



# **CONSTITUTION**

**Amended as at 26 October 2022**

# THE CONSTITUTION OF THE WESTERN AUSTRALIAN BAR ASSOCIATION

As amended by Members at a General Meeting on 26 October 2022

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## PREAMBLE

### WHEREAS:

- (a) Applicants for admission to the Supreme Court of Western Australia are admitted to practice as Lawyers.
- (b) All Legal Practitioners admitted in Western Australia have unlimited rights of audience in Courts and Tribunals notwithstanding that they may freely choose to conduct their practice wholly or in part as solicitors.
- (c) Legal Practitioners admitted in Western Australia operating either as sole practitioner solicitors or within firms of solicitors may freely choose to provide advocacy services to their clients.
- (d) Advocacy services in Western Australia may be provided by Australian Legal Practitioners resident in other Australian States.
- (e) Some Legal Practitioners in Western Australia may freely choose to conduct a legal practice wholly, exclusively, or partly as barristers, and may freely choose to do so, other than as a member of the Association.
- (f) Membership of the Association is entirely a matter of choice that is available to persons who may choose to practise solely as independent barristers.
- (g) The Association exists as an association of independent sole practitioner barristers so as to further the objects referred to in clause 2 of this Constitution and in particular with a dedicated commitment to promoting:
  - (i) the highest standards of competence and ethical practice by persons choosing to practice as independent barristers within the Association;
  - (ii) the sharing of knowledge between barrister members of the Association consistently with the objectives of the profession;
  - (iii) the support and nurturing of younger barristers; and
  - (iv) free speech, freedom of association and adherence to and respect for the rule of law, including equality before the law, untrammelled by oppression or tyranny from any quarter.

## PART I – INTRODUCTION

### Interpretation

1. (a) Unless the context otherwise requires, the following words in this Constitution and the Rules hereunder shall have the meanings set against them:

**ABA** means ABA Australian Bar Association Limited ABN 14 605 949 148.

**Act** means the *Associations Incorporation Act 2015* (WA).

**Annual Meeting** – A General Meeting of the Association held annually under the provisions of clause 14 of this Constitution.

**Association** – The Western Australian Bar Association ABN 18 712 427 306.

**Bar Council** – The managing body of the Association constituted under Part III of this Constitution.

**barrister** – means a barrister as defined in the *Legal Profession Uniform Law*

**clear days** – A number of days reckoned exclusive both of the first and the last day, and of Sundays, Saturdays and statutory holidays.

**Disciplinary Committee** – The Disciplinary Committee of the Association constituted under Part IV of this Constitution.

**Executive Officer** – The person designated and employed as such, whose duties shall be specified by the President from time to time.

**General Meeting** – Either an Annual or a Special Meeting under the provisions of Part II of this Constitution.

**LCA** means Law Council of Australia ABN 85 005 260 622.

**Legal Profession Uniform Law** means the *Legal Profession Uniform Law* (WA) as defined in the *Legal Profession Uniform Law Application Act* (WA)

**member** – A person elected to the Association under clause 5 or clause 9 of this Constitution.

**member entitled to vote** – A member who has paid his or her subscription in accordance with clause 11 of this Constitution and any levy payable by him or her.

**ordinary resolution** – A resolution passed by a simple majority of votes of members entitled to vote and voting at a meeting.

**Rule** – means a Rule promulgated by the Association or by Bar Council in accordance with this Constitution from time to time under clause 54 or 55.

**person** – A body corporate as well as a natural person.

**Senior Counsel** – means Senior Counsel practising in and for the State appointed or recognised according to Supreme Court Consolidated Directions (Practice Direction 10.3).

**Special Meeting** – A General Meeting of the Association other than the Annual Meeting.

**special resolution** – A resolution passed by a majority of not less than three-fourths of the members of the Association who are entitled to vote and do vote at a General Meeting of which notice under clause 16 of this Constitution is given specifying the intention to propose the resolution as a special resolution and setting out the wording of the resolution.

**State** – The State of Western Australia.

**year** – A calendar year ended each 31 December.

- (b) In this Constitution and any Rules the singular shall include the plural and the plural the singular.

### **Name**

- 1A. The name of the Association is The Western Australian Bar Association Inc.

### **Objects**

2. The objects of the Association shall be:
- (a) To promote the worthy traditions of the Bar.
  - (b) To uphold the honour and promote the interests of the Bar.
  - (c) To promote fair and honourable practice by and amongst barristers.
  - (d) To confer and collaborate with the Law Society of Western Australia Incorporated.
  - (e) To join or affiliate with the Australian Bar Association and the Law Council of Australia.
  - (f) To further legal education and study including by providing or arranging a Bar Readers' Course for barristers or persons aspiring to join the Bar and to provide continuing legal education to its members or to other like-minded persons.
  - (g) To encourage friendly relations and social and sporting activities among members.
  - (h) To assist needy members and ex-members and dependants of members, ex-members and deceased members.
  - (i) To provide funds and facilities for and to do all such things as are conducive or incidental to the attainment of the above objects or any of them.
- 2A. The property and income of the Association shall be applied solely towards the promotion of the objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members of the Association, except in good faith in the promotion of those objects and with the approval of Bar Council.
- 2B. No payment may be made to a member of the Bar Council from the funds of the Association, except:
- (a) for out-of-pocket expenses for travel or accommodation in connection with the member's functions as a member of the Bar Council; or
  - (b) with the authority of a resolution of members of the Association.

