



*It's in the Balance*

## **Murray Darling Association Inc.**

An incorporated association under the *Associations Incorporation Act 2009* (NSW)

Incorporation No: Y0431747

# **CONSTITUTION**

v. 2020

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## CONSTITUTION

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# Constitution

## Part 1 – Preamble

### 1. *Origins and Background*

The Murray Darling Association Incorporated is the name adopted for the organisation named “Murray Valley League for Development and Conservation Incorporated” (1979) which itself derived from the “Murray Valley Development League” which was established by resolution of the Yarrowonga Conference (August 1944) and the South Australian Regions at the Murray Bridge Conference (December 1944).

### 2. *Vision*

The MDA works to achieve a healthy and environmentally balanced Basin river system that supports thriving communities, economic development and sustainable productivity.

### 3. *Purpose*

To provide effective representation of local government and communities at state and federal level in the management of Basin resources by:

- (1) providing information;
- (2) facilitating debate; and
- (3) seeking to influence government policy.

### 4. *Objectives*

The objectives of the MDA are to:

- (1) advocate on behalf of Basin communities;
- (2) use local knowledge and expertise to fully understand regional issues;
- (3) act as a two-way conduit for information and discussion between our communities and governments;
- (4) encourage and facilitate debate about relevant issues that matter for the Basin’s future;
- (5) explore options to achieve sound solutions to regional issues;
- (6) test information to ensure a sound base for those options;
- (7) be an educational resource for the Basin.

## Part 2 – Definitions

### 5. **Definitions**

(1) In this Constitution:

**Act** means the *Associations Incorporation Act 2009* (NSW).

**Basin** means the Murray-Darling Basin.

**Board** means the governing body of MDA and which is the committee for the purposes of the Act.

**Board Meeting** means a meeting of the Board of the MDA.

**CEO** means the chief executive officer of the MDA.

**Constitution** means this constitution as amended from time to time.

**Code** means a code prepared and adopted by the Board in respect of MDA processes, membership, conduct or like matters.

**Delegate** means a person who may attend, participate, represent and vote at a MDA Meeting, including:

- (i) a Member Council Delegate; or
- (ii) a Region Delegate; or
- (iii) a Life Member.

**Individual Member** means a person accepted as a Member.

**Life Member** means a Member appointed as a Life Member as described in this Constitution.

**MDA** means the association incorporated under the Act known as “Murray Darling Association Inc”.

**MDA Meeting** means a general meeting, special general meeting or the annual general meeting of the MDA.

**Member** means a financial member for the time being of the MDA and includes:

- (i) Member Council;
- (ii) Organisation Member;
- (iii) Individual Member;
- (iv) Life Member.

**Member Council** means a local government municipal entity which has satisfied and maintains the requirements for membership of the MDA.

**Organisation** means a company, corporation, association, body corporate, partnership, government or statutory authority, community service or not for profit organisation or other legal body (other than a Member Council).

**Organisation Member** means an Organisation accepted as a Member.

**Proxy** means the authority to represent, act and vote on behalf of a Delegate at a MDA Meeting or Representative at a Region Meeting.

**Region Meeting** means a meeting of Members located in a Region.

**Public Officer** means the person holding office under this Constitution as the public officer of the MDA.

**Region** means an area made up of particular local government municipalities so determined, from time to time in accordance with this Constitution.

**Region Executive** means the managing executive of the Region as detailed in this Constitution.

**Regulation** means the *Associations Incorporation Regulation 2010* (NSW).

**Representative** means a person who may attend, represent and vote on behalf of a Member Council or Member Organisation at a Region Meeting, including a Representative who is:

- (i) a Member Council Representative;
- (ii) an Organisation Representative.

**Special Resolution** means a vote of 75% of:

- (i) Delegates at a MDA Meeting; or
- (ii) Representatives and Members at a Region Meeting.

(2) In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty;
- (c) a reference to a person includes a natural person (individual), company, corporation, body corporate or other body (whether or not the body is incorporated);
- (d) a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity.

(3) The provisions of the *Interpretation Act 1987* (NSW) apply to and in respect of this Constitution in the same manner as those provisions would so apply if this Constitution were an instrument made under the Act.

## Part 3 – Membership Categories

### 6. *Membership categories and rights*

- (1) The table below sets out the categories which comprise the membership of MDA, together with particular qualifications and the rights associated with each category.

