

## **MOTION AND BACKGROUND ON PROPOSED CHANGES TO THE ASOC CONSTITUTION**

### **BACKGROUND**

This paper describes the rationale for proposed changes to ASOC's constitution made necessary by ASOC's revocation of its Deductible Gift Recipient (DGR) status, and ASOC becoming a registered charity. Making these necessary changes also provides the opportunity to address a few anomalies in the text of the Constitution.

#### ***Deductible Gift Recipient status and the Artists Development Fund***

The ASOC Management Committee agreed that ASOC revoke its Deductible Gift Recipient (DGR) status. This change was approved on 11 March 2025 by Hon Dr Andrew Leigh MP, Assistant Minister for Productivity, Competition, Charities and Treasury.

Revoking ASOC's DGR Status means that the subsections of the ASOC Constitution relating to the Artists Development Fund (ADF) should be deleted. These are subsections 34(4) to 34(10) of the Constitution. These sections of the Constitution were added in 2014 as they legal requirements for organisations with DGR status.

The ADF is the Public Fund set up to receive tax deductible gifts and contributions to be applied for the purposes described for cultural purposes. The ADF appears to have been used only once in its existence, to pay cash prizes at the 2018 Spring Exhibition.

Removing subsections 34(4) to 34(10) from the ASOC Constitution has no impact on ASOC's charity status. It remains a registered charity and not-for-profit organization.

#### ***Regulating ASOC as a charity***

When ASOC became a charity at the end of 2019 (backdated to 2012) it became regulated under both the *ACT Associations Incorporation Act 1991* ("the Act") and the *Australian Charities and Not-for-Profits Commission Act 2012* (the "ACNC Act").

This is not reflected in the ASOC Constitution and mainly relates to financial reporting obligations (in particular, whether a small charity such as ASOC must undertake an audit or a review of its financial statements).

To effect these changes a reference to the ACNC Act would be added to section 1 "Definitions" and subsection (42(1) and subsection 42(2) would be amended to reflect the financial reporting requirements of the ACNC.

#### ***Addressing anomalies***

Since 2002 ASOC's constitution has been amended four times- in 2002, 2006, 2009 and 2014.

In 2009 a number of drafting errors crept into Subsection 21(5). These drafting errors muddled the waters about the need for unanimous agreement of MC members in order to hold an MC meeting without the required 48 hours notice.

A further change in 2014 changed the nature of business that could be conducted at an MC meeting where that business was not already on the agenda. Both the 2009 ASOC

Constitution and the ACT model rules referred to such business being treated as “urgent”, whereas the 2014 amendment altered this to “general business”.

These amendments and errors are not in line with best practice. In situations where contentious matters might need to be carefully considered by MC, it would be more appropriate for ASOC’s constitution to refer correctly to the elements of Incorporated Associations law that are designed to deal with such situations.

There are also a number of simple transcription errors in the 2014 ASOC Constitution – see subsections 25(3), 27(3), and 28(4) in Table 1.

### **Motion**

That this General Meeting agree to the following Special Resolution:

That members agree to the following changes to the ASOC Constitution:

- a. DGR Status – agree to remove subsections 34(4) to 34(10) that relate to the Artists Development Fund;
- b. Regulating ASOC as a charity – agree to add the *Australian Charities and Not-for-Profits Commission Act 2012* (the “ACNC Act”) to Section 1 and Subsection 42(1), and financial reporting requirements of the ACNC to Subsection 42(2); and
- c. Addressing anomalies and cross referencing errors by amending subsections 21(5); 25(3); 27(3); and 28(4);

As outlined in Table 1.

