

RESPONSES TO QUESTIONS ON THE NEW SGLMG CONSTITUTION

Question	Updated 15 December		Answer
37	Why change the whole constitution rather than just the bits required to meet current legislation?		Changing the whole constitution is a good opportunity to meet the standards, benchmarks, good practice and community expectation. A complete and holistic review rather than part review reduces governance risk and is an efficient use of resources and time.
38	Will there be changes based on member feedback?		Yes there will be. The committee is reviewing feedback which informs amendments. Amendments will be made and the modified version distributed to members before the document is tabled at the General Meeting for adoption. Examples to date: 6 year maximum term rather than 9 year term (recognising that an ongoing term is not automatic and must be voted by members). 5% reduced to 1% for issues to be brought to a General Meeting.
39	Why has the date for the Annual General Meeting moved to the 29 January?		This was to accommodate an earlier General Meeting for the constitution and was planned with SGLMG Management. The Board decided not to have the constitution at the December meeting. ASIC gave us an additional 7 months within which an AGM has to take place. This means the latest we can do this is the end of January. This date was decided as 29th is usually end of holidays and most people are back at work this week. The constitution will not be put at the AGM.
40	People who should be on the Mardi Gras board should be the best for job and not be based on gender. Are you saying we'd send two brilliant people away because of their gender? This is discrimination		No. Capability is essential. All directors should have the relevant knowledge, skills and experience. However, this cannot be assured through election. The constitution does not specify gender. Diversity aims to avoid a homogenous board.
41	How would the appointments work?		The process is to be finalised. The current process for board vacancies is effective and can be considered. The independent committee, People and Nominations Committee, is comprised of members with senior human resource and people management experience. This committee and process is similar to that used by many other boards. It is a common process. Selection is based on filling the knowledge and skill gaps of the Board and improving diversity.
42	If 5 are elected and two retire each year, what happens when there is only one to retire?		The longest serving director must retire and stand for re-election.
43	I don't support the block on amendments that impact charitable status. The purpose of the organisation is for members not to be a charity.		The company structure as a charity was chosen at a point in time. There are regulations around this as there are with any structure. If the company decided on an amendment which meant losing its charitable status, it is likely that the board would wind down the charity and establish a new company of a different type.
44	The organisation should be required to have an AGM. It should not be at the discretion of the board.		ACNC Standard 2 requires the board to be accountable to members. SGLMG is of a size that this accountability will occur through a General Meeting. In addition, members can call a General Meeting.
Question	Existing Const Reference	Proposed Const Reference	Answer
1	II	2	SGLMG Ltd and Mardi Gras Arts Ltd are both registered charities and both must meet the requirements of the ACNC Act and Charities Act as well as Corporations Act. Mardi Gras Arts Ltd was established to hold the deductible gift recipient (DGR) status and thereby accept donations. Not all charities can accept tax deductible donations. The existing constitutions only consider the Corporations Act - this includes rules that no longer apply to charities as ACNC is now the regulating body.
2	NA	NA	MGA Ltd is a separate company and charity with DGR status. MGA runs the operations of the company and all donations run through MGA. SGLMG runs the festival, pays for events and receives revenue for events. It enables surpluses from SGLMG to be donated to MG Arts and for the distribution of such funds to be distributed to community arts and development projects. This relationship will not change. Following any changes to SGLMG constitution, the legal team will update MGA constitution to align with and reflect the SGLMG constitution. Both entities share the same board.
3	II IX XXI XXII	2 3, 4, 7, 9, 10	The Objects have been renamed "Purposes". The objects in the existing constitution do not refer to the charitable purposes of the company. This presents a risk in relation to maintaining charity registration.  There are 12 charitable purposes stated in the Charities Act. The changes make the charitable purposes more explicit and more closely aligned to the relevant purposes in the ACNC requirements.  In addition the following Chapters are all informed by the ACNC Act 3. Company Powers - not explicitly addressed in the existing constitution except under the Powers and Duties of Directors. The ACNC template for model constitution suggests that this be addressed in a separate chapter. 4. Not for Profits - similarly not addressed explicitly in the current constitution. The ACNC template for model constitution suggests that this be addressed in a separate chapter 7. Winding up - clause changed to explicitly state that any assets remaining in the company should be distributed to another recognised charity which is more closely aligned with SGLMG purposes. 9. Corp Act rules for General Meetings no longer apply to charities. The current constitution has 119 references to General Meetings and AGMs scattered across a number of chapters(II, VI, VII, IIX, X etc). This chapter in the proposed constitution follows the ACNC model covering both AGM and other GMs and pulls all rules relating to GMs into a single chapter. It also addresses digital meetings. 10.5.Powers and duties of directors. ACNC Governance standard Duties of Responsible Person is the legal responsibility for Directors and is not covered in the existing constitutions.