| Category            | Category qualification   | Category rights for Region Meeting  | Category rights for MDA Meeting   |
|---------------------|--|---|---|
| Member Council      | Local government entity, located within a Region, which is a current Member. | To appoint<br>2 Representatives, plus<br>an additional Representative for every 20,000 of population (or part thereof) of the municipality above the first 20,000,<br>up to a further 3, for a maximum total of 5 Representatives.<br><br>To have its Representatives attend, participate and vote on its behalf at a Region meeting. | To appoint<br>1 Member Council Delegate, plus<br>an additional Delegate for every 20,000 (or part thereof) of population of the municipality above the first 20,000,<br>up to a further 2, for a maximum total of 3 Member Council Delegates.<br><br>To have its Delegate(s) attend, participate and vote on its behalf at a MDA Meeting. |
| Organisation Member | An Organisation, located within a Region, which is a current Member.         | To appoint a Representative for a Region Meeting.<br><br>To have its Representative<br><br>attend, participate and vote on its behalf at a Region Meeting;<br>to be eligible for election by a Region as a Region Delegate.   | Its Representative may attend and participate at a MDA Meeting.<br><br>If its' Representative is elected as a Region Delegate, to vote as a Region Delegate at the MDA Meeting.   |
| Life Member         | As identified in this Constitution or elected as a Life Member.              | To attend, participate and vote at a Region Meeting.  | To attend, participate and vote at a MDA Meeting as a Life Member.  |
| Individual Member   | A person living in a Region who is a current Member.                         | To attend, participate and vote at a Region Meeting.<br><br>To be eligible for election as a Region Delegate.   | To attend and participate at a MDA Meeting. If elected as a Region Delegate, to vote as the Region Delegate at a MDA Meeting.   |

- (2) A person or legal entity is eligible to be a Member of the MDA if:
- (a) the person or legal entity meets the category and qualifications set out in the table to sub clause (1) or otherwise in the Constitution for the category of membership sought, and
  - (b) the person or legal entity applies for membership in accordance with clause 21.

- (3) A person or legal entity is a Member if:
- (a) they or it is an existing Member of the MDA at the date of adoption of this Constitution; or
  - (b) is accepted by the Board as a Member as contemplated in clause 21; and
  - (c) their or its Membership has not ended.
- (4) The Region within which the Member's rights apply is:
- (a) for a Member Council, the Region it is located in;
  - (b) for an Individual Member or a Life Member, the Region the Member resides in;
  - (c) for an Organisation Member, the Region the Organisation is located in or if in more than one region, the Organisation may select its Region.
- (5) A Member will retain all rights in relation to the relevant membership category unless or until:
- (a) a Member resigns as a Member;
  - (b) subject to clause 6(5)(c), the membership is suspended or ended at the direction of the Board;
  - (c) in the case of a Member Council such membership may only be suspended or ended by a vote at a MDA Meeting;
  - (d) in a case of an Individual Member or an Organisation Member, membership rights will be suspended at any time the Individual Member or Organisation Member's annual fee is overdue by more than 90 days;
  - (e) if elected as a councillor of a Member Council any Individual Members membership is suspended, whilst the person remains a councillor;
  - (f) if an Organisation Representative is elected as a councillor of a Member Council, then whilst that person is a councillor, the Organisation must nominate an alternative Organisation Representative, otherwise the Organisation Member's membership is suspended.
- (6) A serving councillor of a local government entity or a member of a Member organisation must not:
- (a) apply to become an Individual Member; or
  - (b) allow an Organisation to apply for membership with that councillor proposed as the Organisation Representative.
- (7) In respect of Life Members:
- (a) the current Life Members of the MDA are those set out in Schedule 1;
  - (b) the process and regulation in relation to Life Members will be subject to any Code prepared by the Board and adopted at a MDA Meeting.



## **Part 4 - The Board**

### **7. Powers of the Board**

Subject to the Act, the Regulation and this Constitution and to any resolution passed by the MDA, the Board:

- (a) is to control and manage the affairs of the MDA, and
- (b) may exercise all such functions as may be exercised by the MDA, other than those functions that are required by this Constitution to be exercised by a MDA Meeting, and
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the MDA, and
- (d) has the power to make policies or Codes for the proper conduct of the MDA which will be binding on Members to the extent not inconsistent with this Constitution.

Without limiting the above, the Board may, without the need for any further resolutions to be passed at a MDA Meeting:

- (a) provide, monitor and manage good governance processes;
- (b) carry out a direction from a MDA Meeting;
- (c) prepare, manage and monitor an annual budget;
- (d) take steps to obtain the necessary resources for the MDA to continue its role;
- (e) appoint, manage and if required dismiss any of a chief executive officer, Public Officer and auditor;
- (f) monitor and review the organisation's performance;
- (g) appoint any sub-committee to address issues and carry out activities on behalf of the Board;
- (h) appoint staff to address issues and carry out activities on behalf of the Board.

### **8. Composition of the Board**

- (1) The Board will comprise each of the chairs of the Regions of the MDA existing from time to time.
- (2) On an annual basis, at a Board Meeting, the Board will elect:
  - (a) a President;
  - (b) a Vice President; and
  - (c) a Treasurer (as provided in clause 8(3));to serve for the financial year.
- (3) The Board must appoint a Treasurer of the Board. The Treasurer:
  - (a) must have, in the reasonable opinion of the Board, appropriate qualifications in accounting or a like field or otherwise have sound financial expertise;
  - (b) may be a Board member, an Individual Member or an Organisation Representative; and
  - (c) if the Treasurer is not a Board member, the Treasurer will attend Board Meetings upon request of the Board.

