

Constitution Reform ASASA

Consultation Draft

Background

The existing ASASA National Constitution requires renewal so that it accurately reflects the national basis of the organisation and complies with current law. This is particularly important as the National Constitution is the parent or master construction for State Branch Constitutions.

Key areas of concern are that the present document does not reflect a genuinely national association and is registered under WA law, rather than national law. The current Constitution is out of date, and it does not reflect modern standards of governance and obligations required under federal law for charitable not for profit Associations. There are concerns about the current ASASA Objects, Membership, Definitions and Voting arrangements which has from time to time led to confusion and uncertainty across the organisation.

Aim

The aim of this paper is to provide a draft new Constitution for consultation.

The Existing Constitution

The present ASASA Constitution incorporated in WA under state law in 2010 is attached. The language in that document is outdated and several areas of confusion and uncertainty exist. The national organisation requires a legal basis to operate and trade nation-wide. The new Constitution needs to reflect the way we have been effectively operating, which is as an association of State ASASA Associations, with Branch Presidents empowered to represent and vote on behalf of their local State Branch membership. The Constitution of any national body provides its legal foundation. Getting this right is important for legal liability and insurance reasons and to enable the ASASA to be registered as a charity and for Deductible Gift Recipient (DGR) status.

A Proposed New Constitution

At the November 2023 ASASA AGM in Canberra it was decided that a new Constitution was needed as a Company Limited by Guarantee under national law, registered with ASIC as a charity and with DGR status. This is a legal structure commonly used by national charitable organisations, not for profits and recreational sporting clubs. An individual member's liability is limited, shares cannot be sold, and dividends cannot be paid. These bodies can trade nationally and are registered with ASIC. It is common for this structure to form the basis of an application for DGR status.

The Benefit of Change

To be granted Deductible Gift Recipient status (DGR) by the Australian Tax Office (ATO) all the objects of the association must without exception relate to a charitable and philanthropic purpose. National Executive has identified that the most appropriate ATO category for us to apply for DGR under is as a Public Benevolent Institution, (PBI) category even though we also fulfil functions of 'Harm Prevention Charities (HPC)' and 'War Memorial Repair Funds (WMRF)'. The ATO will only consider our application if the Australian Charities and Not for profits Commission (ACNC) has assessed the organisation and concluded that it qualifies as

a PBI. We must submit a new constitution for recognition as a PBI with ACNC before we can apply to the ATO for DGR.

An entity that is registered with 'public benevolent institution' (PBI) status must only provide benevolent relief targeted at people in need and for the relief of those needs. Such activities include helping people with suffering, sickness, disability, poverty, misfortune and helplessness. The entity can undertake other activities only if those activities further its benevolent purpose.

For ACNC to agree to PBI status we must therefore prove that our benevolent functions are our main role. Our first object, "to provide advice and assistance to past and present members of 'The Regiment', the Association and, where possible, their families in need" is patently benevolent but the ATO has queried the objects 2, 3, and 4 in our constitution ("to perpetuate the close bonds and esprit de corps created by past and present members of 'The Regiment' and other Special Forces Units, such as Z Special Unit, by providing the means for contact, amalgamation and trusteeship as required, to provide support to 'The Regiment'; and to preserve the good name of 'The Regiment' and guard its interests") and whether these stray from our benevolent roles? We will need to explain what the last three mean, in benevolent terms.

Once the ACNC has agreed to ASASA's status and as a PBI we apply to the ATO for DGR but the ATO will require an amendment to our constitution to the effect that on winding up any funds will go exclusively to another DGR approved body. This has been done in the consultation draft.

New Objects of our Association

Our Objects need to reflect our true purpose, which is to care for our SAS veterans and their families. This consultation draft retains the existing objects in principle but extends them to make clear the benevolent aim of each object.

The Existing Objects.

- a. to provide advice and assistance to past and present members of 'The Regiment', the Association and, where possible, their families in need.
- b. to perpetuate the close bonds and esprit de corps created by past and present members of 'The Regiment' and other Special Forces Units, such as Z Special Unit, by providing the means for contact, amalgamation and trusteeship as required.
- c. to provide support to 'The Regiment'; and
- d. to preserve the good name of 'The Regiment' and guard its interests.

The proposed new objects.