RESPONSES TO QUESTIONS ON THE NEW SGLMG CONSTITUTION

4	Can you explain how it was at risk? What provisions were a problem, and how?		2	In addition to previous answers. The current constitution doesn't comply with the legislation that governs it - ACNC Act (Australian Charities and Not-for-profits Commission Act 2012). If the regulator had cause to review the organisation's status, there is a risk of non-compliance which could lead to a sanction, (an assessment to determine if charity status is to be withdrawn), as the charitable purposes aren't reflected and other requirements not covered as outlined in responses above. Further, the current constitution also has many procedures in it which are best placed in policy. Policy and procedures are operational and are best addressed in separate documents in order for them to undergo regular review and update to meet changing circumstances and operating environments.
5	Will there be a change with a max number of proxy votes held at an AGM per person? The standard is 5 max while I have seen at SLMG one people hold 100+ proxy votes	VII	9	Capping proxies has been an ongoing discussion amongst members, and members hold different views. Some members are concerned about the abuse of the proxy system. Proxy voting enables a member to vote if they can't attend the meeting, by asking a representative to vote on their behalf. It is a vote cast by one person as a representative of the member.  The Constitution Review Committee (CRC) proposes a cap on proxy votes of a maximum of 50 held by any one person.
6	Can the CRC also explain the rationale behind the move to the Chair of directors being asked to chair general meetings. Given the history of our organisation, the ability for the board to appoint a chair with significant skill and an element of impartiality has been vital to community access to these meetings	7.4	9	Some feel the Board Chair should chair the General Meetings as in other companies. With the proposed move to directors with expertise, it is seen that a Chair drawn from Directors would provide sufficient capability. The aim is also for the Board Chair to be an experienced and capable Chair as it is a critically important role. A key success factor of a Board, as well as General Meetings, is an effective Chair. The CRC has reviewed its position and will change the wording to Board Chair or Independent Chair.
7	Shouldn't members determine the manner of accountability to members		9.1	Yes and in the proposed constitution they still do. Accountability by directors to members is embedded in legislation. ACNC Governance Standard 2 provides the minimal level of accountability. This includes reporting to members about the finances, activities and future activities at least once a year and providing adequate opportunities for members to raise matters and ask questions. Members have the opportunity to request other matters and the General Meeting provisions allow for this. There will still be at least one General Meeting a year. There could be more.
8	Can the CRC please outline the evidence from member consultation that supported the change to appointed board members			An expression of interest was advertised in July and the Constitution Review committee (CRC) represents a broad cross section of members. The committee's decisions were informed by best practice and modern governance standards as well as experiences on Boards outside of SGLMG. Members recognise the importance of having the right combination of experience and knowledge. Member feedback shows that members understand the importance of a minimum level of expertise. The current popular vote election system doesn't produce the minimum level of expertise. The proposed solution of majority elected and minority appointed provides a means of ensuring that minimum level of expertise, while still ensuring strong member representation on the board. It is important to note that appointed Directors are also members. Refer to references on the Constitution Review Project Page, Not for Profit Governance Principles.
9				<a href="#">Reference: Not-for-profit Governance Principles</a>
10	to increase the threshold for members to bring a resolution to a general meeting from a mover and seconder to a 5%/100 member minimum. This later change seems to remove the ability for people to participate openly in the democracy of general meetings		9, 10	5% is the standard percentage used in constitutions. The rationale is that 5% of members is enough to highlight the significance of an issue. The CRC has reviewed its position and will change the wording to 1% of membership.
11	What is the rationale for keeping the preferential voting for board elections	7.12	10.1	Preferential voting was introduced when 'new' Mardi Gras was established in 2002\3. With "old" Mardi Gras mostly a team would stand as a ticket with a common vision, platform and objectives. At times this served the organisation well with the ticket leader addressing gender parity and skills requirements. At that time, first past the post voting often resulted in less diversity other than gender parity. In addition, at the time the term was 12 months and all directors stood down and many renominated with the same or similar ticket make up. Preferential voting was fit-for-purpose at the time, introduced to improve the chance of a more diverse board being elected with varying degrees of success over the years. In the current context where parties don't run, first past the post could work. There are arguments for and against each system. There is a fairly even split in opinions.
12	I note the removal of the censure and stand down provisions from the Constitution, meaning that Mardi gras will not be able to remove or discipline poor-performing or disruptive directors. Please consider putting these clauses back in	10.12, 10.13	10	The Corporations Act is explicit on the removal of directors. The Board has a Code of Conduct, available on the governance page of the website. The Board led by the Chair should manage poor-performing and disruptive directors. The Board must comply with the procedures and requirements of the Act in the event that internal procedures are ineffectual. Any member has the right to bring such matters to the attention of ACNC.
13	Why do you think having a 4/5 split of elected and appointed directors is fair? Don't you think this is disenfranchising the community. Wouldn't 6/3 be better?		10	All directors have to be members of SGLMG. The CRC discussed this at great length and agreed on five elected directors, and four appointed directors based on appropriate experience and capability. The legal responsibilities of a director are significant, directors owe duties to the company and potentially can be held personally liable. The board is responsible for ensuring that the company is suitably and competently run. This requires a board comprised of individuals who have experience in strategic roles and can recognise the risks and opportunities to guide and support management.