## **9. Public officer**

- (1) The Public Officer of the MDA must, as soon as practicable after being appointed as Public Officer, lodge notice with the MDA of his or her address. The Public Officer may be the Chief Executive Officer.
- (2) It is the duty of the Public Officer to ensure that minutes are kept of:
  - (a) all appointments of office-bearers and Board members and its sub-committees, and
  - (b) the names of the Board members present at a Board Meeting or a MDA Meeting, and
  - (c) all proceedings at Board Meetings, sub-committee meetings and MDA Meetings.
- (3) Minutes of proceedings at a Board Meeting must be signed by the President as chairperson of the meeting or by the chairperson of the next succeeding meeting.
- (4) It is the duty of the Public Officer to ensure:
  - (a) that all money due to the MDA is collected and received and that all payments authorised by the MDA are made, and
  - (b) that correct books and accounts are kept showing the financial affairs of the MDA, including full details of all receipts and expenditure connected with the activities of the MDA.

## **10. Casual vacancies**

- (1) A casual vacancy in the office of a Board member occurs if the Board member:
  - (a) dies, or
  - (b) resigns or otherwise ceases his or her position or involvement with the Member he or she was elected to represent, or
  - (c) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (d) resigns office by notice in writing given to the Public Officer, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is absent without the consent of the Board from 3 consecutive meetings of the Board, or
  - (g) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months or other indictable offence, or
  - (h) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth, or
  - (i) is prohibited from being a responsible person of a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012*, or
  - (j) is removed as provided in clause 11.
- (2) Upon ceasing to be a Board member the person will also cease to be a chair of the particular Region.
- (3) In the event of a vacancy occurring in the membership of the Board, the Region may appoint a new Chair to the Region to fill the vacancy and until such time the Board will continue its activities minus that Board member.

## **11. Removal of Board members**

- (1) A Board Meeting may, by an ordinary resolution, remove any Board member from that office before the ending of the person's term of office, provided:
  - (a) the Board (by its vote) forms the view (on proper and reasonable grounds) that the relevant Board member has acted in a manner which is substantially prejudicial to the interests of the MDA; or
  - (b) the Board member has committed a serious breach of any Code of conduct for Board, or MDA Members, adopted by the Board.
- (2) A Board Member who is removed under clause 11 (1) shall have the right of appeal. That appeal shall be addressed to the public officer and be acted upon as per clause 27 of this constitution.
- (3) A Board Member who is exercising their right of appeal in 11 (2) (a), shall be suspended from all Board responsibilities until the resolution of that appeal.

## **12. Board member vacancy**

- (1) Upon the occurrence of a casual vacancy under clause 10 or removal of a Board member under clause 11:
  - (a) the relevant former Board member ceases to be the chair of and (if applicable) a Region Delegate on behalf of the relevant Region;
  - (b) the resulting Region vacancy must be filled by the Region as soon as practicable;
  - (c) prior to any re-appointment the Board may continue to operate otherwise in accord with the Constitution.

## **13. Board meetings and quorum**

- (1) The Board must hold at least 8 meetings (at least 2 of which must be face to face) in each period of 12 months, at such place and time as the Board may determine.
- (2) A Board Meeting may be held with use of technology that allows a Board member using the technology and the Board members present at the meeting to clearly and simultaneously communicate with each other. A Board member in attendance using that technology will be deemed to be physically present at the meeting.
- (3) Additional (including emergency) meetings of the Board may be convened by the President (or the Vice President, in the President's absence) as considered necessary or upon the request of 3 Board members.
- (4) Written notice of a meeting of the Board must be given by the CEO or Public Officer to each member of the Board at least 14 days (or such other period as may be unanimously agreed on by the members of the Board) before the time appointed for the holding of the meeting.
- (5) Notice of a meeting given under sub clause (4) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the Board members present at the meeting by a majority agree to consider.
- (6) The need for 14 days' notice of a Board Meeting will not apply in the case of an emergency, provided:
  - (a) 48 hours' notice will be sufficient;

- (b) such notice must be in writing and attempted orally with the first oral attempt more than 48 hours before the meeting, acknowledging subsequent oral attempts may occur within 48 hours;
  - (c) the only business that may be transacted at the emergency meeting is the item or items that constituted the emergency as disclosed in the notice;
  - (d) the emergency meeting by a vote of a majority present, must confirm that issue or issues for consideration did constitute an emergency for the meeting and any resolutions from it to be effective.
- (7) A quorum for a Board Meeting will be one more than half of the chairs then appointed by the Regions. (For example if only 10 Regions have a chair, then 6 present will be the quorum.)
- (8) No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (9) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting will not proceed.
- (10) At a meeting of the Board:
- (a) the President or, in the President's absence, the Vice President is to preside, or
  - (b) if the President and the Vice President are absent or unwilling to act, such one of the remaining Board members as may be chosen by the Board members present at the meeting is to preside;
  - (c) all voting shall be by ordinary resolution of the majority of the Board members present (there will be no proxy voting);
  - (d) if there is a tie in any vote, the chair of the Board Meeting may exercise an additional casting vote.

#### **14. *Sub-committees and delegation***

- (1) The Board may establish sub-committees consisting of such Members Organisation Nominees, Member Council Nominees or non-members of the MDA as the Board thinks fit. Each sub-committee may be a standing or ad-hoc committee reporting to or advising the Board.
- (2) The Board may, by instrument in writing, delegate to a sub-committee or Chief Executive Officer the exercise of such of the functions of the Board as are specified in the instrument, other than:
- (a) this power of delegation, and
  - (b) a function which is a duty imposed on the Board by the Constitution, the Act or by any other law.
- (3) A Region Executive is a sub-committee of the Board of the MDA.
- (4) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (5) A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.