## Power

3. In addition to all such powers as may be necessary to further the objects of the Association and any powers which it might possess as a result of incorporation, the Association shall have power to hold, buy and sell and lease real or personal property, make loans, borrow money, take or give mortgages or guarantees, take or give such security as it deems fit, make gifts, and invest its funds in any form of investment whether authorised trustee investments or not.

## Membership

4. Persons eligible for membership of the Association are the following:
  - (a) a barrister who does not carry on any other occupation inconsistent with the maintenance of proper standards of professional conduct and integrity;
  - (aa) a barrister who is not primarily occupied at the Bar due to the fact that she or he is responsible for the care of a child;
  - (b) a Queen's Counsel or Senior Counsel for the State who is a law officer of the Crown in right of the State or of the State, including the offices of Attorney General, Solicitor General, Director of Public Prosecutions, or any law officer of the Crown in right of the Commonwealth or of the Commonwealth, including the Attorney General, Solicitor General, Director of Public Prosecutions or any Special Prosecutor appointed by the Commonwealth;
  - (c) a university lecturer who is a practising barrister; and
  - (d) a member of the State or Federal Parliament who practises or practised as a barrister or a barrister who is a Minister of the Crown.

A barrister within the category of paragraphs (a), (aa), (c) and (d) above shall announce himself or herself at the first ordinary sitting of the Full Court held after he or she shall have been elected a member if they have not already done so.

5. (1) A General Meeting of the Association may elect any person eligible for membership of the Association (the **applicant**) as a member where:
  - (a) the Bar Council has considered an application for membership from the applicant and resolved that the application be forwarded to a general meeting for its consideration; and
  - (b) the applicant has completed, or undertaken to complete within a time specified by Bar Council, any Bar Readers' Course prescribed by the Bar Council from time to time.
- (2) A General Meeting may elect such other eligible persons as a member as the meeting considers appropriate.
6. [Deleted]
7. Any member may resign from the Association by giving notice of resignation and upon paying all subscriptions due up to the end of the year in which such notice is effective and any levy payable at the time of the giving of such notice.
8. When any member shall for any reason cease to be a member, the fact, reason and date thereof shall be entered by the Executive Officer in the register of members against the name of the person concerned, and thereupon his or her name shall be taken to have been removed from the register of members.

- 8A (a) A member to whom such a scheme applies, shall comply with any scheme of the Association in force, from time to time, under the *Professional Standards Act 1997 (WA)*.
- (b) A member who fails to comply with clause 8A(a) shall cease to be eligible for membership.
- 8B By becoming and remaining a member of the Association, a member agrees to become and remain a member of the ABA, subject to the constitution of the ABA. A member who ceases to be a member of the Association ceases to be a member of the ABA, unless otherwise provided by the constitution of the ABA.

### **Honorary, Judicial, Magistrate and Interstate Members**

9. A General Meeting of the Association may elect –
- (a) as an Honorary Member of the Association any person who in the opinion of the General Meeting is worthy of being elected as an honorary member of the Association;
- (b) as a Judicial Member of the Association any person who is a judge of the High Court of Australia, Supreme Court of Western Australia, the Federal Court of Australia, the Family Court of Western Australia, the Family Court of Australia, the District Court of Western Australia or the Federal Circuit Court or any person who is a judicial officer of equivalent status in any other Court or Tribunal;
- (c) as a Magistrate Member of the Association any person who is the Chief Magistrate of the Magistrates Court of Western Australia; and, upon the recommendation of Bar Council, a former member who is a Magistrate of the Magistrates Court of Western Australia or the Family Court.

Honorary, Judicial and Magistrate Members shall not be eligible to vote at meetings of the Association or to hold office in the Association, nor shall such members be liable to pay any subscription or levy.

- (d) As an Interstate Member a practising barrister whose primary occupation is at the Bar who does not normally reside in Western Australia and who is a member of the Bar of another state or Territory in Australia.

Interstate Members shall not be eligible to vote at meetings of the Association or to hold office in the Association, nor shall such members be liable to pay any levy.

### **Ex Officio Member**

10. The Bar Council may elect as an ex officio member of the Association the Attorney-General of Western Australia and the Solicitor-General for Western Australia.

