwise determines in a particular case, temporary absence from practice without a practising certificate on Division A Part IV shall not be for a period greater than 12 months.

DIVISION B – JUDICIAL AND OTHER OFFICERS

Comprising all members who are in judicial or other public office.

Such Division to be divided into Parts as follows:

- Part 1: Governors
- Part II: Judges, Associate Judges, Magistrates and Judicial Registrars
- Part III: Ministers of the Crown and Members of Parliament
- Part IV: Solicitors-General and Directors of Public Prosecutions
- Part V: Full-time Members of Statutory Tribunals
- Part VI: Crown Counsel and Parliamentary Counsel
- Part VII: Other official appointments

DIVISION C – RETIRED COUNSEL

Comprising all counsel who have retired from judicial or other public office and have not resumed practice as counsel and all counsel who are or have been of not less than 10

years standing (or such lesser period of standing as the Bar Council may fix in relation to any particular counsel) and who, for reasons other than the acceptance of judicial or other public office, have retired from practice as counsel.

Such Division to be divided into Parts as follows:

Part 1: Retired Judges, Associate Judges, Masters, Magistrates and Judicial Registrars

Part II: Retired Holders of Public Office other than Judicial Office

Part III: Retired Counsel.

DIVISION D – ACADEMICS

Comprising all counsel who are or have been academics, other than those whose names are included in another Division of the Bar Roll.

- 8.2 Subject to this Constitution, the Bar Council, in its discretion, shall determine the Division or Part of Division of the Bar Roll in which the name of each member shall be included and it may so determine at any time and from time to time, either on the application of the member, or of its own motion.
- 8.3 Subject to this Constitution, the name of any member may be moved from any Division or Part thereof to another Division or Part thereof by resolution of the Bar Council, on application by that member in writing to the Secretary, or by the Bar Council of its own motion.

9. PRACTICE

- 9.1 It is a condition of remaining on the Bar Roll, and thus remaining a member of the association, that counsel shall, whether in the State of Victoria or elsewhere:
- (a) not practise otherwise than as a barrister – and not practise as a solicitor or a barrister and solicitor;
 - (b) not carry on, engage in or practise any business, profession or occupation which is inconsistent with practice as counsel;
 - (c) not, absent dispensation from the Bar Council, directly or indirectly, hold shares or an interest in any legal practice, other than shares representing less than 5% of the votes in a listed company that carries on a legal practice;
 - (d) not practise as a barrister in partnership with any person or as an employee of any person; and

- (e) not share profits arising from practice as a barrister with any person.
- 9.2 If the Bar Council is satisfied, on application in writing by any counsel or of its own motion, that there are exceptional circumstances, it may give leave for that counsel to remain on the Bar Roll notwithstanding non-compliance with clause 9.1(a), (b), (c), (d) or (e) on such conditions (if any) and for such period as it thinks fit.
- 9.3 It is a condition of remaining on the Bar Roll in Division A Part III (Interstate and Overseas Practising Counsel), and thus remaining a member of the association, that, in addition to the requirements of clause 9.1, counsel is and remains:
- (a) entitled to practise as a barrister (howsoever described – and whether or not the practice framework includes an independent Bar) in the person’s interstate or overseas jurisdiction; and
 - (b) a member of the independent Bar association of that person’s interstate or overseas jurisdiction if there is one.

10. AUSTRALIAN BAR ASSOCIATION

By becoming and remaining a member of the association, each member agrees concurrently to become and remain a member of the Australian Bar Association for so long as the Bar Council determines.

11. SUBSCRIPTIONS

- 11.1 Members shall pay to the association such subscriptions as the Bar Council determines. Unless the Bar Council determines otherwise, the subscription year is the financial year (1 July to 30 June). Subscriptions are due on 1 July each year or, if that day is a Saturday, Sunday or Public Holiday, the next business day.
- 11.2 The Bar Council may set subscriptions of differing amounts in respect of differing classes of members, or on such basis as it deems fit.
- 11.3 The Bar Council may:
- (a) exempt any member or class of members from the requirement to pay any subscription;
 - (b) vary or waive the amount of the subscription that any member or class of members may otherwise pay; or
 - (c) vary the time for payment of any subscription.

- 11.4 The Bar Council may delegate to the Honorary Treasurer the powers referred to in clause 11.3 or any of them, and may instruct the Honorary Treasurer as to the circumstances in which those powers may be exercised.
- 11.5 [deleted]
- 11.6 Members whose names are entered on the Bar Roll more than three months after the commencement of a financial year shall pay as an initial subscription in respect of that financial year such sum or sums at such time as the Bar Council determines.
- 11.7 [deleted]
- 11.8 If any member fails to pay a subscription for a period of two months after it becomes payable, the Honorary Secretary may serve upon that member a notice that membership rights and benefits are immediately suspended.
- 11.9 If any member fails to pay the amount of any subscription, or any other amount payable to the association, for a period of two months after it became payable, the Honorary Secretary may, in addition to any suspension of member rights and benefits under clause 11.8 (whether exercised by the Honorary Secretary or not), serve upon that member a notice requiring that member to pay the amount to the association within 14 days of the date of the notice or such other time as may be specified in the notice; and may by further notice extend the time for compliance for such time and on such conditions (if any) as the Honorary Secretary thinks fit.

12. MEMBERSHIP, THE BAR ROLL AND THE REGISTER OF MEMBERS

- 12.1 The Secretary shall keep and maintain as an historical record the Bar Roll in which shall be entered the full name of each member; the date of signing the Roll; the date of admission to practice or admission as a lawyer; an address (which may be by reference to clerk or chambers); annotations as to professional matters such as silk, appointment to judicial office, transfer of division on the Bar Roll; and the date of death or otherwise ceasing to be a member and shall maintain an electronic database of such historical record.
- 12.2 A person whose name was on the Roll kept successively by the Committee of Counsel and the Bar Council immediately before the incorporation of the association is a member of the association, and that Roll is, and continues to be, the Bar Roll.
- 12.3 The Secretary shall also keep and maintain separately from the Bar Roll a Register of Members in accordance with section 56 of the Associations Incorporation Reform Act 2012. The Register shall contain the name and address (which may be by reference to clerk or chambers) of each person who is a member, their division on the Bar Roll, and the date on which the person became a member.

See section 56(1) and (2) of the Act.

- 12.4 Within 14 days after the date upon which a person ceases to be a member, that event is to be entered in the Register of Members and information about that person in the Register other than the name of the person and the date on which the person ceased to be a member shall be removed from the Register.

See section 56(3) and (4) of the Act.

- 12.5 Members may inspect the Register in accordance with clause 75.

See section 57 of the Act.

- 12.6 In accordance with clause 13.5, although information is removed from the Register of Members under clause 12.4, all information remains in the Bar Roll and in the electronic Bar Roll database.

13. RIGHTS, OBLIGATIONS AND LIABILITY

- 13.1 This Constitution is an enforceable contract between the association and each member, as provided in section 46 of the Act. Subject to and read with the Act, the rights, obligations and liability of members are as set out in this Constitution and each member has a contractual obligation to comply with the Constitution and any regulations made under it.

See section 46, and see generally Part 5 – Rules, Membership and General Meetings, sections 46–71, of the Act.

- 13.2 Each member has the right to inspect and, upon written request and payment of such fee as the Bar Council may prescribe, to obtain copies of this Constitution and any regulations made under it, and of the minutes of general meetings.

See section 53, and item 15 of Schedule 1, of the Act.

- 13.3 Each member has the right to inspect and, upon written request and payment of such fee as the Bar Council may prescribe, to obtain copies of the minutes of meetings of the Bar Council except to the extent that the Bar Council may determine that particular minutes, or parts of minutes, relate to confidential personal, employment, commercial or legal matters to which access ought not be allowed.

See item 16 of Schedule 1 of the Act.

- 13.4 Each member has the right to inspect the Register of Members.

See section 57 of the Act.

- 13.5 Each member agrees that all information about them entered in the Bar Roll under clause 12.1 will remain in the Bar Roll and the electronic Bar Roll database as an historical record

notwithstanding the requirement in section 56(4) of the Act that information be removed from the Register of Members.

- 13.6 Each member has the right to attend a general meeting unless their rights as a member have been suspended.