- (6) Despite any delegation under this clause, the Board may continue to exercise any function delegated.
- (7) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Board.
- (8) The Board may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (9) The Board may determine a sub-committee's terms of reference, and the sub-committee must comply with any other requirements set out in its terms of reference. The terms of reference may entitle the President or the Vice-President to be an ex-officio member or observer of the sub-committee. The sub-committee may otherwise meet and adjourn as it thinks proper.

## **Part 5 - Regions**

### **15. Role and Region composition**

- (1) The role of the Region includes:
  - (a) initiating action on Region issues within the bounds of the MDA policy and any Codes;
  - (b) encouraging support for the MDA and its policies and actions;
  - (c) initiating and facilitating discussion on Region and Basin issues;
  - (d) increasing awareness of an education in respect of the MDA and the Basin;
  - (e) recommending changes to policy to the Board or the MDA;
  - (f) encouraging financial support for the MDA;
  - (g) appointing Region Delegates to a MDA Meeting.
- (2) The Regions of the MDA shall be made up of those local government municipal areas determined and as amended from time to time, by resolution of the Board.
- (3) The details of the areas making up each Region must be maintained by the Board and made available to Members on request and published (and kept up to date) on the MDA website.
- (4) The composition of a Region and the number of Regions may be varied from time to time by the resolution of the Board, the listed Regions and their composition. Variations to the composition of the Regions may be proposed by the Regions, the Board, or the vote of a MDA Meeting.
- (5) Within each Region the Members in respect of that Region will be:
  - (a) Member Councils within the Region;
  - (b) Organisation Members located in the Region, provided if the Organisation is located in multiple Regions it must nominate one Region;
  - (c) Life Members and Individual Members, resident within that Region.

### **16. Region Meetings**

- (1) In respect of a Region:
  - (a) a Member Council may appoint:
    - (i) 2 Member Council Representatives; plus
    - (ii) 1 or more additional Member Council Representatives, for each 20,000 of population (or part thereof) above the first 20,000;  
up to a maximum of 5 Member Council Representatives. A Member Council Representative may be a councillor or council officer of the Member Council, or another person selected and supported by the Member Council;
  - (b) an Organisation may appoint 1 Organisation Member Representative.
- (2) Region Meetings may be attended by:
  - (a) Member Council Representatives;
  - (b) Organisation Member Representatives;
  - (c) Individual Members;
  - (c) Life Members;

- (d) people from other Regions in various capacities;
  - (e) guest speakers and other invitees and subject to the management of the meeting by the Chair, may address the meeting.
- (3) Region Meetings:
- (a) must occur at least 4 times per year;
  - (b) may be called by the Region Executive, Chair of the Region Executive or not less than 2 Member Councils within the Region; and
  - (c) require written notice of not less than 14 days to all Members located within the Region.
- (4) Regions must elect annually at a Region Meeting a Region Executive made up of:
- (a) a chair; plus
  - (b) not less than 2 and not more than 5, other Region Executive Members.
- (5) The chair of the Region Executive is the chair of the Region, provided further:
- (a) the chair must demonstrate both the initial and ongoing capacity to provide secretariat support for the activities of the Region;
  - (b) when the position of the chair becomes vacant for any reason, the Region Executive may appoint a temporary chair and a new chair must be appointed at the next Region Meeting;
  - (c) the chair must ensure minutes and other necessary records of Region Executive and Region Meetings are taken, kept and provided regularly to the MDA Board.
- (6) Voting at a Region Meeting must occur as follows:
- (a) Member Council Representatives may vote through a Proxy provided:
    - (i) not less than one Member Council Representative appointed by the same Member Council, is present; and
    - (ii) the relevant proxy has been given, in writing, to that Member Council Representatives who is present;
  - (b) one vote for each Individual Member of that Region and Life Member of that Region present;
  - (c) one vote for each Organisation Member of that Region, through its Organisation Member Representative, who must be present;
  - (d) a quorum of the Region Meeting will be not less than  $\frac{1}{3}$  of Member Councils present in the Region;
  - (e) voting will be by ordinary majority;
  - (f) the chair will have an additional casting vote in the case of a tie in votes.
- (7) The Region Executive shall have responsibility to facilitate and implement the various roles of the Region and may, if it considers appropriate, seek support from Members to provide assistance including involvement through sub-committees as is thought fit.
- (8) The Region shall provide a report not less than once a year and prior to the annual general meeting of the MDA, of various business and actions dealt with by and within the Region relevant to the MDA.
- (9) Regions are encouraged to hold joint meetings with nearby Regions or Regions with common interests to discuss matters of common interest.