Ex officio members shall not be eligible to hold office in, or vote at meetings of, the Association, nor shall such members be liable to pay any subscription or levy.

### **Subscriptions**

11. Each member of the Association shall pay such subscription, annual or otherwise, as the Bar Council shall from time to time resolve. The Bar Council shall have power from time to time to impose levies differential or otherwise.

### **Cesser of Membership**

12. (1) A person shall cease to be a member if:
- (a) any part of his or her annual subscription or any levy lawfully imposed on him or her remains unpaid for 3 months after it became due for payment and he or she fails to pay the

same for 14 days after receiving written notice on behalf of the Bar Council requiring him or her to pay the same; or

- (b) he or she has been given reasonable notice by Bar Council and has failed to comply with an undertaking to complete a Bar Readers' Course within the time specified by Bar Council under clause 5(1) (b), and has not been granted an extension by Bar Council for compliance with that undertaking; or
  - (c) he or she is determined by Bar Council to have ceased to be eligible for membership.
- (2) If the Council determines under clause 12(1)(c) that a member of the Association has ceased to be qualified for membership, it shall notify the member in writing at his or her last known residential address in Western Australia of such determination and of its reasons therefor. If such member within twenty-eight days of receipt of such notification advises the Council in writing that he or she disputes such determination and that he or she desires to be heard thereon, the Council shall fix a date, time and place to hear representations made by and on behalf of such member and shall notify such member thereof. At the appointed time on the due date the Council shall meet at the appointed place and shall hear such representations and shall then reconsider its determination. If, on such reconsideration, it reverses its earlier determination, then such member shall remain entitled to be registered as and to all the privileges and obligations of a member as if such earlier determination had not been made. If, however, the Council re-affirms its earlier determination, such member shall thereupon cease to be a member of the Association. If the member shall not give written notification to the Council, as hereinbefore provided, that he or she disputes its determination that he or she has ceased to be qualified to be a member, he or she shall cease to be a member of the Association.

## **PART II – MEETINGS**

### **General Meetings**

13. General Meetings shall include Annual Meetings and Special Meetings.

### **Annual Meeting**

14. The Annual Meeting for each year shall be held in Perth upon such date in October as the Bar Council may from time to time decide.
- 14A. The Treasurer shall present the Association's financial statement at the Annual Meeting. The financial year for the Association shall be between 1 July and 30 June.
- 14B. The President shall present to the Annual Meeting the President's annual report and shall announce the results of the annual elections.

### **Special Meetings**

15. The Bar Council may call a Special Meeting whenever it thinks fit and shall call a special meeting on the requisition in writing, stating the object of such meeting, of at least 5% of all members entitled to vote

### **Provisions Applicable to all Meetings**

16. The Secretary shall give every member, in accordance with Part VI below and the Act, not less than seven days' notice in writing of the place, date and time of every meeting and such notice shall also specify:
- (a) the nature of the business to be transacted;
  - (b) where a special resolution is to be proposed, the wording of the resolution; and

- (c) in the case of the Annual Meeting, also the vacancies for office and the last day for the receipt of nominations of candidates for those vacancies

provided that the Secretary shall not send notices of meetings to honorary, judicial, interstate or ex officio members, unless instructed to do so by Bar Council.

17. The non-receipt by any member of a notice of meeting as referred to in clause 16 shall not invalidate proceedings at the meeting.
18. A meeting may proceed with business and, subject to clause 20, pass resolutions in respect of all matters mentioned in the notice of meeting or arising out of the minutes of the previous meeting and any member may bring forward any other business if he or she has given notice thereof in writing to the Secretary not less than four clear days before the meeting or if the meeting by a two-thirds majority allows that member to do so.
19. No business shall be transacted at any meeting unless a quorum of members is present. A quorum shall consist of five members entitled to vote.
20. If, within the half hour following the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, lapses, but in any other case it stands adjourned to the same day in the next week at the same time and place. The Secretary is not required to but may give members notice of that adjournment. If a quorum is not present at the adjourned meeting within the half hour following the time appointed for the meeting, the meeting lapses.
21. The Chair of any meeting at which a quorum is present, with the consent of the meeting, may adjourn the meeting from time to time and to the same or another place and declare a meeting closed. No business shall be transacted at any adjourned meeting other than the business of the meeting from which the adjournment took place.
22. Decisions at any meeting (unless otherwise provided in this Constitution or the Act) shall be arrived at by the making of ordinary resolutions.
23. No ordinary or special resolution shall be rescinded except by a special resolution.
24. Every member entitled to vote shall have one vote and no more save that in the case of any ordinary resolution in the event of equality of votes the Chair shall have and may exercise a casting vote as well as a deliberative vote.
25. Any member absent from the Perth metropolitan area at the time of a general meeting may vote by proxy, but such vote shall only be exercised on a poll.
26. No member shall be entitled to act as proxy unless the member is someone who is entitled to vote, and no person may hold more than one proxy at any one meeting.
27. The instrument appointing a proxy shall be deposited at the chambers of the Secretary or of the President not less than two clear business days before the time appointed for the commencement of the meeting or adjourned meeting to which the instrument shall apply.
28. Unless a poll is demanded by at least two members entitled to vote and present at any meeting, voting shall be by show of hands.
29. Upon a poll being so demanded, the same shall be taken forthwith in such manner as the Chair shall direct.
30. The Chair shall declare to the meeting the result of the taking of a vote or of a poll, which declaration shall be the result unless the meeting forthwith overrules such declaration.