See section 61 of the Act. See clauses 20 and 21 for notice and eligibility to vote at general meetings.

- 13.7 The liability of members is limited as set out in section 52 of the *Associations Incorporation Reform Act 2012*. Members (including Bar Council members) are not liable to contribute to the debts and liabilities of the association, or to the costs, charges and expenses of the winding up of the association, only because of their membership.

14. CONDUCT OF MEMBERS

- 14.1 The Bar Council may refer to the Ethics Committee or a committee of at least three persons who may, but need not be, members or former members of the Bar Council or of the Bar (in this clause, the committee to which the Bar Council refers a matter is called “the Investigating Committee”) for investigation and consideration for the purposes of this clause a matter of whether a member of the association may have:

- (a) infringed any of the provisions of this Constitution or any regulations made pursuant to it – other than practice rules and other rules provided for in the *Legal Profession Uniform Law Application Act 2014* (Vic);
- (b) breached any undertaking given pursuant to this Constitution or any regulations made pursuant to it;
- (c) failed to comply with a notice served pursuant to clause 11.9 of this Constitution;
- (d) been found guilty of unsatisfactory professional conduct or professional misconduct pursuant to Chapter 5 of Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic) or equivalent by a corresponding disciplinary body (as defined in section 461 of Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic)); or
- (e) ceased to be an Australian lawyer as defined in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic).

- 14.2 The Investigating Committee may require a member of the association to furnish comments or information in relation to any matter it investigates or considers pursuant to this clause and the member must forthwith respond to any such enquiry.

- 14.3 The Investigating Committee may:

- (a) if satisfied that the matter is without substance, dismiss it;
- (b) otherwise direct that the Honorary Secretary serve on the member a notice to show cause why any one or more of the orders referred to in clauses 14.12(b)(ii)–(viii) should not be made; and
- (c) at any time withdraw any such show-cause notice.

14.4 A notice pursuant to clause 14.3(b) shall:

- (a) be in writing and signed by the Honorary Secretary;
- (b) contain particulars of the alleged infringement, breach, failure or finding against the member;
- (c) specify the date, time and place at which the matter is to be heard; and
- (d) contain such other information (if any) as the Investigating Committee may direct.

See section 54(3)(a)(i) of the Act.

14.5 A notice pursuant to clause 14.3(b):

- (a) shall be heard by a show-cause panel so constituted as not to give rise to a reasonable apprehension of bias (“the Show-Cause Panel”); and
- (b) shall be heard and determined as soon as is reasonably practicable.

See section 54(3)(b) & (c) of the Act.

14.6 The Show-Cause Panel shall be:

- (a) the Counsel Committee; or
- (b) a committee appointed pursuant to clause 14.7.

14.7 Further to clause 14.6(b), the Bar Council may, in its discretion, appoint a committee of three who may, but need not be, members or former members of the Bar Council or of the Bar, to constitute a Show-Cause Panel for the purposes of a particular show-cause matter or generally.

14.8 On application in writing by or on behalf of the member, or on application by the Investigating Committee, or of its own motion, the Show-Cause Panel may vary the date, time or place at which the matter is to be heard specified in the clause 14.3(b) notice (by notice in writing served on the member).

14.9 Subject to a direction under clause 14.1, the Investigating Committee shall present the matter on the papers.

14.10 The Show-Cause Panel shall give the member a reasonable opportunity to be heard and the member may be represented by counsel.

See section 54(3)(a)(ii) of the Act.

14.11 The Show-Cause Panel may adjourn the hearing to enable the Investigating Committee to brief counsel to appear and present the matter if it considers that it would be assisted by that course.

14.12 The Show-Cause Panel may make any one or more of the following orders (whether or not the member concerned appears before it):

- (a) in the case of a breached undertaking, that the member comply with the undertaking, and, in such manner as the Show-Cause Panel may specify, make good the breach; and
- (b) in any case:
 - (i) an order dismissing the show-cause notice;
 - (ii) an order reprimanding the member;
 - (iii) an order cautioning the member;
 - (iv) an order requiring the member to undergo counselling;
 - (v) an order that the member undertake and complete specified further education or training within a specified period;
 - (vi) an order that, in the event that the member does not comply with an order pursuant to sub-clause 14.12(a) or (b)(iv) or (v) within the time specified in that order or any extension, the member's name be struck off the Bar Roll;
 - (vii) an order that the member's name be struck off the Bar Roll;
 - (viii) an order that the operation of its order or orders be suspended for such period and upon such conditions as it may specify; and
 - (ix) an order adjourning the further hearing of the matter (including to a date to be fixed) upon such terms and conditions as it may specify.

14.13 At any time within 3 months after making an order pursuant to clause 14.12(a) or (b), or such longer time as it considers fit, the Show-Cause Panel or the Counsel Committee may vary or rescind that order (upon application in writing by the member, or by the Investigating Committee, or of its own motion) either absolutely or on such conditions as it considers fit.

15. RESIGNATION

A member may resign by notice in writing to the Secretary requesting that the member's name be removed from the Bar Roll.

16. CESSATION

Members cease to be members on resignation, death or having their name struck off the Bar Roll.

17. GRIEVANCE PROCEDURE

17.1 The grievance procedure in this clause applies to disputes under this Constitution between:

- (a) a member and another member; and
- (b) a member and the Bar Council or the association.

17.2 The parties must first attempt to resolve the dispute themselves.

17.3 If the parties are unable to resolve the dispute, the Bar Council must appoint a conciliator and arbitrator (in this clause, "the conciliator").

17.4 The conciliator:

- (a) must not have a personal interest in the dispute;
- (b) must not be biased in favour of or against any party;
See section 55(3)(b) of the Act.
- (c) may be a member or former member of the association;
- (d) if possible, should be appointed with the agreement of all parties; and
- (e) shall be appointed by the Bar Council (if the parties are unable to agree upon a conciliator), regardless of whether the Victorian Bar, the Bar Council or any person acting, or claimed to be acting, on behalf of the Bar is a party to the dispute.

17.5 Regardless of whether the conciliator is agreed by the parties or appointed by the Bar Council, the conciliator's fees and all other costs of the conciliation are to be met by the parties in equal shares unless otherwise agreed or otherwise ordered by a court or tribunal.

17.6 The conciliator must conduct a conciliation at which each party is given a reasonable opportunity to be heard.

See section 55(3)(a) of the Act.

17.7 The parties must in good faith attempt to resolve the dispute by conciliation.

- 17.8 The conciliator must attempt to resolve the dispute by agreement between the parties.
- 17.9 If the conciliator is unable to resolve the dispute by agreement between the parties, the conciliator must determine the respective rights and obligations under this constitution of the parties and any other members.
- 17.10 A determination of a conciliator under clause 17.9 is binding on all parties and all members.
- 17.11 As required by sections 55(2) and (3) of the *Associations Incorporation Reform Act 2012*:
- (a) a member may appoint any person to act on their behalf in the grievance procedure; and
 - (b) the association, in applying the grievance procedure, must ensure that such member has been given an opportunity to be heard; and
 - (c) the outcome of the dispute must be determined by an unbiased decision-maker.
- 17.12 A member who is the subject of a referral, investigation and consideration, or show-cause procedure under clause 14 must not initiate a grievance procedure under this clause in the same matter until the referral, investigation and consideration, or show-cause procedure has been completed, and any grievance procedure shall, upon the initiation of a referral, investigation and consideration, or show-cause procedure in the same matter, be stayed until the referral, investigation and consideration, or show-cause procedure is concluded.
- See section 54(4) of the Act.
- 17.13 The State, Territory and Commonwealth Acts applying to commercial arbitrations do not apply to the grievance procedure in this clause.

PART 3 – GENERAL MEETINGS

18. ANNUAL GENERAL MEETING

18.1 The Bar Council must convene an annual general meeting each year.

See section 63(1) of the Act.

18.2 The annual general meeting must be held within five months after the end of the association's financial year under clause 67.

See section 63(4) of the Act.

18.3 At the annual general meeting, the Bar Council must submit to the members the financial statements for the last financial year in accordance with the financial reporting requirements of the Act.

See sections 94, 97 and 100 of the Act.