- (10) Each year prior to the 30th of June at a Region Meeting, the Region will elect by a vote, up to 3 Regional Delegates to attend and vote at any MDA Meeting occurring over the following 12-month period (to the next 30 June). A Region Delegate must not be a Member Council.
- (11) A Region Meeting may be held with use of technology that allows a member using the technology and the members present at the meeting to clearly and simultaneously communicate with each other. A member in attendance using that technology will be deemed to be physically present at the meeting.
- (12) To be effective, details of the elected Region Delegates must be sent (together with the minutes of the relevant meeting) to the Board of the MDA, addressed to the President or the Chief Executive Officer not less than 14 days prior to the next MDA Meeting.



## Part 6 – MDA Meetings

### 17. *MDA Meetings*

- (1) In respect of a MDA Meeting:
  - (a) a Member Council may appoint:
    - (i) 1 Member Council Delegate; plus
    - (ii) 1 additional Member Council Delegate, for every 20,000 of population (or part thereof) above the first 20,000;  
up to a maximum of 3 Member Council Delegates;
  - (b) a Member Council Delegate may be a councillor or council officer of the Member Council, or another person selected and supported by the Member Council.
- (2) The MDA must hold a MDA Meeting at least once every financial year and one of those MDA Meetings must be the annual general meeting.
- (3) The annual general meeting of the MDA must be held between 1 April and 30 September in a particular year.
- (4) The time, place and arrangements for the annual general meeting of the MDA will be set by the MDA at any preceding MDA Meeting, failing which the Board will make arrangements for the annual general meeting.
- (5) The Board or not less than 4 Member Councils, may call a general meeting or a special general meeting of the MDA, by:
  - (a) written notice of the request to the Chief Executive Officer; and
  - (b) the process as set out in clause 17(6) .
- (6) Requirements for any MDA Meeting include the following:
  - (a) must be arranged on behalf of the Board, including through the Chief Executive Officer or Public Officer;
  - (b) by sending by post or email a written notice of the MDA meeting not less than 30 days prior to the proposed MDA Meeting, to each Region chair, every Delegate of whose existence notice has been given to the MDA and each Member Council;
  - (c) by posting of the details of the proposed MDA Meeting on the MDA's website, not less than 30 days prior to the proposed MDA Meeting;
  - (d) details with notice or posting must include the date, time and place of the MDA Meeting;
  - (e) the agenda and any motions proposed, including those initiated by a Region, Member Council or any other Member must be distributed and posted on the MDA's website, not less than fourteen (14) days before the MDA Meeting.
- (7) A quorum for a MDA Meeting is 30 Delegates present at the meeting.
- (8) A MDA Meeting will be presided over by either the President of the Board or such other person appointed through a vote of Delegates present at the MDA Meeting.
- (9) Only Delegates are entitled to vote on matters considered by or at a MDA Meeting or in respect of MDA matters generally.
- (10) Voting at a MDA meeting must occur as follows:

- (a) each Delegate (that is Region Delegates, Member Council Delegates or Life Member Delegates) have a single vote;
  - (b) Member Council Delegates may vote through a Proxy provided:
    - (i) not less than one Member Council Delegate appointed by the same Member Council is present; and
    - (ii) the relevant Proxy has been given in writing to that Member Council Delegate who is present;
  - (c) Region Delegates and Life Member Delegates must be present at the MDA Meeting to vote;
  - (d) a matter the subject of a vote may be passed by an ordinary majority;
  - (e) in the case of a tied vote, the Chair appointed to preside at the MDA Meeting shall have a casting vote, in addition to any vote as a Delegate.
- (11) In any case where the Board considers a matter to be determined by the MDA is to be determined through a postal vote, the following must occur:
- (a) the Board will provide not less than 30 days' written notice of such proposal;
  - (b) the notice must contain the clear and specific detail of a matter or matters for decision by a postal vote;
  - (c) the vote must call for a yes or no response and no amendment to the nature of the question or outcome which is the subject of the proposed vote may occur;
  - (d) all and only Delegates may respond to a postal vote and those Delegates must do that personally;
  - (e) in the case of a tied postal vote, the proposal or issue for determination fails.
- (12) A MDA Meeting may be held with use of technology that allows a delegate using the technology and the delegates present at the meeting to clearly and simultaneously communicate with each other. A delegate in attendance using that technology will be deemed to be physically present at the meeting.

## **Part 7 – Chief Executive Officer**

### **18. Chief Executive Officer**

- (1) The Board shall appoint a Chief Executive Officer.
- (2) The Chief Executive Officer shall be responsible to the Board for the administration and operation generally of the MDA.
- (3) The Chief Executive Officer:
  - (a) shall carry out the Board's instructions;
  - (b) shall be responsible for the appointment of staff and retention of contractors.

## **Part 8 – Financial**

### **19. Financial**

- (1) Each Member of the MDA will contribute an annual fee based on the category of membership. Such annual fee:
  - (a) as to amount; and
  - (b) amount in respect of category of Member,will be set and potentially varied, on an annual basis, by the Board.
- (2) The Board may reduce, waive or accept instalment payments or make such arrangements as it thinks fit in relation to the application and calculation of the annual fee provided any reduction or waiver must be due to financial or other hardship, evidence of which has been provided (in confidence) to the Board.
- (3) The Board may, from time to time, provide to the Regions such funds as are considered appropriate, by the Board, to undertake activities within the particular Region.