## Bar Council Elections

31. The President, Vice-President and ordinary members of Bar Council shall be elected annually each October. All members of Bar Council shall be members of the Association and shall hold office from the day of their election or appointment until the announcement of the results of the next annual election. Provided that the same person shall not be elected to the office of President for more than three consecutive years, all members of Bar Council shall be eligible for re-election.
32. The annual election shall be conducted on the day before the day of the Annual Meeting. The Secretary shall not less than 28 nor more than 35 days before the day for holding such election send written notice of such election to all members entitled to vote.
33.
  - (a) Every member wishing to nominate for election as a member of the Bar Council shall, not less than 21 days before the date of the election, forward to the Secretary written notice of intention to seek election countersigned by at least one member entitled to vote. In the notice a member may nominate for election as President, Vice-President and also as an ordinary member of the Bar Council and if applicable, whether as a member of less than three years' standing or as one of the non-WABCL members (as referred to in clause 36). The notice shall specify the position or positions for which the member nominates, and if the member nominates for more than one position, the notice shall also indicate to which of those positions the member prefers to be elected but in the absence of any such indication the member shall be deemed to prefer election to the senior position.
    - (aa) The position of ordinary member shall be deemed to be a more senior position than the position of member of less than three years' standing.
    - (b) If, in respect of each position, the number of candidates is not more than the number of vacancies to be filled, then each candidate shall be deemed to be elected to the position for which he or she has nominated, provided that -
      - (i) If a candidate has nominated for more than one position in respect of each of which the number of candidates is not more than the number of vacancies, the candidate shall be elected to the position to which, in his or her notice of intention to seek election, he or she has indicated his or her preference or which the candidate is deemed to prefer in the manner aforesaid.
      - (ii) No member shall be deemed to be elected Vice-President unless or until an election under clause 34 has been held for the position of President, if such election is necessary and the member is a nominee for that position.
      - (iii) No member shall be deemed to be elected an ordinary member of the Bar Council unless or until an election under clause 34 has been held for the position of President and Vice-President if either of those elections is necessary and if the member is one of the nominees for either of those positions.
    - (c) If a candidate who has nominated for more than one position is by the operation of clause 33(b) deemed to be elected to a position, he or she shall be removed from the list of candidates for the other position or positions for which he or she has nominated and the provisions of clause 33(b) shall then be applied to the amended list or lists, as the case may be.
    - (d) If there are insufficient candidates for the vacancies to be filled, the Chair at the Annual Meeting may accept nominations at that meeting for such vacancies and if there are more candidates than required for the vacancies, the Chair shall conduct an election by secret ballot in respect of those vacancies.

34. If, after the application of clause 33(b) and (c), there remain more candidates for any of the positions to be filled than the vacancy or the number of vacancies as the case may be, an election shall be held to decide which of the candidates shall be elected to the position or positions as the case may be, and for the purposes of the election the following provisions shall apply:

- (a) The Secretary shall, at least 10 days before the day of the election, post to each member entitled to vote a ballot paper containing particulars of the positions to be filled and of the candidates therefor, the candidates for each position being those who have nominated and who are not already deemed to have been elected to another position pursuant to clause 33(b) or (c).
- (b) A member desirous of voting shall mark their ballot paper by indicating their preference for the candidates for each position to be filled, by placing the numbers 1, 2, 3 (and so on as the case requires) opposite the names of all the remaining candidates so as to indicate the order of his or her preference for them and shall return the ballot paper to the Secretary not later than noon on the day of the election.
- (c) No member shall have more than one vote in respect of each position.
- (d) The votes shall be counted by two returning officers, who shall be two members nominated by the President who are not candidates for a position at the election.
- (e) The elections shall be in the following order:
  - (i) President
  - (ii) Vice-President
  - (iii) Ordinary Members of the Bar Council

provided that if any of those positions are not the subject of the election, such position or positions shall be excluded from that order.