18.4 The ordinary business of the annual general meeting is:

- (a) verification of the minutes of the last annual general meeting and of any special general meetings since the last annual general meeting;
- (b) receipt of the annual report including the audited accounts and financial statements in accordance with the financial reporting requirements of the Act;
- (c) the appointment of an appropriately qualified person or body to be auditor for the association; and
- (d) such other business as may be conveniently dealt with and of which not less than 21 days' notice in accordance with clause 83.4 has been given to members.

18.5 The business at an annual general meeting may also include any special resolution of which notice has been given to members in accordance with clause 83.4.

18.6 At, or as soon as practicable after the conclusion of the annual general meeting, a member of the Bar Council must certify in the form approved by the Registrar that:

- (a) the Bar Council member attended the annual general meeting; and
- (b) the financial statements were submitted to the members at the annual general meeting.

See sections 94(3), 97(3) and 100(3) of the Act.

18.7 The Secretary must lodge with the Registrar:

- (a) an annual statement in the form approved by the Registrar;

- (b) the financial statements and any accompanying review or audit report; and
- (c) a statement of the terms of any resolution passed at the annual general meeting concerning the financial statements

— within 1 month after the annual general meeting.

See section 102 of the Act.

19. SPECIAL GENERAL MEETINGS

19.1 The Bar Council may convene general meetings from time to time as it thinks fit.

19.2 Forty or more members may by a notice in writing addressed to the Secretary require the Bar Council to convene a general meeting to consider any subject specified in the notice. Such notice need not contain any proposed motion or motions but, if it does, the notice shall identify a single proposer and single seconder for each motion.

19.3 The Bar Council shall convene a general meeting to be held as soon as practicable after receipt by the Secretary of a notice under clause 19.2.

19.4 In the event that the proposer and seconder of each motion in a notice pursuant to clause 19.2 advise the Bar Council that they do not intend to proceed with their proposed motions, the Bar Council may cancel the general meeting by notice pursuant to clause 83.4 without reference to any of the other signatories to the clause 19.2 notice.

20. NOTICE

20.1 The Bar Council shall give to all members eligible to vote at a general meeting not less than 21 days' notice of the general meeting in the manner provided for in clause 83.4.

See sections 60 and 64 of the Act.

20.2 The notice shall include:

- (a) the date, time and place of the meeting;

See section 60(a) of the Act.

- (b) the general nature of each item of business to be considered;

- (c) if a special resolution is to be proposed:

- (i) the special resolution in full; and

- (ii) notice of the intention to propose the resolution as a special resolution.

See section 64(3) of the Act.

- (d) the prescribed form(s) for appointment of a proxy.

See section 60(b) of the Act.

- 20.3 Despite clause 20.1, the accidental omission to give notice of the meeting to a member or members, or the non-receipt by a member or members of notice of the meeting, does not invalidate the meeting.

21. ELIGIBILITY TO VOTE AT A GENERAL MEETING

All members not in arrears of subscription and whose practising certificate (if any) is not then suspended or cancelled are eligible to vote at a general meeting.

22. QUORUM

- 22.1 Any 10 members present or deemed present and eligible to vote at a general meeting (excluding proxies) shall constitute a quorum.
- 22.2 If within a quarter of an hour after the appointed time for the commencement of a general meeting, a quorum is not present:
- (a) the meeting if convened upon the requisition of members shall be dissolved; and
 - (b) in any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place unless another day, time or place is specified by the chair of the meeting (“the Chair”) at the time of the adjournment or by written notice to members given before the date to which the meeting is adjourned.
- 22.3 If at the adjourned meeting a quorum is not present within a quarter of an hour after the time appointed for the commencement of the meeting, the meeting shall be dissolved.
- 22.4 No item of business shall be transacted at a general meeting unless a quorum is present when the meeting is considering that item.

23. USE OF TECHNOLOGY AT MEETINGS

- 23.1 A general meeting may be held, and the Bar Council may permit members to participate in a general meeting, by the use of any technology that allows all participating members to communicate with each other clearly and simultaneously.
- 23.2 A member participating by the use of technology is deemed present.

See section 62 of the Act.

24. CHAIR OF THE MEETING

- 24.1 The President, or in the President’s absence, a Vice-President, shall preside at each general meeting of the association.

- 24.2 If neither the President nor a Vice-President is present, or wishes to chair the meeting, or a part of the meeting, the President (if present) or the Chair may appoint, or in default of such appointment, the meeting may elect, another member to chair that meeting or part of the meeting.

25. ADJOURNMENTS

The Chair may adjourn the meeting from time to time and place to place on such terms as the Chair may determine. All members eligible to vote at a general meeting as at the date to which the meeting is adjourned may attend and vote, whether or not eligible or present at the initial meeting, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

26. VOTING

- 26.1 Upon any question arising at a general meeting, a member has one vote only.
- 26.2 All votes shall be given personally or by proxy.
- 26.3 Voting shall first be by show of hands of those present, to which shall then be added proxy votes by show of hands and declaration by the Chair as to the number of proxy votes held by the Chair.
- 26.4 A question arising at a general meeting shall be determined on a show of hands unless, before or on the declaration of the show of hands, a poll is demanded pursuant to clause 28.1.
- 26.5 The Chair does not have a casting vote – in the case of equality of voting on a question, the motion is lost.
- 26.6 Subject to clause 26.7, a declaration by the Chair that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority is conclusive unless a poll is demanded under clause 28.1.
- 26.7 In relation to a vote on a special resolution, if any member of the association present at the meeting demands that the votes (including proxy votes) be counted, they may not make a declaration under clause 26.6 unless and until there has been an actual count of those votes.

See section 65 of the Act.

27. PROXIES

- 27.1 Each member eligible to vote is entitled to appoint another member who is eligible to vote as a proxy by notice in the form prescribed by the Bar Council and received by the

Secretary no later than 5 p.m. on the last business day, and at least 24 hours before, the time of the meeting in respect of which the proxy is appointed.

- 27.2 Only a member eligible to vote at that general meeting may appoint or hold a proxy.
- 27.3 Except for the Chair (to whom any number of proxies may be given in that designation), no member may hold more than two proxies.

28. THE POLL

28.1 If:

- (a) the Chair determines; or
- (b) at least one-fifth (but in no case fewer than 5) of the members present at the meeting and eligible to vote so require

— after debate has concluded and, either before or immediately after a vote has been taken on a show of hands upon any question (not being a purely procedural question) that the question be determined by a poll of all members eligible to vote at a general meeting, the question shall be so determined.

- 28.2 A poll pursuant to clause 28.1 shall be taken within two weeks after the date of the meeting and in such manner as the Chair determines.
- 28.3 All members who on the day fixed for the closing of voting in the poll are eligible to vote at a general meeting are eligible to vote in any such poll, whether or not eligible or present at the meeting out of which the poll arises.

29. MINUTES OF GENERAL MEETINGS

The Bar Council must prepare and retain accurate minutes of each general meeting; and such minutes shall include copies of any financial statements submitted at a general meeting including, in relation to those submitted at the annual general meeting, the certificate of two Bar Council members and the accompanying audit report required by sections 100(2)(b) and (c) of the Act.

See section 100 and Schedule 1 item 14(a) of the Act.

PART 4 – THE VICTORIAN BAR COUNCIL

30. THE BAR COUNCIL

There shall be a committee of Victorian counsel called the Bar Council.

31. RESPONSIBILITY AND POWERS

The business and affairs of the association shall be managed and administered by the Bar Council which, in addition to the powers and authorities conferred on it by this Constitution, may exercise all powers and do all things that might be exercised or done by the association which are not by this Constitution or by statute required to be done by the association in general meeting.

32. DELEGATION

32.1 The Bar Council may delegate any of its powers (including the power to delegate) to:

- (a) a committee of members of the Bar Council;
- (b) a member or members of the Bar Council;
- (c) a member or members of the Victorian Bar; or
- (d) an employee or employees of the Victorian Bar.