## **Part 9 – Life Members**

### **20. Life Members**

- (1) A Life Member of the MDA is:
  - (a) a person named in Schedule 1; or
  - (b) any person nominated by a Member, endorsed by the Board and elected as a Life Member at a MDA Meeting.
- (2) The Board may prepare a Code for the consideration and approval of Life Members which will apply once adopted by a resolution at a MDA Meeting.
- (3) A Life Member is automatically a Delegate for the purposes of attendance, participation and voting at a MDA Meeting, provided the Life Member's voting right may not be a subject of a proxy.

## **Part 10 – Membership Generally**

### **21. *Application for membership***

- (1) An application for membership of the MDA:
  - (a) must be made in writing in the form and in the manner determined by the Board, and
  - (b) must include an agreement by the applicant to be bound by this Constitution and any Code, and
  - (c) must be lodged with the Public Officer of the MDA.
- (2) As soon as practicable after receiving an application for membership, the Public Officer must refer the application to the Board. The Board must determine whether to approve or to reject the application in its absolute discretion. Where an applicant qualifies for multiple categories of membership, the Board may, in its absolute discretion, determine which category it deems to be most suitable for the applicant.
- (3) As soon as practicable after the Board makes that determination, the Public Officer must:
  - (a) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable) and if the applicant was approved, the applicant's category of membership, and
  - (b) if the Board approved the application, request the applicant to pay (within the period of 28 days after receipt by the applicant of the notification) the sum payable under this Constitution by a Member as an annual fee (if applicable), and
  - (c) on payment by the applicant of the amounts referred to in sub clause 21(3)(b) within the period referred to in that provision (if applicable), enter or cause to be entered the applicant's name in the register of Members and, on the name being so entered, the applicant becomes a Member of the MDA.
- (4) The determination of the Board in respect of an applicant's application and the applicant's membership category is final. The Board is not required to provide reasons for its determination.
- (5) A Member may apply for a change of membership category. Subclasses (2) to (4), with applicable changes, will apply to an application for a membership category change.

### **22. *Cessation of membership***

A Member ceases to be a Member of the MDA if:

- (a) for Individual Members and Organisation Members, the Member annual fee is overdue for more than 90 days and the Board ends the membership,
- (b) for Member Councils, the annual fee remains unpaid after the failure to pay has been raised at a MDA meeting and the meeting decides to end the membership;
- (c) in the case of an individual – dies or is declared bankrupt, or
- (d) the Board resolves to end the membership;
- (e) the Member resigns membership,
- (f) the Member is expelled from the MDA in accordance with clause 28, or
- (g) ceases to be eligible to be a Member, or

- (h) in the case of an organisation – is insolvent, or is being wound up or deregistered, or has a receiver, administrator, manager, liquidator or other controller (howsoever described) appointed over the organisation or a substantial part of its assets.

### **23. *Membership entitlements not transferable***

A right, privilege or obligation which a person has by reason of being a Member of the MDA:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of membership.

### **24. *Register of Members***

- (1) The Public Officer of the MDA must establish and maintain a register of Members of the MDA specifying the name and postal address and principal place of business of each Member of the MDA, the date on which the Member became a Member, the category of membership, and the contact details of the Member's representatives if applicable.
- (2) The register of Members must be kept:
  - (a) at the main premises of the MDA, or
  - (b) if the MDA has no premises, at the MDA's official address.
- (3) The register of Members must be open for inspection, free of charge, by any Member of the MDA during business hours.
- (4) A Member must not use information about a person obtained from the register to contact or send material to the person. However, a Member may use information about a person obtained from the register for:
  - (a) the purposes of sending the person a notice in respect of a meeting or other event relating to the MDA or other material genuinely relating to the MDA or its management, or
  - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.

### **25. *Members' liabilities***

The liability of Member Councils of the MDA to contribute towards the payment of the debts and liabilities of the MDA or the costs, charges and expenses of the winding up of the MDA is limited to \$1. Other Members are not required to contribute.

### **26. *Conduct Code or Codes***

- (1) A conduct Code or Codes will be prepared in respect of the conduct of:
  - (a) the Board and Board Meetings;
  - (b) MDA Meetings;
  - (c) Region Meetings;
  - (d) Members in the various MDA forums; and
  - (e) CEO and other staff.

- (2) Any conduct Code must be prepared (and varied) at the direction and by resolution of the Board.
- (3) A Code must be complied with by Members, Representatives and Delegates.

## **27. Resolution of disputes**

- (1) A dispute between the MDA, or any of the Members of the MDA, or with the MDA, or with a Region, is to be referred to a mediator agreed by the parties to the dispute, or in the absence of agreement, by a mediator nominated by the President of the Law Council of Australia (or his or her nominee).
- (2) If a dispute is not resolved by mediation within 3 months of the referral under sub clause (1), any party to the dispute may commence proceedings.
- (3) A party to the dispute must not commence proceedings unless that party has complied with this clause 27, except in the case of a party seeking urgent interlocutory relief.

