

**CONSTITUTION  
OF THE TASMANIAN BAR  
(as at December 2019)**

**Name of the Association**

1. The Association shall be known as “The Tasmanian Bar”.

**Objects of the Association**

2. The objects of the Association shall be:
  - 2.1. To represent the interests of the independent barristers practising in Tasmania;
  - 2.2. To promote understanding and goodwill between independent barristers, the Courts, Government, solicitors and members of the general public;
  - 2.3. To promote the continual legal education of independent barristers;
  - 2.4. To affiliate with the Australian Bar Association and with such other bodies of lawyers as the Association may choose to affiliate with;
  - 2.5. To promote the better understanding of law and the role and functions of independent barristers;
  - 2.6. To promote law reform where it is necessary or desirable to do so;
  - 2.7. To promote and protect the independence of the judiciary;
  - 2.8. To promote and protect the independence of the legal profession;
  - 2.8A To arrange and provide schemes of insurance and/or superannuation for members;
  - 2.8B To arrange and provide such benefits, services or facilities for or available to members as the Bar Council thinks fit from time to time;
  - 2.9. To do such other lawful things as the members may consider to be in their best interests or in the best interests of society as a whole.

**Membership**

3. There shall be the following categories of membership of the Association:

**Category A** Tasmanian practising counsel (comprising only barristers holding a current Tasmanian practising certificate, barristers whose principal place of residence is in Tasmania and who regularly practice in Tasmania but with an interstate or overseas practising certificate, and Crown Law Officers within the meaning of the *Criminal Code*)

**Category B** Life membership (which shall include all counsel admitted as life members of the Association prior to the amendment of this clause as set out in Schedule 1)

**Category C** Tasmanian 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 shall not be for a greater period than 12 months)

**Category D** Interstate and overseas practising counsel

**Category E** Judicial and other public officers (comprising governors, judges, associate judges, magistrates, Ministers of the Crown and Members of Parliament, Solicitors-General, Directors of Public Prosecutions, judicial registrars, full-time members of statutory tribunals, Parliamentary counsel, other official appointments as determined by the Bar Council

**Category F** Retired counsel

**Category G** Academics

**Category H** Special membership

And by becoming and remaining a member of the Association, a member agrees to become and remain a member of the Australian Bar Association Limited (**the ABA**), subject to the Constitution of the ABA. A member who ceases to be a member of the Association ceases to be a member of the ABA, unless otherwise provided by the Constitution of the ABA.

### **Life Membership**

4. Life Membership may be conferred upon any person who is a Full Member of the Association by a resolution carried at a general meeting.
5. ...
- 5A. ...

### **Special Membership**

6. Special Membership is open to any person who is admitted as a practitioner of the Supreme Court of Tasmania and who is admitted by the Bar Council in its discretion to Special Membership.

### **Cessation of Membership**

7. A person's membership ceases if and when that person:

- 7.1. no longer holds the qualifications for membership;
  - 7.2. fails to pay membership fees within 60 days of those fees falling due;
  - 7.3. is expelled in accordance with Article 8;
  - 7.4. resigns from membership;
  - 7.5. commences employment with or is engaged as a consultant by a legal practitioner or firm or legal practitioner corporation within the meaning of the *Legal Profession Act* or otherwise in the opinion of the Bar Council ceases to be an independent barrister.
8. A member may be expelled by the Bar Council if that person is found guilty of unsatisfactory professional conduct or of professional misconduct or such other professional conduct which, in the opinion of the Bar Council, justifies expulsion.