32.2 The delegate must exercise the power or powers delegated in accordance with any direction of the Bar Council.

32.3 The exercise of the power or powers by the delegate is as effective as if the Bar Council had exercised it or them.

32.4 The Bar Council may revoke or amend any delegation made under clause 32.1.

33. REGULATIONS

33.1 The Bar Council may make, revoke and amend regulations for any of the matters and things which by this Constitution are contemplated, required or permitted to be the subject of regulations or which appear to it to be necessary or convenient for the purpose of carrying out the provisions of this Constitution, or for better giving effect to the operation, objects and purposes of the Victorian Bar. Any and all such regulations are binding on members and operate as if they formed part of this Constitution.

33.2 Without limiting the generality of clause 33.1 the Bar Council may by regulation make provision in respect of:

- (a) the professional or other related conduct of members;

- (b) reading;
- (c) the retainer of counsel;
- (d) applications to enter names on the Bar Roll;
- (e) the granting of exemptions provided for in any of the provisions of this Constitution;
- (f) all matters relating to the licensing of barristers' clerks;
- (g) the chambers occupied by counsel; and
- (h) any other matter authorised required or permitted by this Constitution or the *Legal Profession Uniform Law Application Act 2014* (Vic) to be provided for by regulations.

33.3 Any regulations made by the Bar Council pursuant to this Constitution shall be subject to disallowance, revocation, variation or amendment by a general meeting convened for that purpose.

33.4 [deleted]

34. PUBLIC STATEMENTS

34.1 The President may make public statements on behalf of the association.

34.2 The Bar Council or the President may authorise another Bar Council member or other person to do so.

34.3 Otherwise, no person may make any public statement on behalf of the association.

35. DUTIES

35.1 Members and former members of the Bar Council must not make improper use of:

- (a) their position; or
- (b) information acquired by virtue of holding their position

— so as:

- (c) to gain an advantage for themselves or any other person; or
- (d) to cause detriment to the association.

See section 83 of the Act.

35.2 Bar Council members must exercise their powers and discharge their duties with reasonable care and diligence.

See section 84 of the Act.

35.3 Bar Council members must exercise their powers and discharge their duties:

- (a) in good faith in the best interests of the association; and
- (b) for a proper purpose.

See section 85 of the Act.

36. MEMBERSHIP

The Bar Council shall consist of 21 counsel whose names are included in either Part I, Part II or Part IV of Division A of the Bar Roll and who are elected pursuant to this Constitution:

- (a) 11 of whom shall be of Senior Counsel or counsel of not less than 15 years standing (senior category);
- (b) 6 of whom shall not be of Senior Counsel and shall be of not less than 6 years standing and not of 15 or more years standing (middle category); and
- (c) 4 of whom shall not be of Senior Counsel and shall be of less than 6 years standing (junior category)

— such seniority and years standing being determined as at the date by which nominations for election are to be received by the Secretary.

37. OFFICERS OF THE BAR COUNCIL

37.1 The Officers of the Bar Council shall be:

- (a) a President (who may be designated “President of the Victorian Bar”);
- (b) two Vice-Presidents (who may be designated “Senior” and “Junior” respectively; and who may be designated “Vice-President of the Victorian Bar”; or “Senior” or “Junior” respectively “Vice-President of the Victorian Bar”);
- (c) an Honorary Treasurer;
- (d) an Honorary Secretary;
- (e) the Statutory Secretary for the purposes of the Associations Incorporation Reform Act 2012; and
- (f) if the Bar Council considers necessary:
 - (i) an Assistant Honorary Treasurer; and
 - (ii) one or more Assistant Honorary Secretaries.

38. PRESIDENT, VICE-PRESIDENTS AND HONORARY TREASURER

- 38.1 As soon as practicable after it takes office following the annual election, the Bar Council shall elect from its members a President, two Vice-Presidents, an Honorary Treasurer and, from time to time if considered necessary, an Assistant Honorary Treasurer.
- 38.2 If any such Officer ceases to be a member of the Bar Council or resigns such office, the Bar Council shall elect another of its members to fill the vacancy.
- 38.3 In the temporary absence of the President, the President shall appoint a Vice-President, or in the absence of both Vice-Presidents another member of the Bar Council, Acting President; and the Acting President shall have the same power of appointment.
- 38.4 If the office of President becomes vacant, until the Bar Council elects a President, one of the Vice-Presidents shall be Acting President. In default of agreement between the Vice-Presidents, the Bar Council shall appoint one of its members (who may but need not be one of the Vice-Presidents) Acting President.

39. HONORARY SECRETARY

As soon as practicable after it takes office following the annual election, the Bar Council shall appoint a member of the association who is not a member of the Bar Council as Honorary Secretary and, from time to time if considered necessary, one or more Assistant Honorary Secretaries of the Bar Council.

40. STATUTORY SECRETARY

- 40.1 Unless the Bar Council determines otherwise, the Executive Director of the Victorian Bar shall be the Statutory Secretary for the purposes of the Act. The Statutory Secretary need not be a member of the association.
- 40.2 If the office of Statutory Secretary becomes vacant, the Bar Council shall within 14 days of the vacancy appoint a new Statutory Secretary.
- See section 73 of the Act.
- 40.3 The Statutory Secretary shall notify the Registrar within 14 days of appointment.
- See section 74 of the Act.
- 40.4 In this Constitution, unless a contrary intention appears, "Secretary" means the Statutory Secretary.
- See clause 84.1(g) of this Constitution.

41. REMOVAL OF OFFICERS

- 41.1 The Bar Council, in its discretion, may at any time by a resolution of not less than two-thirds of its members remove any Officer and appoint another eligible person to that office.
- 41.2 Such removal from being a particular Officer of the Bar Council shall not, in the case of a member of the Bar Council, affect such membership.

42. TERM OF OFFICE

- 42.1 Subject to this Constitution, Officers and members of the Bar Council shall hold office until the declaration of the poll by the Bar Council following the next ensuing annual election.
- 42.2 A member of the Bar Council ceases to be a member of the Bar Council if:
- (a) the member resigns by notice in writing addressed to the Secretary;
 - (b) the member's name is no longer included in either Part I, Part II or Part IV of Division A of the Bar Roll;
 - (c) the member is found guilty of professional misconduct pursuant to Division 3 of Part 5.4 of Schedule 1 of *Legal Profession Uniform Law Application Act 2014 (Vic)* and the time for lodging an appeal therefrom has elapsed or, if the member does appeal, all rights of appeal have been unsuccessful and exhausted;
 - (d) the member dies, or becomes insolvent under administration (as defined in section 38 of the *Interpretation of Legislation Act 1984*) or becomes a represented person within the meaning of the *Guardianship and Administration Act 1986*;
See section 78(2)(c) of the Act.
 - (e) the member is removed from the Bar Council by special resolution; or
See section 78(2)(b) of the Act.
 - (f) a statutory manager is appointed under section 116 of the Act to conduct the affairs of the association.
See section 78(2)(e) of the Act.

43. CASUAL VACANCIES

- 43.1 In this clause, nomination date means the date by which nominations for any election are to be received by the Secretary.
- 43.2 If a member of the Bar Council, for whatever reason, ceases to be a member of Bar Council, they shall be replaced by the person, being a person who is willing and able to fill the vacancy, who received the highest number of votes among the unsuccessful

candidates in the same clause 36 category as the departing member at the last election (whether or not that person is in the same clause 36 category as the departing member at the time of replacement). That person commences as a member of the Bar Council 7 days following the departure of the departing member.

43.3 If a vacancy is unable to be filled under clause 43.2, and there is a period of at least three months between the date of departure of the departing member and the next election, the Bar Council shall give directions to the Secretary for the conduct of a by-election to replace the departing member and the provisions of this Constitution shall apply to that by-election as if it were an election, but with such modifications as are necessary in the circumstances.

43.4 A by-election conducted in accordance with paragraph 43.3 above shall call for nominations from members who are in the same clause 36 category (as at the date by which nominations for the by-election are to be received by the Secretary) as the departing member was in as at their nomination date.

44. MEMBERS ELIGIBLE FOR RE-ELECTION

A member of the Bar Council, if otherwise eligible for election to the Bar Council, is eligible for re-election.

PART 5 – ELECTION OF THE BAR COUNCIL

45. ELECTIONS

- 45.1 The Bar Council shall be elected once in each calendar year.
- 45.2 Only members whose subscriptions are not in arrears and who are otherwise eligible to vote in the election are eligible for election to, and may nominate or be nominated for, the Bar Council.
- 45.3 Members in any of Part I, Part II and Part IV of Division A of the Bar Roll as at the close of voting are eligible to vote at an election for the Bar Council unless:
- (a) the member is in arrears of subscription; or
 - (b) the member's practising certificate (if any) is suspended or cancelled.