## **28. Disciplining of Members**

- (1) A complaint may be made to the Board by a Member of the MDA if a Member:
  - (a) has refused or neglected to comply with a provision or provisions of this Constitution or any MDA Code, or
  - (b) in the case of individuals – has acted in a manner prejudicial to the interests or reputation of the MDA or unbecoming of a Member, or
  - (c) in the case of Members who are not individuals – the officers, employees or agents of the Member have acted in a manner prejudicial to the interests or reputation of the MDA or unbecoming of a Member.
- (2) The Board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Board decides to deal with the complaint, the Board:
  - (a) must cause notice of the complaint to be served on the Member concerned, and
  - (b) must give the Member at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint, and
  - (c) must take into consideration any submissions made by the Member in connection with the complaint.
- (4) The Board may decide to expel the Member from the MDA or suspend the Member from membership of the MDA if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the Board expels or suspends a Member, the Public Officer must, within 7 days after the action is taken, cause written notice to be given to the Member of the action taken, of the reasons given by the Board for having taken that action and of the Member's right of appeal under clause 29.
- (6) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the Member is entitled to appeal against the decision concerned, or

- (b) if within that period the Member exercises the right of appeal, unless and until the decision is confirmed under clause 29, whichever is the later.

## **29. *Right of appeal of disciplined Member***

- (1) A Member may appeal to a disciplinary appeal committee against a decision of the Board under clause 28, within 7 days after notice of the decision is served on the Member, by lodging with the Public Officer a notice to that effect. The disciplinary appeal committee will consist of:
  - (a) an independent chair, who will be a suitably qualified lawyer nominated by the President of the Law Council of Australia (or his or her nominee), and
  - (b) at least two further persons selected by the Board who have not been involved with the original decision of the Board.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the Member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a Member under sub clause (1), the Public Officer must notify the Board which is to convene the disciplinary appeal committee and schedule a hearing within 56 days after the date on which the Public Officer received the notice.
- (4) At a disciplinary appeal committee hearing convened under sub clause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the Board (or nominee) and the Member must be given the opportunity to state their respective cases orally or in writing, or both.
- (5) The appeal is to be determined by a unanimous decision of the disciplinary appeal committee

## **Part 11 – General Provisions**

### **30. *Insurance and indemnities***

- (1) In this clause “**officer**” means:
  - (a) a Member of the Board, and
  - (b) a person, such as an executive officer or chief executive officer, who makes, or participates in making, decisions that affect the whole of the MDA, or has the capacity to affect the financial standing of the MDA.
- (2) To the extent permitted by law, the MDA indemnifies every person who is or has been an officer out of the assets of the MDA against any liability incurred by the officer in or arising out of the conduct of the affairs or business of the MDA, or in or arising out of the discharge of the duties of the officer, unless such liability arises out of conduct involving a lack of good faith.
- (3) To the extent permitted by law, the MDA may (but is not obliged to) pay, or agree to pay insurance premiums for any directors or officers liability insurance which may cover liability incurred by officers in, or arising out of, the conduct of the business of the MDA, or in or arising out of, the discharge of the duties of the officer.

### **31. *Funds - source***

- (1) The funds of the MDA are to be derived from annual fees, donations, grants, contracts, service level agreements and such other sources as the Board determines.
- (2) All money received by the MDA must be deposited as soon as practicable and without deduction to the credit of the MDA's bank or other authorised deposit-taking institution account.
- (3) The MDA must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **32. *Funds - management***

The funds of the MDA are to be used in pursuance of the objects of the MDA in such manner as the Board determines.

### **33. *Custody of books etc***

Except as otherwise provided by this Constitution, the Public Officer must keep in his or her custody or under his or her control all records, books and other documents relating to the MDA.

### **34. *Service of notices***

- (1) For the purpose of this Constitution, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally, or
  - (b) by sending it by pre-paid post to the address of the person, or
  - (c) by sending it by email or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this Constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the device from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

### **35. *Financial year***

The financial year of the MDA is:

- (a) the period of time commencing on the date of incorporation of the MDA and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the MDA, commencing on 1 April and ending on the following 31 March.



### **36. *Not-for-profit clause***

- (1) The assets and income of the MDA are to be applied solely in the furtherance of its objects. No portion of the MDA's assets and income are to be distributed directly or indirectly to its Members by way of fee, salary, dividend, bonus or otherwise.
- (2) The Members of the Board will not be entitled to receive fees for their service on the Board (eg: sitting fees).
- (3) Nothing in sub clauses (1) and (2) prevents the payment in good faith to a Board member or Member:
  - (a) of remuneration for any services to the MDA in the ordinary and usual course of business,
  - (b) for goods supplied in the ordinary and usual course of business,provided that any such payment, or any other payment permitted by this Constitution, made or proposed to be made to a Board member, has been approved by the Board (in any generic or specific case).
- (4) Nothing in sub clauses (1) and (2) prevents the reimbursement for out-of-pocket expenses incurred in carrying out the duties of a Board member where payment does not exceed any amount approved by the Board (in any generic or specific case).