TABLE 1 AMENDMENTS TO ASOC CONSTITUTION		
Current section	Proposed amendment	Explanation
Part 1.1 Preliminary	Part 1.1 Preliminary	
1. Definitions	1. Definitions	
the <b>Act</b> means the Associations Incorporation Act 1991. the <b>regulation</b> means the Associations Incorporation Regulation 1991.	the <b>Act</b> means the Associations Incorporation Act 1991. the <b>ACNC Act</b> means the Australian Charities and Not-for-Profits Commission Act 2012 (Cth) as modified and includes any regulations applying to the Society. the <b>regulation</b> means the Associations Incorporation Regulation 1991.	Since ASOC became a registered charity in 2019 its activities come under both the ACT Associations Incorporation Act 1991 and the ACNC. The drafting has used the governing document of the ACT Branch of the RSL as a guide.
<b>21. Committee meetings and quorum</b>	<b>21. Committee meetings and quorum</b>	
21(1) Use of technology for Committee meetings:	no change	When subsection 21(1) was inserted in 2009, the new subsection 21(5) should have referred to subsection (4) rather than subsection (3). This drafting error rendered section 21 inconsistent with the requirement that unanimous agreement is necessary in order to hold an urgent MC meeting as is the intent of the ACT Associations Incorporation Act 1991. Under the ACT legislation, members of Management Committees have the right not to be rushed into meetings with no understanding of the business to be transacted.
21(a) A Committee meeting may be held using any means of audio or audio-visual communication by which each committee member participating can hear and be heard by each other committee member participating or in any other way permitted by section 248D of the Corporations Act 2001(Cth)	no change	See 21(5) below,
21(3) Additional meetings of the committee may be called by any member of the committee.	no change	See 21(5) below,

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21 (4) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least 48 hours (or any other period that may be unanimously agreed by the members of the committee) before the time appointed for the holding of the meeting.	no change	See 21(5) below,
21(5) Notice of a meeting given under subsection (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business may be transacted at the meeting, except business that the committee members present at the meeting unanimously agree to treat as general business.	21 (5) Notice of a meeting given under <b>subsection (4)</b> must specify the general nature of the business to be transacted at the meeting and no business other than that business may be transacted at the meeting, except business that the committee members present at the meeting unanimously agree to treat as <b>urgent</b> business.	At the time of the 2014 amendments to the ASOC Constitution a drafting change was made to subsection 21(5) replacing the words "urgent business" with "general business". This is inconsistent with the ACT model rules for Incorporated Associations which state that notice of a meeting given under subsection (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business may be transacted at the meeting, except business that the committee members present at the meeting unanimously agree to treat as <i>urgent</i> business." It is recommended that the wording in the ASOC Constitution align with the ACT model rules in this instance.
<b>Annual general meetings - calling of and business at</b>	<b>Annual general meetings - calling of and business at</b>	
25(2) In addition to any other business that may be transacted at an annual general meeting, the business of an annual general meeting is -	no change	see 27(3) below

TABLE 1 AMENDMENTS TO ASOC CONSTITUTION		
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(a) to confirm the minutes of the last annual general meeting and of any general meeting held since that meeting; and (b) to receive from the committee reports on the activities of the Society during the last financial year; and (c) to elect members of the committee, including office-bearers; and (d) to receive and consider the statement of accounts and the reports that are required to be submitted to members under the Act, section 73 (1).	no change	
25(3) An annual general meeting must be specified as such in the notice calling it in accordance with section 28 (Notice).	25(3) An annual general meeting must be specified as such in the notice calling it in accordance with <b>section 27</b> (Notice).	Subsection 25(3) cross refers to the wrong Section elsewhere in the Constitution. The cross-reference should be to Section 27 (Notice), whereas Section 28 relates to General meetings—procedure and quorum.
26(2) The committee must, on the requisition in writing of not less than 5% of the total number of members, call a general meeting of the Society.	no change	see 27(3) below
27(3) No business other than that specified in the notice calling a general meeting may be transacted at the meeting except, for an annual general meeting, business that may be transacted under section 26 (2).	27(3) No business other than that specified in the notice calling a general meeting may be transacted at the meeting except, for an annual general meeting, business that may be transacted under section <b>25 (2)</b> .	The text in 27(3) refers to the wrong subsection. The cross-reference should be to Subsection 25(2), which relates to the business that may be transacted at an annual general meeting, whereas section 26(2) relates to the calling of a general meeting by ASOC members rather than by the ASOC Management Committee.
28 (4) If within 30 minutes after the appointed time for the start of a general meeting a quorum is not present, the meeting if called on the requisition of members is dissolved and in any other case stands adjourned to the same day in the following week at the same time and (unless another place is specified at the time of adjournment by the	no change	The ASOC Constitution contains two Subsections numbered 28(4). This Subsection below should be re-numbered 28(5)

