

## PROPOSED CONSTITUTION OF MEDICAL AFFAIRS PROFESSIONALS OF AUSTRALASIA LTD (MAPA)

### Summary of key constitutional changes

In view of the scale and nature of MAPA's operations, the Executive Committee has reviewed MAPA's legal structure and believes that registration pursuant to the *Corporations Act 2001* (Cth) to be more appropriate for MAPA than continuing as a NSW incorporated association pursuant to the *Associations Incorporation Act 2009* (NSW). The *Associations Incorporation Act* is designed to regulate small scale not-for-profit organisations. As MAPA is also intending to apply for charity status, the incorporated association structure may not be the most efficient model for MAPA as it will create multiple reporting requirements to different regulators should MAPA attain charity registration. The *Corporations Act 2001* (Cth) allows not-for-profit entities to register as public companies that are limited by guarantee. CLGs that are charities will have one primary regulator being the Australian Charities and Not-for-profits Commission (ACNC).

The table below outlines the key changes in the proposed new constitution for MAPA Ltd compared to the current constitution of Australian Pharmaceutical Physicians Association Inc t/a Medical Affairs Professionals of Australasia. The new constitution is drafted as a fresh document. It is not a marked-up amendment of the current constitution.

Key changes include updating the legal name to reflect the trading name, revising the Purposes to support an application for charity registration, introducing Appointed Directors, the Vice President and President to be appointed by the Board from amongst its number, removing Treasurer, Secretary and Immediate Past President as Office Bearers on the Board, and removing impractical quorum threshold for changing constitution.

There are no changes to the current classification of members as either Voting or Non-Voting, the classes have simply been formalised. The criteria within the classes will now sit in the By-laws.

While the Board size remains the same, new clause 24.2 provides: "No more than four Directors on the Board may be employees (as either a permanent staff or a contractor) working for the same company or organisation."

In this paper:

- "ACNC" means Australian Charities and Not-for-profits Commission,

- “Act” means *Corporations Act 2001* (Cth),
- “AGM” means Annual General Meeting, and
- “CLG” means company limited by guarantee (which is MAPA’ legal structure).

References to “current rule” means a reference to a rule in the current constitution. References to “new clauses” means a reference to a clause in the proposed new constitution.

<b>New Clause</b>	<b>Subject</b>	<b>Comments</b>	<b>Reasons for change</b>
1	Name	The association’s legal name is “AUSTRALIAN PHARMACEUTICAL PHYSICIANS ASSOCIATION” but it trades as “Medical Affairs Professionals of Australasia”.  The new proposed legal name is “Medical Affairs Professionals of Australasia Ltd”.	To align the trading name with the legal name. This is the name the Association is commonly known by and currently operates under.  CLGs have the suffix Ltd in their name.
2.6	Members Guarantee	The liability in current rule 9A is “any [amount] unpaid by the member in respect of membership fees of the Association”.  The guarantee amount for MAPA will be set at \$1.00 in new clause 2.6.	The liability of members of a CLG is limited to the guarantee amount. The guarantee is the amount that members agree to pay towards certain debts if the organisation winds up. The guarantee needs to be specified in the constitution.
3	Purposes	The new Purposes clause carries over the intent of current rule 1 “Aims and Objectives”.  The sub-points consolidate rules 1(a) to (k) of the current Objects.	The proposed Proposes better reflect MAPA’s vision and mission and enhance the possibility of being registered as a charity with the Australian Charities & Not-for-profits Commission (ACNC) under the sub-type Advancing Education.
7	Classes of Members	The current constitution has the following members: 1. Rule 3B: Voting Members 2. Rule 4B: Non-Voting Members (including Vendor Members and Partner Members) 3. Rule 5F: Honorary Members	The new membership provisions do not change the rights of Members but rather simplify the composition into two classes and allow flexibility for the criteria to be set in the By-laws. This is