RESPONSES TO QUESTIONS ON THE NEW SGLMG CONSTITUTION

14	What is the rationale for not only increasing the term of directors, but having a limit of 9 years. Isn't this too long and encourage complacency and disconnection to change?	10	<p>The rationale is to achieve greater stability in the governance of the company as well as enable time for for new directors to learn and understand the organisation's long-term plans. The CRC considered that a 3 year term is a more reasonable period in which to achieve this. The three year term for directors is a common model that supports an organisation's strategic journey. Limit of 9 years is based on the contemporary view that objectivity and independence is lost beyond this tenure. In addition, 2 or 3 terms is not automatic, members would still need to vote the director in for another term.</p> <p>The current two years and the annual turn over is disruptive and doesn't enable a director time to understand the full context nor does it enable the Board to unite as one cohesive decision-making body. In addition, currently there is no limit so a director in theory could be voted in for 2, 3, 4, or 5 terms. In the proposed model, a director must go up for election every three years. A second term is not guaranteed. Members decide if an individual does another term. To be re-elected, directors should demonstrate the value they have contributed during their term and put forward a case as to why they should be given another term.</p> <p>Based on feedback, an amendment to the terms will be made to set as a maximum term, two rounds of three year terms, giving a maximum cumulative six year term.</p>
15	Can you confirm that a member can stand for election as a director if they wish to do so without any approval from any committee such as the People and Nominations Committee (PAN) (or the existing Board)? ie if a person is not considered by PAN to meet advertised skills mix in EOI. Will any person be precluded from standing for election if they do not meet the skills set required.	10	Any member can stand for election as a Director. No person will be precluded from standing for election if they don't meet the skills required. Members have a responsibility in ensuring good governance. More information about candidates will be provided to enable members to make an informed choice.
16	How will the elected / appointed process work?	10	There is currently an EOI process for board vacancies. Consideration will be given to this process for appointed Board positions. Where the elected directors don't fill the required gaps, an EOI will call for members with the specifically required skills.
17	Can Deputy Chair be added to the constitution?	11	Yes a Deputy Chair could be added. The CRC supports a deputy chair as it mitigates risk and supports development of chairing skills. Also see next question.
18	Explain the rationale behind the board appointing a single chair. Previously, the board was empowered to self determine leadership models, which has increased gender representation in leadership and allowed for partnerships in leadership that greatly benefited the board and the organisation.	11	The Board is still empowered to, and may decide to appoint a deputy chair. A deputy allows for development of directors, and may allow an experienced deputy to step into the role of chair. The diversity representation can be enhanced under this model and in line with the composition and diversity policy.
19	Can Mardi Gras please confirm for the record that it has made the correct amendments to its community surveys to be in line with the recommendations made by ACON (2015) to accurately collect data on transgender and gender diverse people?	NA	The <i>ACON Recommended Community Indicators for Research</i> are used in our community surveys, as well as general data collection (where it is appropriate)