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person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.		
28(4) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the start of the meeting, the members present (being not less than 7) constitute a quorum.	<b>28(5)</b> If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the start of the meeting, the members present (being not less than 7) constitute a quorum.	The ASOC Constitution contains two Subsections numbered 28(4). This Subsection should be re-numbered 28(5)
<b>Part 1.6 Miscellaneous</b> <b>34. Funds—source</b>	<b>Part 1.6 Miscellaneous</b> <b>34. Funds—source</b>	
34(1) The funds of the Society must be derived from entrance fees and annual subscriptions of members, donations, fees for any lecture, demonstration, or workshop, or other sources appropriate to the object of the Society such as Government grants and, subject to any resolution passed by the Society in general meeting and subject to the Act, section 114, any other sources that the committee decides.	no change	Subsections 34(1) to 34(3) align with the 2009 ASOC Constitution. The ASOC text has been included in the ASOC Constitution since at least 2002. Except for the inclusion of "fees for any lecture, demonstration, or workshop, or other sources appropriate" in subsection 34(1) these subsections align with the ACT model rules. This difference is appropriate for an art society whose objects include holding art exhibitions, and arranging lectures, demonstrations or workshops on related subjects,  It is a requirement in the ACT Association Constitution/Rules checklist (Form A8) to 8 (1) "State the source from which the funds of the association are to be or may be derived."
34(2) All money received by the Society must be deposited as soon as practicable and without deduction to the credit of the Society's bank account	no change	
34(3) The Society must, as soon as practicable after receiving any	no change	

TABLE 1 AMENDMENTS TO ASOC CONSTITUTION		
Current section	Proposed amendment	Explanation
money, issue an appropriate receipt.		
34(4) The Society will establish and maintain a public fund known as the “Artists Development Fund” The objects of the fund are to attract tax-deductible donations to enable the Society to provide affordable development opportunities for artists, for example, through: the provision of regular expert-led workshops across all visual art media; the provision of art training courses, the annual Summer Art Experience – a one week intensive series including up to 10 independent tutors; a scholarship program for young and emerging artists to participate in the Society’s artists development events; provision of opportunities for artists participating in the Society’s tutored sessions to exhibit and sell their completed work; and encouraging excellence in art through the provision of art prizes.	Delete this subsection	<p>Subsections 34(4) to 34(10) were added to the ASOC Constitution in 2014 when ASOC became a Deductible Gift Recipient (DGR) status organisation. These subsections were requirements for being listed on the Register of Cultural Organisations.</p> <p>As the Management Committee has decided revoke ASOC’s DGR status and to close the Artists Development Fund, these subsections should be removed from the ASOC Constitution.</p>
34(5) Donations will be deposited into the public fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the Society and will only be used to further the principal purpose of the Society as outlined in the objects of the fund. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.	Delete this subsection	See explanation for Subsection 34(4)
34(6) The fund will be administered by the management committee or a sub-committee of the management committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as	Delete this subsection	See explanation for Subsection 34(4)

TABLE 1 AMENDMENTS TO ASOC CONSTITUTION		
Current section	Proposed amendment	Explanation
distinct from obligations solely in regard to the cultural objectives of the Artists Society of Canberra Inc.		
34(7) No monies/assets in this fund will be distributed to members or office bearers of the Society, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.	Delete this subsection	See explanation for Subsection 34(4)
34(8) The Society will comply with the Guidelines of the Register of Cultural Organisations. The Department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the public fund, to assess the effect of any amendments on the public fund's continuing Deductible Gift Recipient status.	Delete this subsection	See explanation for Subsection 34(4)
34(9) Receipts for gifts to the public fund must state: the name of the public fund and that the receipt is for a gift made to the public fund; the Australian Business Number of the company; the fact that the receipt is for a gift; and any other matter required to be included on the receipt pursuant to the requirements of the Income Tax Assessment Act 1997. In accordance with Taxation Ruling TR95/27 the Society will provide six-monthly statistical reports of the donations to the fund.	Delete this subsection	See explanation for Subsection 34(4)
34(10) If upon winding-up or dissolution of the public fund listed on the Register of Cultural Organisations, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its members, but shall be given or transferred to some other fund,	Delete this subsection	See explanation for Subsection 34(4)