- (iv) The position of member of less than three years standing.
- (f) The determination of the candidate who shall fill the position of President shall be made in accordance with the following provisions:
  - (i) The candidate who has received the largest number of first preference votes shall if that number constitutes an absolute majority of votes be elected.
  - (ii) If no candidate receives an absolute majority of first preference votes, the candidate who has received the fewest first preferences votes shall be excluded and each ballot paper counted to him or her shall be counted to the candidate next in order of the voter's preference.
  - (iii) If no candidate then has an absolute majority of votes the process of excluding the candidate who has the fewest votes and counting each of that candidate's ballot papers to the unexcluded candidate next in the order of the voter's preference shall be repeated until one candidate has received an absolute majority of votes. The candidate who has received an absolute majority of votes shall be elected.

This procedure shall be applied separately to candidates seeking election as members of less than three years' standing or the non-WABCL members, and to other candidates.

- (g) The determination of candidates to fill the position of Vice-President shall also be in accordance with clause 34(f).

- (h) The determination of candidates to fill the positions of ordinary members shall be made in accordance with the following provisions:
- (i) If there appears in the list of candidates for any position the name of a candidate who has already been elected to another position, that name shall, prior to the election for the first-mentioned position taking place, be crossed off the list together with the number opposite the name denoting the voter's order of preference.
  - (ii) If the number of names remaining on the list is then not more than the number of vacancies to be filled, those candidates shall be elected to fill the vacancies, but if the number of names remaining on the list is then more than the number of vacancies to be filled, the votes shall be counted in accordance with clause 34(f) hereof (with any necessary modifications to take account of the number of vacancies to be filled).
- (i) In the case of a tie in any election the result shall be determined by lot.
35. Subject to clause 36, the number of ordinary members of Bar Council to be elected at the Annual Meeting election shall be determined by the Bar Council prior to the issue of the notice of the annual election prescribed in clause 32.

### **PART III – THE BAR COUNCIL AND OFFICERS**

#### **Bar Council**

36. The members of Bar Council shall be the President, Vice President, and ten ordinary members of whom two members shall be members who have been members of the Association for less than three years immediately preceding the date of the election; provided however that at least two members of Bar Council shall be members of the Association who practise at chambers other than chambers leased or owned by WA Bar Chambers Limited (the **non-WABCL members**).

#### **President, Vice-President**

37. The President when available and otherwise the Vice-President shall represent the Association on formal occasions and shall act as Chair of meetings of the Association and of the Bar Council.

#### **Chair**

38. Any meeting of the Association or of the Bar Council, at which the President and Vice President are not present, may appoint any other member present to act as Chair.

#### **Officers**

39. At its first meeting following the annual election the Bar Council shall appoint one of the ordinary members of Bar Council to be Secretary and the same or another ordinary member of Bar Council to be Treasurer provided that if less than ten ordinary members of Bar Council were elected at the annual election, the Bar Council may appoint any member or members of the Association to hold those offices provided further that such appointments do not increase beyond ten the number of ordinary members of Bar Council. Any member so appointed shall thereupon be an ordinary member of Bar Council as if elected at the preceding annual election. The Bar Council may terminate any appointment to the offices of Secretary and/or Treasurer and may appoint another member or members to such office or offices to fill any vacancy or vacancies therein.
40. The office of Secretary and that of Treasurer shall be honorary or otherwise as the Bar Council may decide; provided that in any particular case and from time to time the Bar Council may, if so authorised by a resolution of the Association, allow and pay an honorarium or other remuneration to such officer or officers whether as a lump sum or on a periodic basis.

### **Co-opted Ordinary Members**

41. If the number of ordinary members of Bar Council at any time after an election is less than ten or becomes less than ten, the Bar Council may appoint any member or members as ordinary members of Bar Council and any member so appointed shall thereupon be an ordinary member of Bar Council as if elected at the preceding election.

### **Cesser of Office**

42. The office of a member of the Bar Council shall be vacated if he or she:
- (a) dies;
  - (b) resigns from office;
  - (c) is removed from office in accordance with this Constitution;
  - (d) ceases to be a member or ceases to engage in active practice as a barrister;
  - (e) is absent from five consecutive meetings of the Bar Council without leave, if the Bar Council resolves that his or her office should be vacated; or
  - (f) is adjudicated a bankrupt or becomes a mentally ill person.
43. Any member of the Bar Council may resign from office by a resignation in writing given to Bar Council.
44. Any member of the Bar Council may be removed from office by a resolution of the Bar Council; provided that such a member may within seven days of becoming aware of such resolution request the Bar Council in writing that the matter be referred to a General Meeting, whereupon such removal shall not become effective until confirmed by a General Meeting.

### **Vacancy in Office of President or Vice-President**

45. If the office of President or Vice-President should for any reason be or become vacant, an election to fill the vacancy shall be conducted as soon as practicable and the provisions of clauses 32, 33 and 34, with necessary modifications, shall apply for the purpose of conducting that election.

### **Meetings**

46. Meetings of the Bar Council shall be held at the places and times advised by the President, unless the Bar Council otherwise directs.
47. Meetings of the Bar Council may be called by the President or by any other three members thereof or by the Secretary at the request of the President, or any other three members of the Bar Council, by giving notice (which may be given by electronic means) of the meeting to all the other members of the Bar Council.