- (a) Provide health and welfare assistance services to past and present members of 'The Regiment' who may be suffering, sickness, disability, poverty, misfortune, and helplessness and, where possible to support their families in need.
- (b) Provide pension advice and veterans entitlements advocacy and claims assistance to members and families including war widows and children of veterans.
- (c) Protect veteran mental and emotional health by perpetuating the close bonds and esprit de corps created by past and present Members of the Regiment, and other Special Forces Units, such as Z Special Unit, by providing the means for contact, amalgamation, respect for war service and trusteeship as required.
- (d) To construct and maintain Special Forces war memorials and graves in respective states, to conduct or provide support for commemorative events such as Anzac Day and regimental and squadron anniversaries and where invited, to provide support and pastoral care to families for funeral services on the passing of a veteran.

(e) provide spiritual and moral support to serving and former soldiers of the Regiment by preserving the good name of the Regiment and by guarding its interests.

(f) ensure that medical, psychological and material support is provided to veterans wounded in action and in training including support for the education of orphaned children and the wellbeing of widows and dependents left behind.

(g) establish welfare funds, to apply for grants and to seek charitable donations to facilitate the objects of the Association.

Membership

The existing national membership categories and rules allow for ordinary individual members, affiliate members, honorary members and life members, all of whom are persons. Uncertainty has arisen over membership duplication as members of State Branches automatically become members of ASASA National. In practice for years individual State Branch members have been represented by their State Branch Presidents and General meetings. In this new Constitution draft, incorporated State Branches of the ASASA become the members, not individuals.

Slight variations have crept into State Branch membership rules which deviate from a universal definition. It is in the interest of the entire organisation that each State Branch have common membership criteria reflected in each State Branch Constitution. This new constitution does not impose that standard criterion which is better resolved as a matter to be coordinated separately, within the organisation by mutual agreement. Once agreed State Branch Constitutions need to be amended to reflect a common set of membership criteria.

Voting Rights

Current System. In the existing constitution "Voting Member" means an Ordinary (individual) Member who is Financial Member or a Life Member of any State Branch. This implies that all ASASA members can attend an AGM, and a complex process of proxy voting is enabled. A meeting of all members across the nation to vote on matters in person or online is not and never has been practicable, and has never been attempted.

Proposed System. A more robust system is needed which enables Branches Presidents to vote on behalf of local members and which reflects existing practice. How Branch Presidents resolve to determine the agreed views of their local state members is a matter for Branches a Such as system was unanimously agreed to by all Branch Presidents at the 2023 National ASASA AGM in Canberra. After discussion at the 2023 AGM, it was further agreed unanimously that a system of one vote one value per Branch would apply irrespective of the size of Branches.

Balance. The National Chairman, Vice Chairman, Secretary, Treasurer would be elected by the State Branches. Individuals elected as Directors will each have one vote. WA Branch would have priority to nominate two of these positions (Secretary and Treasurer) to reflect the size and location of the Branch, effectively guaranteeing WA Branch three votes. In a tied vote the National Chairman would have a casting vote.

Other Issues

This new constitution draws on the existing Constitution but ensures we comply with current federal law. Arrangements for the election of Directors, General Meetings, financial controls, record keeping and reporting are all spelt out in the consultation draft. Every SAS veteran through their membership of their respective State Branch is affiliated with the ASASA.

Consultation and the Reform Process

Background. This rewriting of the ASASA Constitution has been years in the making and has been subject to exhaustive negotiation over more than five years. The main principles contained in the proposed new Constitution were debated and decided upon at the November 2023 ASASA National AGM in Canberra, with decisions unanimously agreed by all State Branch Presidents and recorded in the Minutes. The Chairman was instructed to seek legal advice and return with the draft new document, now enclosed. These processes in 2023 were effectively the first round of consultation.

Second Round Consultation. This correspondence kicks off the second round of consultation open until Friday 2 August 2024 and requests informal feedback. State Branch Presidents are requested to distribute the draft widely amongst the membership. Branch feedback should be collated locally and provided to the Chairman directly by the Branch Presidents on the due date. The Chairman will consider any proposed amendments and consult with Branch Presidents. If necessary, an impromptu online General Meeting will be called on Tuesday 6th August at 430pm CST. Branch Presidents should save the date. Agreed amendments to the Consultation Draft will be sent to legal counsel for redrafting and preparation for the third round of consultation.

Third Round of Consultation. The amended Draft Consultation will be sent out with AGM papers by Friday 9th August for further consultation with members within State Branches. If necessary, a further online General Meeting will be held in on Monday 19th August at 430pm CST until the final Draft Constitution is agreed to. Executive Members please save the date.

Adoption. At the ASASA AGM on 9th September the new Constitution will be put to the meeting for adoption. If agreed to, the Constitution will then be registered with ASIC and the ACNC. The AGM will be asked to vote that once this has been done; the present constitution be terminated.

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