### **General Meetings**

9. All members of the Association may attend and speak at any general meeting of the Association.
10. Only Category A and Category B members may cast a vote at a general meeting of the Association.
11. A general meeting of the Association may be convened by the Bar Council or by the President or by any three members entitled to vote at a general meeting who has or have served written notice thereof upon the Secretary/Treasurer.
12. The Secretary/Treasurer must upon receipt of a valid notice requesting the convening of a general meeting cause a general meeting to be called within 35 days of that receipt. The Secretary/Treasurer must give written notice of the meeting to all members resident in Tasmania within 14 days of that receipt.
13. It shall not be necessary to give notice of a general meeting to a member who is not a resident of Tasmania.
14. The President shall be the chairman of every general meeting unless the members present elect another member to be chairman.
15. Except whereby this Constitution a special resolution of members is required, resolutions are to be carried by simple majority and the chairman has a deliberative as well as a casting vote.

### **Proxies at General Meeting**

16. A member not able to attend a general meeting of the Association may appoint any other member to be his proxy.

17. A proxy need not be in any particular form, but it must be in writing and signed by the member and tabled at the general meeting.
18. A proxy may direct the proxy holder how to cast a vote, but unless it does so specifically, the proxy holder may exercise a vote for the absent member as he sees fit.

### **Quorum at General Meetings**

19. A quorum for a general meeting of members is not less than 4 Category A members of the Association present in person or by telephone or audio-visual means.
20. If after 30 minutes from scheduled commencement of a general meeting a quorum is not present, the meeting must be adjourned to a date to be specified by the Secretary/Treasurer to be held no later than 14 days thereafter. At any such adjourned general meeting there is no requirement for a quorum.

### **Notice of General Meeting**

21. A notice of general meeting is sufficient if it purports to be issued by the Secretary/Treasurer and contains:
  - 21.1. the time, date and place of the meeting;
  - 21.2. an agenda of the business of the meeting.
22. Notice of a general meeting may be given personally, by prepaid post, by e-mail or by facsimile.

### **Voting at General Meetings**

23. Voting is to be by show of hands unless a resolution for a poll is passed in which case voting must be by secret ballot and the chairman or their nominee must act as the returning officer and declare the poll.

### **Annual General Meetings and Office Bearers**

24. There must be a general meeting of all members of the Association, called the Annual General Meeting, held in the month of March each year commencing with March 2005.
- 24A. 24A.1 A nomination of a member for election as an office bearer, or as an ordinary member of the Bar Council, is to be –
  - (a) made in writing by a member other than the nominated member, and accompanied by the written consent of the nominated member (which may be endorsed on the nomination); and
  - (b) delivered to the Secretary/Treasurer at least 5 days before the day on which the Annual General Meeting is to be held; and

- (c) delivered by:
  - (i) leaving it, during business hours, at the Association's address from time to time;
  - (ii) sending it by post, to the Association's postal address, in sufficient time for it to be delivered to that address in the ordinary course of post before the day on which it is required to be delivered;
  - (iii) faxing it to the Association's fax number; or
  - (iv) emailing it to the email address of the Association, or to the email address of the Secretary/Treasurer.

24A.2 If insufficient nominations are received to fill all vacancies on the Bar Council –

- (a) the members nominated are taken to be elected; and
- (b) further nominations are to be received at the Annual General Meeting.

24A.3 If the number of nominations received is equal to the number of vacancies on the Bar Council to be filled, the members nominated are taken to be elected.

24A.4 If the number of nominations received exceeds the number of vacancies on the Bar Council to be filled, a ballot is to be held.

24A.5 If the number of further nominations received at the Annual General Meeting exceeds the number of remaining vacancies on the Bar Council to be filled, a ballot is to be held in relation to those further nominations.

24A.6 A ballot is to be conducted in the manner determined by the chair of the meeting.

- 25. At the Annual General Meeting the President is to present their report to the members on the affairs of the Association and the Treasurer is to table any accounts of the Association for approval.
- 26. At the Annual General Meeting all offices are vacated with effect from the close of the meeting and the Immediate Past President, or in their absence a member elected from the floor by the members present is to take the chair to conduct elections of office bearers for the forthcoming year.
- 27. Only Category A and Category B members may participate in a vote for the election of office bearers and elected members of the Bar Council.
- 28. The office bearers of the Association are and are to be elected in the following order:

- 28.1 President;
- 28.1A Vice-President;
- 28.2 Secretary/Treasurer.