### **Quorum**

48. Five members of the Bar Council shall form a quorum for the transaction of the business of the Bar Council.

### **Minutes**

49. The Bar Council shall cause minutes to be made of the names of all persons present at, and of the proceedings of, General Meetings and Bar Council meetings.

50. Any minutes of a General Meeting or of a Bar Council meeting, if purporting to be signed by the Chair of such meeting or of a subsequent General Meeting or Bar Council meeting respectively, shall so far as the Association and its members, or any of them, are concerned, be prima facie evidence of the matters stated in such minutes.

## **Management**

51. Subject to resolutions on matters reserved by this Constitution or the Act to the Association in General Meeting, the affairs of the Association shall be managed, its interests supervised, its powers (other than disciplinary powers) exercised and its objects furthered by the Bar Council.
52. In particular, but without limiting its powers and duties, the Bar Council may:
- (a) make regulations not inconsistent with this Constitution for the conduct of its own business;
  - (b) make Rules as hereinafter provided;
  - (c) appoint and control sub-committees or officers as hereinafter provided;
  - (d) supervise the professional conduct of members and the etiquette and conduct to be observed by them as barristers;
  - (e) make rulings on all matters within its powers, as provided in clause 58;
  - (f) appoint a person or persons (whether or not a member or members) to represent the Association at meetings of the ABA and LCA and to pay from the funds of the Association such amount towards the costs of his or her so representing the Association as the Bar Council might think proper, subject to clause 2B;
  - (g) appoint deputations to meet the Chief Justice, Attorney General or any other Minister, authority, body or person in respect of any of the affairs, interests and objects of the Association;
  - (h) make statements to the press, or other public statements to any authority or person in respect of any of the affairs, interests and objects of the Association;
  - (i) act in disciplinary matters as hereinafter provided;
  - (j) manage the funds and pay the debts of the Association and levy contributions from members to the funds of the Association;
  - (k) decide and make a ruling on whether any person should be considered a barrister, or eligible for membership of the Association, or has ceased to engage in active practice;
  - (l) enter into any agreement or arrangement on behalf of the Association, with the ABA, the LCA or the Law Society of Western Australia Incorporated;
  - (m) at its discretion release any member or former member from liability for outstanding subscriptions or other debts due to the Association.
53. (a) The Bar Council may prescribe a Bar Readers' Course to be undertaken by persons applying to join the Association, for the purposes of clause 5(1)(b).
- (b) In prescribing a Bar Readers' Course for the purposes of clause 5(1) (b), Bar Council may make provision for circumstances in which a person applying for membership may be exempted by the Bar Council from completing all or part of the Course.

## **Rules**

54. The Association in Special Meeting may make and amend from time to time, Rules of conduct.
55. The Bar Council may make and amend from time to time Rules for the conduct of its meetings and the disposal of the business, and also for the conduct of the General Meetings, of the Association.

## **Appointment of Committees and Officers**

56. Save as to the Disciplinary Committee, the Bar Council may at any time and from time to time appoint, control or dissolve any committee or committees, and appoint, control or dismiss any officer.
57. (a) Save as to the Disciplinary Committee, any such committee shall consist of such persons (whether, subject to clause 57(b), each is a member of the Bar Council or not) and shall have such convenor or chair, and shall conform to such requirements and have such delegated powers and functions, as the Bar Council from time to time may direct.  
  
(b) Any person who is appointed convenor or chair of a committee shall be a member of the Association and may exercise such functions as the Bar Council may direct and such delegated powers as the Bar Council may confer, but any such convenor or chair so appointed, shall not become a member of Bar Council by virtue of such appointment.

## **Rulings**

58. Except that no act or ruling of the Bar Council binds the Disciplinary Committee, the Bar Council may from time to time make, amend, or rescind rulings on any of the following matters:
  - (a) matters to be decided under the Constitution by the Bar Council;
  - (b) the application of this Constitution to particular cases;
  - (c) the application of any Rules to particular cases;
  - (d) any matter within the objects of the Association not covered by this Constitution or any Rules or Regulations;
  - (e) any matter submitted to it in writing by a member.

## **PART IV – DISCIPLINE**

- 59A. The Association shall elect from among its members a Disciplinary Committee of three, two of whom shall be either Queens Counsel or Senior Counsel and one of whom shall be of the Junior Bar. The Chair shall be the senior member.
- 59B. Members of the Disciplinary Committee will hold office for three years unless removed by a special resolution of a Special Meeting. Upon a vacancy caused by resignation or removal or death of a member the Bar Council may appoint a new member who may act until the next Annual Meeting when the position shall be filled by election.

At three yearly intervals, a new Disciplinary Committee shall be elected at the Annual Meeting. Members whose term has expired are eligible to be re-elected.