### **37. *Dissolution clause***

- (1) Subject to this Constitution, upon the MDA being dissolved or wound up, any surplus that remains (after such dissolution and the payment of all debts and liabilities) is to be transferred to another fund authority or institution.
  - (a) having objects similar to the objects of the MDA and which are charitable at law;
  - (b) whose rules prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the MDA under this Constitution; and
  - (c) if the MDA is endorsed by the Commissioner for Taxation as income tax exempt those other institutions are also currently endorsed as income tax exempt on the same basis.
- (2) The fund, authority or institution will be determined by a vote of Delegates before the time of dissolution or winding up.

### **38. *Amendment of constitution***

The MDA may amend this Constitution and its objects by special resolution of Delegates at a MDA Meeting, subject to following sub clauses:

- (a) the amendment must be lodged with the executive twelve (12) weeks prior to the MDA Meeting;
- (b) the amendment must be listed as a motion and published in the agenda for the MDA Meeting.

### **39. *Government grants and assets***

An asset or part of an asset of the MDA consisting of property supplied by a government department, public authority or council, including the unexpended portion of a grant, must be returned to:

- (a) the department, authority or council that supplied the property, or

- (b) a body nominated by that department, authority or council.

#### **40. Confidentiality and intellectual property**

In the furtherance of the MDA's activities, the MDA may provide Board members (and any organisation they represent under this Constitution) and Members (and their officers, employees, agents, contractors), access to sensitive, commercial-in-confidence or confidential information ("**information**"). Each Board member and Member must ensure that a recipient from them of such information:

- (a) will keep the information confidential, and will not disclose the information to any other person unless:
  - (i) the person is a permitted recipient with a need to know,
  - (ii) disclosure is required by law or government policy,
  - (iii) disclosure is with the MDA's prior written consent, or
  - (iv) the information is already in the public domain other than by a breach of any confidentiality obligation,
- (b) will only be used for the purposes of preventing or controlling diseases, and the information must not be copied, modified, adapted or exploited for any commercial purposes, and
- (c) will comply with the MDA's information disclosure policies as published from time to time by the Board.

#### **41. List of amendments**

|          |             |                                   |
|----------|-------------|-----------------------------------|
| AGM 2016 | Motion 5.1  | Adoption of Constitution (2016).  |
| AGM 2017 | Motion 1A   | Part 6 s17 (6).                   |
| AGM 2018 | Motion 5.15 | Part 11 s38 (a)(b).               |
| AGM 2019 | Motion 5.1  | Part 35 (b); Part 6 s17 (3).      |
| AGM 2020 | Motion 5.1  | Part 5 s16 (11); Part 6 s17 (12). |

## Schedule 1 - Life Members

| Surname    | First Name      | Title | Location      |   |
|------------|-----------------|-------|---------------|---|
| Camac      | Graham          |       | Meningie      |   |
| Frost      | Pauline         |       | Adelaide      |   |
| Gorman     | Bill            |       | Yarrawonga    |   |
| Grogan     | Brian           | OAM   | Mildura       |   |
| Hill       | Les             |       | Berri         |   |
| Hillman    | Terry           |       | Lavington     |   |
| Hullick    | Jim             | OAM   | Adelaide      |   |
| Mecham     | J Bede          |       | Wagga Wagga   |   |
| Moor       | Max             |       | Barmah        |   |
| Moore      | Phillip         |       | Melbourne     |   |
| Oberin     | Don             |       | Echuca        |   |
| Pell       | Kevin           | OAM   | Nathalia      |   |
| Rogers     | Ken             |       | Dubbo         |   |
| Reichler   | Wulf            | OAM   | Brewarrina    | * |
| Anderson   | Stuart          | OAM   | Moama         | * |
| Dalzell    | David           |       | Whyalla       | * |
| Davies     | Peter           |       | Adelaide      | * |
| Gemmell    | James Wallace   |       | Cobram        | * |
| Heslop     | Albert          |       | Swan Hill     | * |
| Jacobi     | Ralph           |       | Adelaide      | * |
| Killmister | Ian             |       | Nathalia      | * |
| Larkin     | Jack James      | OAM   | Kooloonong    | * |
| Lawrence   | Gunnar Vernon   | AM    | Hawthorn      | * |
| Joseph     | John            |       | McGuire       | * |
| McKinnon   | Neil            | OAM   | Jerilderie    | * |
| Martin     | T Norm          |       | Wodonga       | * |
| Mengler    | Reg             |       | Balranald     | * |
| Merrylees  | William Andres  |       | Carrathool    | * |
| Pearsall   | Thomas Ernest   |       | Albury        | * |
| Alfred     | Percival        |       | Yeomans       | * |
| Perry      | Wal             |       | Port Elliot   | * |
| Potter     | Phillip         |       | Narooma       | * |
| Robertson  | Agnes Isabel    |       | Albury        | * |
| Schmidt    | Max             |       | Paringa       | * |
| Rankin     | Robert Starritt | OBE   | Rochester     | * |
| Tredinnick | HG              |       | Murray Valley | * |
| Tume       | Allen           |       | Adelaide      | * |
| Smith      | Henry Lester    | MBE   | Kerang        | * |
| Wilhelm    | Maurice         | OAM   | Murray Bridge | * |
| Weston     | Percy           |       | Eurobin       | * |

\* Passed