20	I am concerned at how easily it currently is for 'branch stacking' of MG by outside groups. I know that 'Socialist Alternative' and 'Pride in Protest' have tried this - with some success and will probably continue to. My question relates to a way forward to help prevent this. In the past membership was open but only declared LGBT persons could vote. Going through the last AGM vote I recognised a vast number of heterosexuals on that list from a particular political group I am a member of. This worried me deeply. Can we have two levels of membership? Voting Members and members whereby the later would have to declare their sexuality? Or at least tick a box, L,G,B or T.? I meant Voting LGBT members and 'Allies' Who would not have voting privileges. Our community should control where we go	NA	SGLMG is a proudly a diverse and inclusive community and will not exclude anyone from voting or from membership based on their sexuality or gender identity. That would be contrary to the aims and ethos of MG. This can also be mitigated if every, or the majority, mardi gras member votes. Membership strategy is reviewed regularly to ensure it is current and relevant. SGLMG membership policy is outside of this constitutional reform.
21	As a bisexual. Do I am finding it deeply concerned that we discuss not allowing "straight appearing" people to vote.	NA	SGLMG is inclusive and will not restrict voting in this way. All members have a right to vote.

RESPONSES TO QUESTIONS ON THE NEW SGLMG CONSTITUTION

22	I'm really concerned about the possibility of discussing not allowing "straight appearing" people not to vote. This is really alarming for bi+ communities. And in fact, Mardi Gras has a history of excluding bi+ people. Also, there are some trans people and intersex people who are straight.		NA	The membership policy is inclusive and reflects SGLMG 's values on inclusivity. We stand for inclusiveness and will role model this.
23	Can the group explain the consultation process undertaken on the diversity policy, Target A, and what alternative policies were considered?		DIVERSITY	This is a draft diversity policy, provided here to illustrate how greater diversity can be achieved. However, this draft diversity policy is not part of the constitution, and is a working document. The policy is not being voted on.
24	<p>I m curious to why the "diversity goal" is            40% men            40% women            20% trans/nonbinary or other "minority" postions it seems it oddly "lumping" together gender identities and other minorities.</p> <p>I think these should be multiple "seperate" point and could            It is perfectly possible to be e.g.:            &gt;=40% men + &gt;=40% women            and:            &gt;=25% trans/nonbinary/gender diverse            and:            &gt;=25% other minority groups (also who decides what are other minority groups. E.g. as former full service SW I think SW would be a "valid" minority group, but I doubt that the majority of people would agree...) people are sitting on multiple intersections and therefore these can (and potentially should add up to more than 100%)</p>		DIVERSITY	<p>Members want diversity in the Board and a policy is a way to achieve that. 40:40:20 is a global ratio which is generally in use as a tool in organisations to improve diversity. This ratio could be changed to better suit SGLMG. It could be 40:40:20 of any group. 35:35:30. It provides an aspiration and a goal to do better.</p> <p>The value is in diversity of thinking not representative groups.</p> <p>A ratio would provide an indicator that could be reported to members every year in the annual report.</p>
25	We still need clarity on how this was decided and perhaps we need this worded better to reflect what is intended. 40% women, 40% men and 20% non-binary or trans on the Board.			It is not a finalised policy and not part of the constitution. There can be further discussions to get the ratio and the language right before the policy is finalised..
26	What is the status of the proposal to have 40% women, 40% men and 20% non-binary or trans on the Board? How does that fit in with these Constitutional changes?			