- 29. At the conclusion of the election of office bearers the outgoing President is to resume the chair and conclude the business of the meeting beginning with the election of the remaining members of the Bar Council.
- 30. Until the first Annual General Meeting the office bearers are: S.P. Estcourt QC President and A.J. Abbott Secretary/Treasurer.

### **Membership Fees**

- 31. Membership fees must be paid promptly by all members except Life Members and become due on the date for payment indicated on the invoice issued for the fees, or if no date for payment is so indicated on the 14<sup>th</sup> day following the Annual General Meeting.
- 32. The amount of annual membership fees is to be fixed by the Bar Council which may fix fees of differing sums for differing categories of membership.
- 32A. Notwithstanding clause 32, a member's annual membership fee may include at the direction of the Bar Council an amount in respect of the members participation in any group insurance and/or superannuation scheme arranged and provided by the Association for members.
- 33. ...

### **Bar Council**

- 34. 34.1 There is a Bar Council consisting of:
  - (a) President;
  - (aa) Vice-President;
  - (b) Secretary/Treasurer who is also the Public Officer for the purposes of the *Associations Incorporation Act 1964*; and
  - (c) Five elected members.
- 34.2 Subject to any general or specific direction given by a resolution of a general meeting of the Association, the Bar Council has the sole management of the affairs and concerns of the Association.
- 34A. ...
- 35. Meetings of the Bar Council are to be held regularly and may be called by the Secretary/Treasurer at the request of any other member of the Bar Council.
- 36. The President, or in their absence the Secretary/Treasurer, is to chair each meeting of the Bar Council.

36A. A meeting of the Bar Council may be held by telecommunication if:

- 36A.1 (a) all persons participating in the meeting are connected by telephone, audio-visual or other instantaneous means;
- (b) each of the persons taking part are able to hear and be heard by each of the other persons taking part at the commencement of the meeting; and
- (c) at the commencement of the meeting each person announces their presence to all other persons taking part in the meeting;

36A.2 A person must not leave a telecommunication meeting by disconnecting their telephone, audio-visual or other communication equipment unless that person has previously notified the chairman.

36A.3 A person linked to a telecommunication meeting using a means of communication that may disconnect without warning and without visible or audible notification of disconnection, understands and accepts that the meeting may proceed to its conclusion under the presumption that they have been present and have formed part of a quorum at all times during the meeting.

36A.4 A minute of proceedings of a telecommunication meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is confirmed to be correct minute by the chairman.

36B. The Bar Council may pass a resolution without a meeting being held if:

36B.1 all members have nominated to communicate with each other by email;

36B.2 the required number of members to pass a resolution send an email to each of the other member containing a statement that they are in favour of the resolution set out in the email;

36B.3 the resolution is passed when the last member required to achieve the required majority sends an email in accordance with 36B.2.

36C. If one or more members of Bar Council have not nominated to use email as a means of communication under clause 36B, the members may pass a resolution without a meeting being held if:

36C.1 the required number of members to pass a resolution sign a document containing a statement that they are in favour of the resolution set out in the document;

36C.2 separate copies of the document may be used for signing by the members if the wording of the resolution and statement is identical in each copy;

36C.3 the resolution is passed when the last member required to achieve the required majority signs.

37. At each meeting of the Bar Council:

37.1 The chairman has a deliberative as well as a casting vote.

37.1 Each member of the Bar Council has the right to exercise a vote.

37.2 A member of the Bar Council not physically present may not appoint a proxy but may be present by telephone.

37.3 If the same person occupies more than one position as an office bearer, they may cast only one vote.

37.4 All resolutions are to be carried by simple majority of those present at the meeting.

37.5 Three members of the Bar Council constitute a quorum.

38. Until the first Annual General Meeting the four members of the Bar Council shall be: B.J. Morgan, O. McTaggart, M.E. O'Farrell and D.J. Porter QC.