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		<p>This has been simplified into two Membership classes:</p> <ol style="list-style-type: none"> <li>1. Voting Members, and</li> <li>2. Non-Voting Members.</li> </ol> <p>The categories and their specific eligibility criteria will be set out in the By-laws.</p>	<p>reflected in the transitional arrangements in clause 51.1.</p> <p>Each class of membership may have sub-categories within it, as determined by the Board and set out in the By-laws.</p> <p>There will be no separate 'Honorary Members' class.</p>
8	Rights and Obligations of Members	<p>These provisions clarify the rights of each class of membership.</p> <p>New clause 8 also outlines the obligations of Members.</p>	<p>Obligations of members is a standard inclusion in constitutions of membership bodies.</p>
9	Application for Membership	<p>New clause 9 reflects current rule 4(a) and explicitly empowers the Board to reject or approve applications, or delegate this process.</p> <p>Rule 4(F) regarding grounds to refuse an application has not been carried over.</p>	<p>New clause 10 reflects the intent of the current provisions and is standard in CLG constitutions.</p> <p>Specifying grounds to reject applications in the Constitution can be restrictive and may raise issues of privacy, liability and reputational risk. It is more appropriate to set eligibility criteria in By-laws.</p>
10	Membership Fees	<p>There is currently no membership fees clause. New clause 10 clarifies that membership fees may be waived or varied at the discretion of the Board.</p> <p>Failure to pay the membership fee may result in automatic termination of membership per the new clause 10.4.</p>	<p>These provisions are a standard inclusion in CLG constitutions.</p>

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11	Register of Members	<p>The new clause 11 reflects the requirements of the Act.</p> <p>Rule 8(d)(a) has not been carried over: “Information about a member, other than the member’s name, must not be made available for inspection if the member requests that the information not be made available.”</p>	In accordance with the Act.
12	Ceasing to be a Member	This clause specifies situations when a Member automatically ceases to be a Member.	This carries over the intent of current rule 5, with the addition of new sub-clauses 12.1(d) to (h), allowing relevant additional cessation events.
14	Disciplinary Procedure	<p>The intent of current rule 10 has been carried over with the addition of details regarding the process (new clauses 13.2 to 13.4), wider scope of disciplinary actions (new clause 13.5) and clarification of the duties of a suspended member (new clause 13.7). The appeal to a General Meeting in current rule 11 will not be carried over.</p>	<p>The provisions provide more clarity to the current procedures.</p> <p>It is not recommended to appeal to a General Meeting as this is not the appropriate forum to deal with sensitive disciplinary matters and can raise issues regarding privacy and reputational risk.</p>
Part C	General Meetings	<p>The quorum will be “10 Voting Members entitled to vote present in person or by proxy”.</p> <p>The following key changes are noted:</p> <ul style="list-style-type: none"> <li>• There will only be one ‘routine’ General Meeting, known as the Annual General Meeting. This will be held within 5 months after the end of the financial year.</li> <li>• Provisions have been added to allow for virtual meetings and direct voting.</li> </ul>	These provisions are standard clauses in CLG constitutions.

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		<ul style="list-style-type: none"> <li>• The notice period has been revised to 21 days in line with the Act.</li> <li>• New clause 19.5 allows the Board flexibility to cancel or postpone a General Meeting without needing consent of majority of members present.</li> <li>• Adjourned meetings will need to meet the same quorum, not a reduced quorum.</li> <li>• Notice of an adjourned meeting will be required after 30 days from the adjournment, not 14 days.</li> <li>• Provisions regarding polls in new clause 21.5 have been updated to align with the Act.</li> <li>• Provisions have been added for member resolutions in new clause 22 per the Act.</li> <li>• The chairperson no longer has a casting/deliberative vote on tied resolutions. Tied resolutions will fail to pass.</li> <li>• The restriction on the number of proxies held by a member (10 proxies) has not been carried over.</li> <li>• Quorum for a constitutional change of “25% of the total membership of the Association, including proxies” will not be carried over, there will only be one quorum.</li> <li>• Current rule 26 regarding “Transaction Of Business Outside Meetings Or By Telephone Or Other Means” has not been carried over.</li> </ul>	
24	Board Composition	The Executive Committee will be renamed as the Board of Directors, in line with contemporary terminology.	The Board now has the option to appoint up to two Appointed Directors who may be but do not

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		<p>The Board size remains at 10 Directors, but the composition has been revised to:</p> <p>(a) eight Elected Directors elected by the Voting Members, and</p> <p>(b) up to two Appointed Directors appointed by the Board under new clause 28.</p> <p>New clause 24.2 also provides: No more than four Directors on the Board may be employees (as either a permanent staff or a contractor) working for the same company or organisation.</p> <p>The President and Vice President continue to exist, but they will be appointed from amongst the Directors by the Board at the first Board meeting after each AGM.</p> <p>The constitution no longer references the Treasurer, Secretary or Immediate Past President as a specific Office Bearer role. There will continue to be a Company Secretary who will be appointed by the Board and may be but does not need to be a Director.</p>	<p>need to be Members. All Elected Directors must be financial Voting Members.</p> <p>New clause 24.2 ensures that there is a balanced representation of organisations on the Board.</p> <p>This empowers the Board to address any skills gaps or desired knowledge/capabilities on the Board through appointments.</p> <p>The election and appointment of Directors will be kept separate from the appointment of office bearers. The Directors will be elected/appointed on to the Board and then the office bearers selected from and by the Directors in office. The Board still remains majority democratically elected.</p>
25, 26	Terms of Office	<p>Terms have been revised from one-year terms to three-year terms for Elected Directors.</p> <p>The term of an Appointed Director will be “up to 3 years, as determined by the Board”.</p> <p>There will be staggered elections.</p>	<p>A longer term of office will assist with continuity on the Board. A three-year term allows directors more time to grow into their role and develop deeper understanding of MAPA’ operations and challenges.</p>