46. DIRECTIONS FOR ELECTIONS

The Bar Council shall give directions to the Secretary prescribing:

- (a) the date and time by which nominations for election are to be received by the Secretary;
- (b) the form of the ballots and the manner in which the ballot is to be conducted, whether by paper or electronically;
- (c) the date by which ballots are to be distributed or made available to members eligible to vote;
- (d) the date of and time for close of voting at the election; and
- (e) the date by which the Secretary shall give written notice to members eligible to vote at the election of the dates and times for nominations and close of voting and of the details of the manner in which the ballot is to be conducted.

47. RETURNING OFFICERS

- 47.1 Before the date prescribed for the closing of voting in an election for the Bar Council, the Bar Council shall appoint not less than two members eligible to vote at the election to be returning officers.
- 47.2 In the event of a returning officer appointed being unwilling or unable to act, the Bar Council, or if it is impracticable for the Bar Council to do so, the President, shall appoint another returning officer to replace the returning officer unwilling or unable to act.

47.3 The counting of votes in an election for the Bar Council shall be supervised by the returning officers who shall rule on the validity of any vote and any such ruling shall be final and conclusive.

47.4 The returning officers shall certify in writing to the Bar Council the result of the ballot and may refer any question arising out of the election to the Bar Council for determination.

48. NOMINATIONS

48.1 [deleted]

48.2 A nomination shall be in writing and signed by at least five members eligible to vote as nominators, as well as by the member nominated consenting to the nomination.

48.3 If the nominated member has not signed the nomination it shall nevertheless be valid if, prior to the time fixed for the receipt of nominations, the person nominated informs the Secretary that they consent to it.

48.4 A member may be nominated for election to the Bar Council in only one of the following categories:

(a) Senior Counsel or counsel of not less than 15 years standing;

(b) Counsel, not of Senior Counsel, who are of not less than 6 years standing and not of 15 or more years standing; or

(c) Counsel, not of Senior Counsel, who are of less than 6 years standing,

seniority and years standing being calculated as at the date by which nominations for election are to be received by the Secretary.

48.5 Members eligible to vote at the election may sign any number of nominations.

48.6 A member nominated for election may withdraw the nomination by notice in writing delivered to the Secretary at any time before the election.

49. VOTING

49.1 Notwithstanding any rule or practice to the contrary, counsel may vote at an election only as provided by this clause.

49.2 A vote may be cast only on the ballots provided by the Secretary.

49.3 A vote shall be cast by members indicating, in the manner described in the instructions accompanying the ballots, up to 11 names in the senior category, up to 6 names in the middle category, and up to 4 names in the junior category for whom the member wishes to record a vote.

49.4 A vote that is invalid for any one category is not thereby invalid for any other category.

50. WITHDRAWAL, INELIGIBILITY OR DEATH OF A CANDIDATE

50.1 If, before the date and time prescribed for the close of voting in the election, any member nominated for election:

- (a) withdraws the nomination;
- (b) ceases, for any reason, to be eligible to vote at the Bar Council election; or
- (c) dies

— the Bar Council, in its discretion, may resolve to:

- (d) declare the election void either altogether or in respect only of the affected category;
- (e) withdraw the ballots on which that member's name appears and direct the Secretary to issue amended ballots for that category deleting the name of the candidate no longer eligible to be elected; or
- (f) declare that the election shall proceed and that any vote cast for that candidate shall not be counted.

50.2 The Bar Council shall give such consequential directions to the Secretary as it deems appropriate.

51. CONDUCT OF ELECTION AND DECLARATION OF POLL

51.1 Subject to this Constitution and any determination under clause 51.2(b):

- (a) the 11 counsel nominated for election in the category referred to in clause 36(a);
- (b) the 6 counsel nominated for election in the category referred to in clause 36(b); and
- (c) the 4 counsel nominated for election in the category referred to in clause 36(c)

— whom the returning officers certify to have received the highest number of votes shall be declared elected. If two or more persons receive the same number of votes for the final position in any category, the final position shall be filled:

- (i) in the case of the category referred to in clause 36(a), by the most senior member of Senior Counsel (such seniority being determined by that person's precedence as Senior Counsel) or, if none of the persons is a member of Senior Counsel, the most senior person by reference to the period of their standing as counsel;

- (ii) in any other case, by the most senior person by reference to the period of their standing as counsel.

51.2 The existing Bar Council shall have the conduct of an election for the Bar Council and shall:

- (a) receive the certificate of the returning officers;
- (b) determine any question arising in or in relation to the election (including any question in relation to seniority, standing and precedence); and
- (c) declare who is elected,

— and any such declaration or determination shall be final and conclusive.

PART 6 – PROCEEDINGS OF THE BAR COUNCIL

52. MEETINGS

- 52.1 The Bar Council shall meet at least 6 times in each calendar year at such place and such times as the Bar Council may determine.
- 52.2 Special meetings of the Bar Council may be convened by the President or by any 4 members of the Bar Council.
- 52.3 Notice shall be given to members of the Bar Council of any special meetings specifying the general nature of the business to be transacted and no other business shall be transacted at such a meeting.

53. QUORUM

- 53.1 Any 5 members of the Bar Council present or deemed present and eligible to vote (excluding proxies) shall constitute a quorum.
- 53.2 No business shall be transacted unless a quorum is present and, if within a quarter of an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same place and at the same hour of the same day in the following week unless another day, time or place is specified by the Chair of the meeting at the time of the adjournment, unless the meeting is a special meeting in which case it lapses.

54. PROCEDURE

- 54.1 Subject to this Constitution, the procedure of the Bar Council is in its discretion.
- 54.2 Questions arising at a meeting shall be determined on a show of hands or, if demanded by a member, by a poll taken in such manner as the person presiding at the meeting may determine.
- 54.3 Each member present at a meeting is entitled to one vote. The person presiding at the meeting does not have a casting vote – in the event of an equality of votes the motion is lost. The Bar Council may, in its discretion, permit voting by proxy.
- 54.4 Subject to the quorum requirement, the Bar Council may act notwithstanding any vacancy.

55. USE OF TECHNOLOGY AT MEETINGS

- 55.1 The Bar Council may hold meetings, or permit members to participate in meetings, by the use of any technology that allows all participating members to communicate with each other clearly and simultaneously.

55.2 A member participating by the use of technology is deemed present.

See section 79 of the Act.

56. CONFLICT OF INTEREST

56.1 A member of the Bar Council who has a material personal interest in a matter that is being considered at a Bar Council meeting must:

- (a) disclose the nature and extent of their interest:
 - (i) to the Bar Council as soon as they become aware of the interest; and
 - (ii) at the next general meeting of the association;
- (b) not be present while the matter is being considered at the meeting; and
- (c) not vote on the matter.

See sections 80 and 81 of the Act.

56.2 Clause 56.1 does not apply to material personal interests that:

- (a) exist only because the Bar Council member belongs to a class of persons for whose benefit the association is established; or
- (b) the Bar Council member has in common with all or a substantial proportion of the members of the association.

See sections 80 and 81 of the Act.

56.3 Clause 56.1 does not apply to material personal interests that exist only because the Bar Council member is an employee of the association.

See section 80 of the Act.

57. RESOLUTIONS WITHOUT MEETING

57.1 The Bar Council may pass resolutions without meeting by email or other written form, such as by delivery of documents through internal mail.

57.2 If a proposed resolution is circulated for approval without a meeting, any member of the Bar Council may (before 11am on the business day after the circulation of the proposed resolution) request that the proposed resolution not be dealt with without a meeting, in which case the proposed resolution shall be dealt with at a meeting.

57.3 Subject to clause 57.2, passage of any resolution without meeting occurs at 11am on the business day after the circulation of the proposed resolution if an affirmative response has been received from an absolute majority of the members of the Bar Council.

58. MINUTES OF BAR COUNCIL MEETINGS

The Bar Council must prepare and retain accurate minutes of each meeting of the Bar Council (including resolutions without meeting under clause 57).