### **Casual Vacancies**

39. An office bearer ceases to hold office upon their resignation or upon their membership ceasing.

40. In the event of a vacancy in an office bearer, the Bar Council may appoint any member to hold that office temporarily until the next general meeting of the members is held at which time elections for that office, and for any other office which may fall vacant as a result of that election, must be held.

### **Powers of Officers**

41. Whereby this Constitution a power or function is vested in a particular officer who is absent or is unable or unwilling to act, the Bar Council may appoint a person who is a full member to act temporarily in that office and to exercise the powers or functions of that office.

### **Minutes**

42. The Secretary/Treasurer is to keep minutes of resolutions carried and the results of elections held during all general meetings and of the meetings of the Bar Council.

43. The Minutes of a meeting are to be presented at the next meeting for confirmation.



### **Bar Roll**

44. There is to be a register of members known as the Bar Roll which shall be kept in the custody of the Secretary/Treasurer or his nominee.
45. The Secretary/Treasurer is to ensure that the Bar Roll is duly maintained.
46. If a complaint against a member is proved (whether by the Law Society, the Court, or any other body having jurisdiction over barristers to hear and determine a charge of unprofessional conduct or of professional misconduct), the Secretary/Treasurer is to make a notation on the Bar Roll recording particulars of the charge and the penalty (if any) imposed.
47. The Secretary/Treasurer is to note on the Bar Roll particulars of any event affecting a member's right to membership.

### **Bank Accounts**

48. The Association may keep such bank account or other investments as the Bar Council may determine.
49. Unless otherwise determined by the Bar Council all cheques, electronic transfers, drafts, bills of exchange, promissory notes and other negotiable instruments are to be signed or otherwise confirmed by two or more persons authorised by the Bar Council for this purpose.

### **Powers of Delegation and Special Committees**

50. The Association or the Bar Council may delegate to any office bearer any specific functions or tasks as they see fit.
51. The Association or the Bar Council may constitute and appoint such special committees to carry out such tasks as they see fit.

### **Amendments to this Constitution**

52. This Constitution may be amended only by a special resolution of members entitled to vote at a general meeting carried by three quarters of the Category A and Category B members present at a general meeting of the members.

### **Winding Up**

53. The Association may be wound up at a general meeting of the members called specifically for that purpose.
54. At a meeting called to wind up the Association no other business may be raised until the motion to wind up the Association has been defeated or has lapsed or been withdrawn.
55. A motion to wind up the Association may not be carried unless passed by a special resolution.

56. Upon a motion to wind up the Association being carried the members entitled to vote at a general meeting may determine by any ordinary resolution what shall become of the assets of the Association. If no such motion is passed the assets must be held by the Secretary/Treasurer as Trustee for members and the Secretary/Treasurer shall liquidate those assets and distribute them equally amongst such charities with like objects to the Association as the Secretary/Treasurer determines.

### **By-laws, Rules and Guidelines**

57. 57.1 The Association may from time to time at a general meeting make professional conduct rules for barristers in their practice as barristers;
- 57.2 The Bar Council may from time to time make by-laws, not inconsistent with this Constitution prescribing matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Constitution;
- 57.3 The Bar Council may from time to time issue guidelines or guidance notes for the assistance of barristers in their practice as barristers.

### **Common Seal**

58. The common seal of the Association is to be:
- 58.1 in such form as the Bar Council may approve;
- 58.2 kept in the custody of the Secretary/Treasurer; and
- 58.3 used only with the authority of the Bar Council, conclusive evidence of which is evidenced by its affixation and attestation under the signature of any two members of the Bar Council.

## Schedule 1

### Founding Members of the Association

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### **Life Members of the Association**