- 59C. No person who is a member of the Bar Council may serve as a member of the Disciplinary Committee.

- 59D. A quorum of the Disciplinary Committee shall be three members, but if one member is unavailable, any two members of the Disciplinary Committee may co-opt a member of the Association to the Disciplinary Committee for the period of the absence or non-availability of the third member.
- 59E. If a member of the Disciplinary Committee recuses himself or herself from the hearing of a complaint, the Bar Council may appoint another member of the Association, of corresponding seniority, to be a member of the Disciplinary Committee in place of the recused member for the hearing of that complaint.

### **Inquiry into Conduct**

60. The Bar Council may inquire into the conduct of any member and may lay a complaint in the name of the Secretary of the Association to be determined before the Disciplinary Committee. It may retain a member or appoint a subcommittee to advise it in relation to any such complaint and to investigate any such complaint and to prosecute the same before the Disciplinary Committee and may pay subcommittee members such remuneration as it thinks fit (subject to clauses 2A and 2B).
- 60A. It shall be the duty of every member to place before the Bar Council or the Disciplinary Committee such information as they may be requested to provide for the purposes of this Part, provided that nothing in this clause shall require any member to furnish any information which might expose a member to a complaint under this Part.
61. A complaint to the Disciplinary Committee may be:
- (a) that the member is guilty of unsatisfactory professional conduct or professional misconduct;
  - (b) that the member has breached this Constitution; or
  - (c) that the member has breached the Conduct Rules.
62. The Secretary shall serve a copy of the complaint and particulars thereof on the member and as soon as possible after the member is served, provide copies of the complaint and the particulars to the members of the Disciplinary Committee, which Committee shall then convene to consider how the matter is to proceed. The Disciplinary Committee shall then appoint a date and place for the hearing of the complaint and the Secretary shall advise the member accordingly.
63. The member may be represented by counsel.
64. If a Disciplinary Committee, after hearing a complaint, shall find the same to be proved beyond reasonable doubt, it may do any one or more of the following things:
- (a) caution a member;
  - (b) reprimand a member;
  - (c) suspend a member for a stated term or upon a condition;
  - (d) expel a member;
  - (e) order a member to pay a fine not exceeding the sum of \$1,000 into the funds of the Association;
  - (f) adjourn the complaint and refer the papers to Legal Services and Complaints Committee (**LSCC**) or equivalent body;
  - (g) publish its decision, if it thinks fit, in any legal professional circular or journal which is published in Western Australia or Australia.

65. If a person ceases to be a member under any of the provisions of this Part, he or she shall not again become a member unless the Association in General Meeting so resolves.

#### **PART IVA – RESOLUTION OF NON-DISCIPLINARY DISPUTES**

##### **Dispute Resolution Procedure**

- 65A. This Part applies to disputes arising under or in relation to this Constitution in relation to matters outside the scope of Part IV and any other specific dispute resolution procedure under this Constitution, being disputes:
- (a) between members; or
  - (b) between one or more members and the Association.
- 65B. The parties to a dispute must attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.
- 65C. If the parties are unable to resolve the dispute between themselves within the time required by clause 65B, any party to the dispute may start the dispute resolution procedure by giving written notice to the President of:
- (a) the parties to the dispute; and
  - (b) the matters that are the subject of the dispute.
- 65D. Within 28 days after the President is given a notice under clause 65D, a Bar Council meeting must be convened to consider and determine the dispute.
- 65E. The President must give each party to the dispute written notice of the Bar Council meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held. The notice must state:
- (a) when and where the Bar Council meeting is to be held; and
  - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Bar Council about the dispute.
- 65F. If the dispute is between one or more members and the Association, and any party to the dispute gives written notice to the President stating that the party:
- (a) does not agree to the dispute being determined by the Bar Council; and
  - (b) requests the appointment of a mediator,
- the Bar Council must not determine the dispute.
- 65G. At the Bar Council meeting at which a dispute is to be considered and determined, the Bar Council must:
- (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions about the dispute;
  - (b) give due consideration to any submissions so made; and



(c) determine the dispute.

65H. The Bar Council must give each party to the dispute written notice of its determination, and the reasons for the determination, within 7 days after the Bar Council meeting at which the determination is made.

65I. A party to the dispute may, within 14 days after receiving notice of the Bar Council's determination under clause 65I, give written notice to the President requesting the appointment of a mediator. If notice is given under this clause, each party to the dispute is a party to the mediation.

## **Mediation**

65J. If written notice has been given to the President requesting the appointment of a mediator by a party to a dispute under clause 65G or clause 65J, a mediator must be chosen or appointed under the following provisions of this Part.

65K. The mediator must be a person chosen by agreement between the parties to the dispute. If there is no agreement then subject to clauses 65M and 65N, the Bar Council must appoint the mediator.