See item 14(b) of Schedule 1 of the Act.

PART 7 – THE ETHICS COMMITTEE

59. APPOINTMENT

- 59.1 The Bar Council shall, as soon as practicable after it takes office following the annual election each year, appoint not less than 5 members of counsel who are eligible to vote at an election for the Bar Council to constitute the Ethics Committee of the Victorian Bar.
- 59.2 The Bar Council shall appoint one of the members of the Ethics Committee as Chair and another member as Deputy Chair of the Ethics Committee.
- 59.3 Subject to this Constitution, the members of the Ethics Committee shall hold office until the appointment of a new Ethics Committee pursuant to clause 59.1.

60. QUORUM AND PROCEDURE

- 60.1 Any 4 members of the Ethics Committee shall constitute a quorum.
- 60.2 Subject to the *Legal Profession Uniform Law Application Act 2014* (Vic), this Constitution and any regulations made pursuant to it, the procedure of the Ethics Committee is in its discretion.
- 60.3 Clause 55 (use of technology in meetings), clause 56 (conflict of interest) and clause 57 (resolutions without meeting) apply to meetings or the business of the Ethics Committee as though references to the Bar Council in those clauses were references to the Ethics Committee.

61. AUTHORITY TO ACT

- 61.1 Subject to the terms of any relevant instrument of delegation held by the Bar Council, the Bar Council may delegate to the Ethics Committee authority to accept and act upon any referrals under the *Legal Profession Uniform Law Application Act 2014* (Vic).
- 61.2 The Ethics Committee shall have such powers and duties as the Bar Council shall determine from time to time.

62. CEASING TO BE A MEMBER

- 62.1 Subject to clauses 62.2 and 62.3, a member of the Ethics Committee ceases to be a member of the Ethics Committee if:
- (a) the member resigns by notice in writing addressed to the Secretary;
 - (b) the member ceases to be a member of counsel eligible to vote at an election for the Bar Council; or

(c) the member is found guilty of professional misconduct pursuant to Division 3 of Part 5.4 of Schedule 1 of *Legal Profession Uniform Law Application Act 2014* (Vic).

- 62.2 If a member of the Ethics Committee is found guilty of professional misconduct and the time for lodging an appeal has not elapsed or, if the member has appealed, all rights of appeal have not been exhausted, the member shall be suspended and shall for the time being remain a member of the Ethics Committee, but without the right to attend meetings or otherwise participate in the activities of that committee.
- 62.3 The Bar Council may, by resolution of not less than two-thirds of the members of the Bar Council, remove a member of the Ethics.
- 62.4 The Bar Council may, from time to time, appoint one or more counsel eligible to vote at an election of the Bar Council to fill any vacancy that occurs on the Ethics Committee; and, if the Ethics Committee requests, may appoint such number of additional members as the Ethics Committee may request.
- 62.5 If the Ethics Committee Chair or Deputy Chair resigns that office, whether or not remaining a member of the Ethics Committee, or ceases to be a member of the Ethics Committee, or the Deputy Chair is appointed Chair, the Bar Council shall appoint a new Ethics Committee Chair or Deputy Chair, either from among the Ethics Committee members or another member of counsel eligible to vote at an election for the Bar Council as an additional member of the Ethics Committee.
- 62.6 If the Ethics Committee Chair or Deputy Chair temporarily stands down from that office, the Bar Council shall appoint an Acting Chair or Deputy Chair, either from among the Ethics Committee members or another member of counsel eligible to vote at an election for the Bar Council as an additional member of the Ethics Committee.

PART 8 – THE COUNSEL COMMITTEE

63. APPOINTMENT

63.1 The Bar Council shall, as soon as practicable after it takes office following the annual election each year, appoint not less than 5 of its members to constitute the Counsel Committee of the Victorian Bar.

63.1A The Counsel Committee shall have such powers and duties as the Bar Council shall determine from time to time.

63.2 The Bar Council shall appoint one of the members of the Counsel Committee to be Chair of the Counsel Committee.

63.3 Subject to this Constitution, the members of the Counsel Committee shall hold office until the appointment of a new Counsel Committee pursuant to clause 63.1.

64. QUORUM AND PROCEDURE

64.1 Any 3 members of the Counsel Committee, or such other number as may be fixed by the Bar Council, shall constitute a quorum.

64.2 Subject to this Constitution and any regulations made pursuant to it, the procedure of the Counsel Committee is in its discretion.

64.3 Clause 55 (use of technology in meetings), clause 56 (conflict of interest) and clause 57 (resolutions without meeting) apply to meetings or the business of the Counsel Committee as though references to the Bar Council in those clauses were references to the Counsel Committee.

65. CEASING TO BE A MEMBER

65.1 Subject to clauses 65.2 and 65.3, a member of the Counsel Committee ceases to be a member of the Counsel Committee if:

- (a) the member ceases to be a member of the Bar Council;
- (b) the member resigns by notice in writing addressed to the Secretary;
- (c) the member ceases to be a member of counsel eligible to vote at an election for the Bar Council; or
- (d) the member is found guilty of professional misconduct pursuant to Division 3 of Part 5.4 of Schedule 1 of *Legal Profession Uniform Law Application Act 2014* (Vic).

- 65.2 If a member of the Counsel Committee is found guilty of professional misconduct and the time for lodging an appeal has not elapsed or, if the member has appealed, all rights of appeal have not been exhausted, the member shall be suspended and shall for the time being remain a member of the Counsel Committee, but without the right to attend meetings or otherwise participate in the activities of that committee.
- 65.3 The Bar Council may, by resolution of not less than two-thirds of the members of the Bar Council, remove a member of the Counsel Committee.
- 65.4 The Bar Council may, from time to time, appoint one or more members of the Bar Council to fill any vacancy that occurs on the Counsel Committee; and, if the Counsel Committee requests, may appoint such number of additional members of the Bar Council as the Counsel Committee may request.
- 65.5 If the Counsel Committee Chair resigns that office, whether or not remaining a member of the Counsel Committee, or ceases to be a member of the Counsel Committee, the Bar Council shall appoint a new Counsel Committee Chair, either from among the Counsel Committee members or another member of the Bar Council.
- 65.6 If the Counsel Committee Chair temporarily stands down from that office, the Bar Council shall appoint an Acting Chair, either from among the Counsel Committee members or another member of the Bar Council.

PART 8A – THE AUDIT, FINANCE & RISK COMMITTEE

65A. APPOINTMENT

- 65A.1 The Bar Council shall, as soon as practicable after it takes office following an election, appoint the Audit, Finance & Risk Committee of the Victorian Bar.
- 65A.2 The Audit, Finance & Risk Committee shall have such powers and duties, and may exercise such functions, as the Bar Council shall determine from time to time.
- 65A.3 Unless the Bar Council otherwise determines, the members of the Audit, Finance & Risk Committee appointed by the Bar Council shall comprise:
- (a) no less than 3 members of the Bar Council;
 - (b) such further members in Division A, Part I, II or IV of the Bar Roll as it considers fit; and
 - (c) at least one employee of the Victorian Bar,
- and may include one or more persons who are neither members nor employees of the Victorian Bar, with experience or qualifications suitable to the position of Audit, Finance & Risk Committee member.

65B. QUORUM AND PROCEDURE

- 65B.1 Any 3 members of the Audit, Finance & Risk Committee, or such other number as may be fixed by the Bar Council, shall constitute a quorum.
- 65B.2 Subject to this Constitution and any regulations made pursuant to it, the procedure of the Audit, Finance & Risk Committee is in its discretion.
- 65B.3 Clause 55 (use of technology in meetings), clause 56 (conflict of interest) and clause 57 (resolutions without meeting) apply to meetings or the business of the Audit, Finance & Risk Committee as though references to the Bar Council in those clauses were references to the Audit, Finance & Risk Committee.

65C. CEASING TO BE A MEMBER

- 65C.1 Subject to clauses 65C.2 and 65C.3, a member of the Audit, Finance & Risk Committee ceases to be a member of the Audit, Finance & Risk Committee if:
- (a) the member resigns by notice in writing addressed to the Secretary;
 - (b) the member ceases to be a member of counsel eligible to vote at an election for the Bar Council; or

(c) the member is found guilty of professional misconduct pursuant to Division 3 of Part 5.4 of Schedule 1 of *Legal Profession Uniform Law Application Act 2014* (Vic).