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		<p>Casual vacancies will be filled for the remainder of the term.</p> <p>A term limit of nine consecutive years will be introduced.</p>	<p>Filling casual vacancies for the remainder of the term ensures an orderly staggered rotation of Directors.</p> <p>Any Directors elected after the new constitution is adopted will serve 3-year terms.</p> <p>Per new clause 51.2, Directors in office at the time of registration as a CLG will remain in office until the AGM at which the Board decides they are to retire (being either the first, second or third AGM as a CLG). A Directors may serve a reduced term of e.g., one-year to facilitate the staggering.</p> <p>Further, the counting of term limits will commence from the next set of elections under the new Constitution.</p>
29	Elections	Current rule 15 has not been carried over as it is too prescriptive and no longer applicable as office bearers are not elected. The details of the elections process will now be moved to the By-laws.	New clause 29 is a standard elections clause.
30	Ceasing to be a Director	New clause 30.1 carries over the intent of current rule 16(a) but has been expanded to include other cessation events under the ACNC Act and changing jobs where this results in “more than four Directors being employed by the same company or organisation as either a permanent staff or a contractor”.	This is a standard clause in constitutions.

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31	Removing a Director	New clause 31.2 outlines the process of removing a Director by ordinary resolution.	This provision aligns with the Act. Current rule 17(b) allowing the Executive Committee has not been carried over as Directors of a CLG are not entitled to remove other Directors.
33	Office Bearers	<p>Office bearers (President and Vice President) will be appointed by the Board after the AGM.</p> <p>Clauses 33.3 and 33.4 provide more clarity regarding the term of an office-bearer.</p>	This is in line with contemporary governance practices.
34-42	Other Board Matters	<p>Clauses 34 and 35 confirm the powers of the Board. Clause 36 confirms the duties of Directors, including under the ACNC.</p> <p>Directors will be entitled reimbursement (current rule 19(g), new clause 37).</p> <p>Provisions have been added to allow for observers at Board meetings (new clause 38.10)</p> <p>Timing for notice of a Board meeting has been clarified in new clause 39.</p> <p>The quorum for a Board meeting will change from 5 Directors (current rule 18(e)) to a majority of Directors in office (new clause 40.2).</p> <p>Provisions have been added to allow the Board to pass written resolutions by majority of Directors (new clause 41.1).</p>	These are standard provisions in CLG constitutions.

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		Provisions will no longer specify the number of times the Board must meet.	
44	Minutes	Provisions confirm the minutes that the Association is required to keep and confirm that “Members have a right to request minutes of General Meetings, including any financial reports presented at the General Meeting” (new clause 44.4).	This is in line with requirements of the Act and contemporary standards.
45	Notices	Provisions simplify the methods and timing for notices and allow for publication of notices on the MAPA website/portal.	This is in line with requirements of the Act and contemporary standards.
49	Amending Constitution	Current rule 30 is too prescriptive and will be replaced with clause 49.1.	This is in line with requirements of the Act.
50	Winding Up	Provisions have been updated to align with the requirements of a CLG with charity status.	This is in line with requirements of the Act.
51	Transitional Arrangements	These clauses outline how the current membership structure and board structure will transition to the new structures under the new constitution.  To allow for a transition to a staggered election cycle, current and incoming Directors may serve either one-, two- or three-year terms as noted in clause 51.2.	Transitional arrangements are required to provide certainty to the Board and members regarding the transition from the current membership and board structure to the new structures.
n/a	Other Matters	Provisions regarding Dispute Resolution have not been carried over.  Provisions regarding “Funds” will be replaced by the “Accounts and Audit” clause.  There have been minor terminology changes. For instance, the ‘Executive Committee’ as a collective is now called the ‘Board’.	Dispute resolution may be addressed outside of the constitution, for example, in the By-laws.