65L. The person appointed as mediator by the Bar Council must be a practising or retired legal practitioner with experience in acting as a mediator.

65M. The person appointed as mediator by the Bar Council may be a member or former member of the Association but must not:

(a) have a personal interest in the matter that is the subject of the mediation; or

(b) be connected with, or biased in favour of or against, any party to the mediation.

65N. The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.

65O. Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation, at least 5 days before the mediation takes place.

65P. In conducting the mediation, the mediator must:

(a) give each party to the mediation every opportunity to be heard;

(b) allow each party to the mediation to give due consideration to any written statement given by another party; and

(c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.

65Q. The mediator cannot determine the matter that is the subject of the mediation.

65R. The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.

65S. The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

65T. Pursuant to section 182(1) of the Act, application may be made to the State Administrative Tribunal to have a dispute determined if the dispute has not been resolved under the procedure provided for in this Part.

## **PART V – AMENDMENT OF CONSTITUTION**

66. This Constitution may be amended or rescinded from time to time by Special Resolution, in accordance with Part 3, Division 2 of the Act.

## **PART VI – MISCELLANEOUS**

### **Notices**

67. Notices may be sent to members by advising the member by written or electronic notice, by posting them to or leaving them at the chambers or the last known address of the person concerned.
68. A notice sent to a member in accordance with the preceding clause shall be deemed to have been received by the member in the absence of proof to the contrary.

### **Time**

69. Any period of time stipulated in this Constitution, may be enlarged or (except as to notice for a General Meeting to consider a Special Resolution) abridged by a General Meeting and either before, or after, or during the event to which it relates and, except as aforesaid, the Bar Council may before a General Meeting abridge any such period.

### **Obligation**

70. This Constitution and the Rules, as respectively amended from time to time, shall be binding on all the members, so far as the same are applicable to them.

### **Distribution of Surplus Property on Dissolution**

71. If the Association is wound up or its incorporation is cancelled, any surplus property must be distributed to an entity referred to in section 24(1) of the Act that has an object or objects in common with the Association.

### **Seal**

72. The Association shall have a common seal which shall be in the custody of the Executive Officer. The President and Secretary shall jointly have the power to use such common seal acting upon a resolution of the Bar Council and the affixing of the seal shall be countersigned by each of them.

### **Auditors**

73. (a) The Association shall at its Annual Meeting in each year appoint an Auditor or Auditors to hold office until its next Annual Meeting.
- (b) Once at least in every year and at intervals of not more than fifteen months the accounts of the Association shall be examined and the correctness of the accounts and balance sheet ascertained by one or more Auditor or Auditors.
- (c) The Bar Council may fill any casual vacancy in the office of Auditor.
- (d) Any Auditor appointed by the Association shall be a registered company auditor under the *Corporations Act 2001* (Cth).

## **Accounts**

74. The Association shall:
- (a) keep such accounting records as correctly record and explain the financial transactions and financial position of the Association;
  - (b) keep its accounting records in such manner as will enable true and fair accounts of the Association to be prepared from time to time; and
  - (c) keep its accounting records in such manner as will enable true and fair accounts of the Association to be conveniently and properly audited.

## **Funds**

75. The funds of the Association shall be kept in appropriate accounts with the Association's bankers and shall be disbursed on the resolution of the Bar Council or by direction of its delegate.

## **Records**

76. (a) The records, books, documents and securities of the Association shall be in custody of the Executive Officer.
- (b) The records and documents of the Association (other than any records and documents of the Disciplinary Committee and any other records classified by the Bar Council as confidential) shall be available for the inspection of the members and a member may make a copy of or take an extract from such records and documents but shall have no right to remove such records and documents for that purpose.

## **Register of Members**

77. The Association shall keep and maintain in an up to date condition a register of the members of the Association and their postal, residential or email addresses, as required by section 53 of the Act. Upon the request on reasonable notice of a member of the Association, the Secretary of the Association shall make the register available for the physical inspection of that member and the member may make a copy of or take an extract from the register, but shall have no right to remove the register for that purpose.

## **Constitution to be Available to Members**

78. The Association shall keep and maintain the Constitution of the Association in an up to date condition and in a form that is readily accessible by members, and shall upon request by any member:
- (a) make that document available to the member for inspection and copying; or
  - (b) send a copy of that document to the member.
- 78A. The Association must give to each person who becomes a member a copy of the Constitution as in force when that person becomes a member, in the manner specified by regulation 10(1) of the *Associations Incorporation Regulations 2016*.

## **Record of Office Holders**

79. The Association shall maintain a record of the names and residential, email or postal addresses of:
- (a) the members of the Bar Council;

- (b) persons who hold other offices of the Association provided for by this Constitution;
- (c) any other persons who are authorised to use the common seal of the Association; and
- (d) any persons who are appointed or act as trustees on behalf of the Association.