65C.2 If a member of the Audit, Finance & Risk Committee is found guilty of professional misconduct and the time for lodging an appeal has not elapsed or, if the member has appealed, all rights of appeal have not been exhausted, the member shall be suspended and shall for the time being remain a member of the Audit, Finance & Risk Committee, but without the right to attend meetings or otherwise participate in the activities of that committee.

65C.3 The Bar Council may, by resolution of not less than two-thirds of the members of the Bar Council, remove a member of the Audit, Finance & Risk Committee.

65C.4 The Bar Council may, from time to time, fill any vacancy that occurs on the Audit, Finance & Risk Committee, including any vacancy or temporary vacancy in the role of Chair or Deputy Chair, provided that the composition of the Audit, Finance & Risk Committee complies with the requirements of clause 65A.3.

PART 9 – FINANCIAL AND LEGAL

66. SOURCES OF FUNDS

The funds of the association may be derived from subscriptions, donations, fees, fund-raising activities, grants, interest and earnings from investments and any other sources approved by the Bar Council.

67. FINANCIAL YEAR

The financial year of the association is from 1 July to the following 30 June, or such other period as the Bar Council may determine.

See section 3 of the Act definition of “financial year”.

68. MANAGEMENT OF FUNDS

68.1 The Bar Council is responsible for the management of the funds of the association.

68.2 The association must keep financial records that:

- (a) correctly record and explain its transactions and financial position and performance;
and
- (b) would enable true and fair financial statements to be prepared in accordance with the financial reporting requirements of the Act.

See section 89(1) of the Act.

69. PAYMENTS

All payments by the association, whether by cheque, electronic funds transfer or any other medium or instrument must be in accordance with a written delegation by the Bar Council in such manner as the Bar Council may from time to time determine.

70. ACCOUNTS AND AUDIT

70.1 The Executive Director:

- (a) shall collect and receive all money due to the association and make all payments authorised by the association; and
- (b) shall keep correct accounts and books showing the financial affairs of the association with full details of all receipts and expenditure connected with the activities of the association.

- 70.2 The accounts of the association shall be audited at least once in every financial year by an appropriately qualified person or body appointed at the preceding annual general meeting as the auditor of the association.
- 70.3 The auditor must not be a member of the association.
- 70.4 An auditor may only be removed by resolution at a general meeting of the association in accordance with the procedure set out in the Act.
- See sections 106–108 of the Act.
- 70.5 If at any time there is no auditor (due to resignation, removal, non-appointment or any other reason) the Bar Council may appoint an appropriately qualified person or body to be the auditor until the next annual general meeting.
- 70.6 The remuneration of the auditor shall be determined by the Bar Council.

71. FINANCIAL STATEMENTS

The financial statements included in the annual report submitted to the annual general meeting shall be in accordance with the financial reporting provisions of the Act and of any regulations under the Act; and duly submitted to the Registrar of Incorporated Associations.

See sections 89–105 of the Act.

72. ANNUAL REPORT

The annual report of the association shall be published on the Bar website. Upon written request by a member within one month after the end of the financial year, a hard copy will be provided as soon as practicable.

73. MINUTES

- 73.1 The Bar Council must ensure that minutes are taken and kept of all general meetings and Bar Council meetings (including resolutions without meeting).

See item 14 of Schedule 1 of the Act.

- 73.2 The minutes of annual general meetings must include a copy of the financial statements in accordance with the financial reporting requirements of the Act.

See sections 94(4), 97(4) and 100(4) and item 15 of Schedule 1 of the Act.

- 73.3 The minutes of special general meetings must include a copy of any financial statements submitted at the meeting.

See item 15 of Schedule 1 of the Act.

74. RETENTION OF RECORDS

74.1 All records including books, documents and securities, and including the Bar Roll and the Register of Members, shall be kept by the Secretary.

74.2 The association must keep its financial records for at least 7 years after the transactions covered by the records are completed.

See section 89(2) of the Act.

74.3 The association must keep the financial statements submitted to the annual general meeting for at least 7 years after the annual general meeting.

See section 105(1) of the Act.

74.4 The association must keep any certificate required by sections 94(3), 97(3) or 100(3) of the Act for at least 7 years after they were signed.

See section 105(2) of the Act.

74.5 [deleted]

75. ACCESS TO RECORDS

75.1 Members may on request inspect at a reasonable time:

- (a) the Register of Members;
- (b) the minutes of general meetings; and
- (c) a copy of any trust deed of the class referred to in section 101(1)(e) and (2) of the Act.

See sections 53(1), 57 and 101(1)(e) and (2), and items 13 and 15 of Schedule 1, of the Act.

75.2 Members have the right to inspect and, upon written request and payment of such fee as the Bar Council may prescribe, to obtain copies of the minutes of meetings of the Bar Council, except to the extent that the Bar Council may determine that particular minutes, or parts of minutes, relate to confidential personal, employment, commercial or legal matters to which access ought not be allowed.

See item 16 of Schedule 1 of the Act.

75.3 Members may neither inspect nor obtain copies of any documents or records of the association that relate to the Ethics Committee, or the Counsel Committee, or that relate to any confidential personal, employment, commercial and legal matters, except as permitted by the Bar Council.

See item 13 of Schedule 1 of the Act.

75.4 The association must within 14 days of a request and payment pursuant to clause 13.2 make available to a member copies of:

- (a) this Constitution; and
- (b) the minutes of general meetings.

See section 53(2) and items 13 and 15 of Schedule 1 of the Act.

75.5 A member may request that access to their personal information in the Register of Members be restricted in accordance with the Act, if there are special circumstances that justify doing so.

See section 59 of the Act.

76. USE OF INFORMATION ON THE REGISTER OF MEMBERS

Unless it is directly related to the management or the purposes of the association, such as giving notice to members of a general meeting or distribution of an association newsletter, no person may use information from the Register of Members to contact or send materials to a member; or disclose such information knowing it is likely to be used to contact or send materials to a member.

See section 58 of the Act.

77. EXECUTION OF CONTRACT OR OTHER DOCUMENT

The association may execute a contract or other document, and may authenticate any document or proceeding, either:

- (a) under its common seal;
- (b) by signature by two Bar Council members; or
- (c) by signature by one Bar Council member and the Secretary; and

may also authenticate any document or proceeding by signature of the Secretary.

See sections 37 and 38 of the Act.

78. COMMON SEAL

78.1 The name of the association must appear in legible characters on the common seal.

See section 23(1)(a) of the Act.

78.2 The common seal shall be in the custody of the Secretary.

78.3 The common seal shall not be affixed to any document except by authority of the Bar Council and the affixing of the common seal shall be attested by the signatures of two members of the Bar Council.

See section 29 (2)(b) and item 12 of Schedule 1 of the Act.

79. REGISTERED ADDRESS

79.1 The office of the Bar Council, the Bar Office, shall be located at such place as the Bar Council from time to time determines; and that shall be the registered address of the association.

79.2 The Secretary must notify the Registrar within 14 days of any change in the registered address.

See section 28 of the Act.

80. AMENDMENT OF CONSTITUTION

80.1 This Constitution may only be amended by special resolution at a general meeting passed by not less than three quarters of the members voting at the meeting whether in person or by proxy or, if at that meeting the resolution is put to a poll pursuant to clause 28, by not less than three quarters of the members voting in that poll.

See sections 50(1) and 64(1) and (4) of the Act.

80.2 Such special resolution may be put to the annual general meeting in accordance with clause 18.5 or to a special general meeting; and in either case the notice shall include the special resolution in full and state the intention to propose the resolution as a special resolution in accordance with clause 20.2(c).

See section 64(3) of the Act.

80.3 An amendment to this Constitution does not take effect until it has been approved by the Registrar.

See section 50(2) of the Act.

80.4 The Secretary must apply to the Registrar for approval of the amendment within 28 days after the special resolution was passed.

See section 50(3) of the Act.