TABLE 1 AMENDMENTS TO ASOC CONSTITUTION		
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authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the Income Tax Assessment Act 1997 and listed on the Register of Cultural Organisations maintained under the Act.		
<b>42 Appointment of Auditor and Public Officer</b>	<b>42 Appointment of Auditor and Public Officer</b>	
42(1) An Auditor and a Public Officer shall be appointed in accordance with the requirements of the Act.	42(1) An Auditor and a Public Officer shall be appointed in accordance with the requirements of the <b>ACNC Act</b> and the Act.	As a registered charity, ASOC's financial reporting obligations are now regulated under the ACNC Act and its obligations in relation to appointment of a public officer are regulated by the ACT IA Act (Division 4.1 s57 of the <i>Associations Incorporation Act 1991</i> ).
42(2) Auditor: In accordance with Part V of the Act and Regulation 13 the Committee shall appoint one or more persons as auditors of the Society and, subject to any decision of the Society in general meeting, may renew such appointments from time to time.	42(2) Auditor: In accordance with <del>Part V of the Act and Regulation 13</del> the <b>ACNC Act</b> the Committee shall appoint one or more persons as auditors <b>or reviewers</b> of the Society and, subject to any decision of the Society in general meeting, may renew such appointments from time to time.	There is no ACNC requirement for a small charity (such as ASOC) to have its financial report reviewed or audited. While it is optional for ASOC to submit a financial report in its Annual Information Statement (AIC) submitted to the ACNC, the ACNC encourages small charities to do so. The ACNC rules permit small charities to undertake an audit or a review (see <b>Annex</b> for the difference between an audit or a review).
42(3) Public Officer: In accordance with the Act the committee shall appoint a person who is at least 18 years of age and who resides in the ACT to be the Society's Public Officer, and may vary or renew such appointment from time to time. The Public Officer may in addition to that office hold any other office of the Society.	no change	

## ACNC GUIDANCE ON AUDIT AND REVIEW

### **Small charity** (charities with annual revenue under \$500,000)

For small charities, it is optional to submit a financial report in the Annual Information Statement, so there is no ACNC requirement for a small charity to have its financial report reviewed or audited. However, the ACNC encourages small charities to submit a financial report as part of the Annual Information Statement. If a small charity's governing document requires it to submit financial statements, it must do so.

ASOC is a small charity under ASOC legislation.

**Medium charity** (those with annual revenue of \$500,000 or more, but under \$3 million). Medium-sized charities must have their financial report either reviewed or audited. The reviewer's or auditor's report must be submitted as part of the financial report in the Annual Information Statement. The audit or review must be conducted by:

- a registered company auditor (as defined by the Corporations Act 2001)
- an audit firm, or
- an authorised audit company.

A review may also be conducted by a current member of a relevant professional body (CPA, CAANZ or IPA) who is qualified to undertake a review (in line with the Corporations Act 2001).

**Large charity** (charities are those with annual revenue of \$3 million or more.). Large charities must have their financial report audited. The auditor's report must be submitted as part of the financial report in the Annual Information Statement. The audit must be conducted by:

- a registered company auditor (as defined by the Corporations Act 2001)
- an audit firm, or
- an authorised audit company.

### **Reviews and Audits:**

A **review** of your charity's financial report is conducted by a reviewer. The reviewer states whether there is, or is not, anything that has come to their attention that causes them to believe the financial report does not meet the requirements of the ACNC Act (in all material aspects). A review also evaluates whether your charity:

- provided all information, explanation and assistance needed to conduct the review
- kept good financial records so a financial report could be prepared and reviewed
- kept other records as required under the ACNC Act.

A review only provides limited assurance (comfort). The reviewer states that they do not know of anything to suggest your charity's financial report is non-compliant. A review is a lower level of assurance than an audit. An audit is a direct opinion as to whether your charity's financial report meets the requirements of the ACNC Act.

An **audit** of your charity's financial report provides an auditor's opinion as to whether the report:

- has been prepared correctly under the ACNC Act
- represents a true and fair view of the charity's financial position (its net wealth) and performance (how it has gone)
- meets all applicable Australian Accounting Standards.

An audit aims to identify material misstatements in the financial report, including those resulting from fraud. The auditor will also obtain sufficient and appropriate evidence to evaluate whether your charity:

- provided all information, explanation and assistance needed to conduct the audit
- kept good financial records so a financial report could be prepared and audited, and
- kept other records as required under the ACNC Act.

An audit provides more assurance (comfort) than a review. Unlike in a review, an auditor must collect evidence to allow them to give a direct reasonable assurance opinion that is positively stated, namely that your charity's financial report meets the requirements of the ACNC Act.

**Source:** ACNC website