80.5 Any amendment to this Constitution shall not affect the validity of anything done or existing before the amendment.

81. WINDING UP

81.1 The association may be wound up voluntarily by special resolution.

See section 125 of the Act; also sections 149 and 151 importing requirements under the *Corporations (Ancillary Provisions) Act 2001* (Vic) and the *Corporations Act 2001* (Cth).

81.2 If:

(a) the association is wound up voluntarily or otherwise; or

(b) the association's incorporation is cancelled

— the surplus assets of the association must not be distributed to any member.

See sections 131 (definition of "surplus assets") and 132(4) of the Act.

81.3 Subject to clause 81.5, the surplus assets must be given to a body that:

(a) has similar purposes to the association; and

(b) also prohibits the distribution of any surplus, income and assets to its members to at least as great an extent as the association.

See section 149 of the Act (importing Part 5.5 (Voluntary winding up) of the *Corporations Act 2001* (Cth); section 501 of the *Corporations Act 2001* (Cth) (surplus assets distributed among the members unless constitution otherwise provides); and section 132(4)(a) of the Act (prohibits the distribution of any surplus asset to "any member or former member")

81.4 If the association is wound up voluntarily, the body to which its surplus assets are to be given must be decided by special resolution.

See section 132(2)(b) of the Act.

81.5 Any property supplied by a government department, public authority or municipal council, including the unexpended portion of a grant, is not to be taken as an "asset" or "surplus asset" of the association in its winding up. On winding up, that property must be returned to the body that supplied it or its nominee.

See section 132(3) of the Act.

82. INDEMNITY

82.1 The association shall indemnify:

(a) each of its office holders (as defined in section 82 of the Act) and the Honorary Secretaries;

(b) each member of the Ethics Committee, the Counsel Committee, the Audit, Finance & Risk Committee, counsel briefed by the Ethics Committee pursuant to clause

14.11, and Bar employees supporting the Bar Council, the Ethics Committee, the Counsel Committee and the Audit, Finance & Risk Committee (in respect of their duties in support of those Committees);

- (c) each person appointed as a trustee for the Victorian Bar by, or acting as a trustee at the express request of, the Bar Council; and
- (d) each person formerly within sub-clauses (a), (b) or (c),

against any liability incurred in good faith in the course of performing their duties in such office, employment or situation.

See sections 87 (indemnity) and 82 (definition of “office holders”) of the Act.

82.2 In addition to clause 82.1, an officer of the association, member of a Bar Committee, or any other person employed or engaged by the association or nominated to represent the association may be indemnified to the relevant extent out of the assets of the association against any liability incurred by such person in or arising out of the conduct of the business of the association or in or arising out of the discharge of the duties of such person where the Bar Council considers it appropriate to do so.

82.3 Where the Bar Council considers it appropriate to do so, the association may pay amounts by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer or representative of the association against liability incurred by the officer or representative in or arising out of the conduct of the business of the association or in or arising out of the discharge of the duties of the officer or representative.

82.4 In this clause:

- (a) officer means:
 - (i) a member of the Bar Council;
 - (ii) the Honorary Secretary, Assistant Honorary Secretary or Statutory Secretary;
 - (iii) a member of the Ethics Committee;
 - (iv) a member of the Counsel Committee;
 - (v) a member of the Audit, Finance & Risk Committee; or
 - (vi) a person appointed as a trustee for the Victorian Bar by, or acting as a trustee at the express request of, the Bar Council

— and includes a former officer;
- (b) duties of the officer includes duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the association to any other body;

- (c) to the relevant extent means:
 - (vii) to the extent the association is not precluded by law from doing so; and
 - (viii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy);
- (d) liability means all costs, charges, losses, damage, expenses, penalties and liabilities of any kind including, in particular, legal costs (on a full indemnity basis) incurred in defending any proceedings or appearing in any court, tribunal, government authority or otherwise.

83. SERVICE AND DELIVERY OF NOTICES AND OTHER MATERIALS

83.1 Each member who does not have a clerk must give the Bar an email address, if they have one, or postal address within Australia, to which notices and other materials may be sent, and notify any change in such information. Such information will be entered and stored in the Bar Roll database.

83.2 Any notice or other material required or authorised to be served, given, distributed, delivered or provided to members pursuant to this Constitution or any regulation made pursuant to it, or for any other purpose independent of the Constitution or regulations, shall be taken for all purposes to have been duly served given, distributed, delivered or provided if:

- (a) delivered personally to the member;
- (b) left with the member's clerk;
- (c) transmitted by email or posted to the member at the email address or postal address on the Bar Roll database or otherwise at their last known address; or
- (d) delivered or notified to the member via any other contact details the Bar Council reasonably considers would be sufficient to notify the member.

83.3 In each case, the notice or other material is deemed to have been served, given, distributed, delivered or provided to the member as follows:

- (a) if left with the member's clerk, on the next business day;
- (b) if transmitted by email, on:
 - (i) the day of transmission, provided transmission occurs before 2 pm on a business day;

- (ii) the next business day following transmission, if transmission is after 2 pm on a business day;
- (iii) the next business day, if transmission is not on a business day; or
- (c) if posted, on the second business day at that address after posting.

83.4 Notwithstanding anything in sub-clauses 83.1 to 83.3 above, notice of:

- (a) the annual general meeting;
- (b) any other general meeting;
- (c) any motion, including any special resolution; and
- (d) the dates and times for nominations and close of voting in a Bar Council election, may be effected:
 - (e) by publication on the Bar website;
 - (f) by publication in the Bar newsletter; and
 - (g) by transmission to the email address of those members to whom notice is to be given for whom there is an email address in the Bar Roll database.

83.5 Notice pursuant to clause 83.4 is deemed to have been served, given, distributed, delivered or provided on the last day of publication in accordance with all three sub-clauses (e), (f) and (g) above or, if that day is not a business day, the next business day.

84. INTERPRETATION

84.1 In this Constitution, unless a contrary intention appears:

- (a) “the Act” means the Associations Incorporation Reform Act 2012 (Vic);
- (b) “the association” means the association named in clause 1.1;
- (c) “the Australian Bar Association” means the Association of that name established in 1962 by the Bar Associations of New South Wales, Victoria and Queensland, the members of which under its present Constitution are the members of the Independent Bars of Australia;
- (d) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
- (e) “the Registrar” means the Registrar of Incorporated Associations pursuant to the Act;
- (f) “regulations” means regulations made by the association, and “regulation” has a corresponding meaning;

- (g) “Secretary” means the Statutory Secretary;
- (h) “Senior Counsel” includes both King’s Counsel and Senior Counsel;
- (i) “special resolution” means a resolution:
 - (i) to amend this Constitution;
 - (ii) to change the name of the association;
 - (iii) to amalgamate the association with another association incorporated under the Act;
 - (iv) to wind up the association; or
 - (v) to decide, in a voluntary winding up, the body to which the association’s surplus assets are to be given

— which may only be passed at a general meeting where:

 - (vi) at least 21 days notice of the proposed resolution has been given to all members entitled to vote;
 - (vii) the notice specifies that it is intended that the resolution be proposed as a special resolution;
 - (viii) at least three-quarters of those members who vote at the meeting (whether in person, by representative or by proxy), or, if there is a poll under clause 28, who vote in the poll, vote in favour; and

See section 64 of the Act.

- (j) “writing” includes emails and documents sent electronically.

84.2 Where this Constitution requires a document to be signed, in the case of an incorporated body the document must either be sealed, or signed on its behalf.

84.3 The headings form part of this Constitution.

84.4 The explanatory notes inserted in a smaller font size after provisions of this Constitution are for guidance only and do not form part of this Constitution.

84.5 This Constitution is to be interpreted in accordance with the Interpretation of *Legislation Act 1984* (Vic) as if this Constitution were an Act of the State of Victoria, unless the contrary intention appears.

84.6 If any legislation, or any provision of any legislation, referred to in this Constitution is repealed and replaced, references to the repealed legislation or provision are to be taken to be references to the replacement legislation or provision.

84.7 The Bar Council is responsible for the interpretation of the Constitution and regulations.

84.8 The provisions of this Constitution are the rules of the association for the purposes of the Act.

84.9 This Constitution is intended to make provision for all matters required by the Act, with the intention that none of the model rules prescribed under the Act apply to the association.

See section 48(3) and Schedule 1 of the Act.