RESPONSES TO QUESTIONS ON THE NEW SGLMG CONSTITUTION

27	Why are people who don't identify as men or women only allowed to run for 20% of the positions;	DIVERSITY	All positions are open to every member. The diversity ratio in the draft diversity policy works to reserve space for underrepresented groups. The 20% for trans and non-binary people is a minimum amount of representation - it is not a cap on numbers. The ratio recognises cis male/female as the majority. However, we can remove the gender to 40:40:20 of any one group. There can be further discussions to get the ratio and the language right, before the policy is finalised.
28	Are trans men and trans women allowed to run for positions reserved for men and women, or only the positions reserved for transgender people?	DIVERSITY	SGLMG welcomes trans people to run for any position. Positions are not reserved for men and women (cis or trans and gender diverse). This draft diversity ratio aims to cap the majority to make way for underrepresented groups and increase diversity on the Board of SGLMG . See the above answer on the draft diversity policy. There is strong evidence to show that a diversity policy makes a positive difference to underrepresented groups. SGLMG wants to make positive changes in the board's diversity, and we need a policy to help drive it.
29	It would be great if the team could start to use the terms cis as well as transgender, it would clear up a lot of the confusion	DIVERSITY	Thank you. This suggestion is noted. Not using cis provides flexibility as non-cis males would be assumed to be included in the 'male' definition.
30	Is there a reason why Asexual/Aromantic people are not explicitly included in the constitution?	NA	The constitution doesn't single out or refer explicitly to any gender or sexual orientation. We aspire to have a Board that reflects diversity of the community. The diversity can change over time.
31	If we agree with some of the recommendations but not all of them, will we be able to vote on them individually?	NA	That is not the intention. Members will not be able to vote on parts of the constitution. The new draft constitution only works as a whole, and cannot be taken apart. If some chapters are voted in and others not, we are left with a mash of two constitutions. The existing constitution is ambiguous in many parts due to piecemeal changes over time.
32	For the board elected - Is each board member going to get trained on what is expected of them - being on a multi-million dollar board - legally - and for the community as a representation of MG?	NA	Yes, SGLMG supports the professional development of directors through an annual programme of training, mentoring and succession planning. Professional development is also a responsibility of directors, and can involve members upskilling themselves to obtain adequate skills as well as receiving professional development, training sessions or external courses. In addition life /work experience all contributes to a well rounded director. The PAN Charter includes a succession planning strategy to provide a path that enables younger members with opportunities and development and ready to take a board seat. See 3.5 in the Charter on the website under People and Nominations Committee.
33	I am somewhat concerned that based on the response the main goal seems to be increase the MILLION dollars... just because we make more money, doesn't necessarily translate to being better for the community:  The company's purposes are to advance health, advance social or public welfare, advance culture, promote respect and tolerance and promote and protect human rights of LGBTQI individuals and communities by, without limitation: (a) facilitating, organising and co-ordinating events of celebration, commemoration and protest; (b) facilitating the diverse expressions of sexual orientation, identity, difference and protest against discrimination; (c) engaging with and supporting LGBTQI individuals and communities; (d) promoting the diversity of LGBTQI individuals and communities  NON OF THESE IS TALKING ABOUT \$\$\$  \$\$\$ are not equal to value to the community	NA	The CRC strongly agrees that \$\$\$ doesn't necessarily equate to value. SGLMG is a highly visible and proactive symbol of diversity celebration in Sydney and NSW (and globally). To continue this level of visibility, there is a need for a minimum level of revenue to put on a parade plus provide a strong cohesive program of community events. The focus of many of the constitutional changes is to strengthen the governance that ensures that minimum level of revenue on an ongoing basis.
34	So, just to clarify, Mardi Gras is NOT a community organisation then from the view of the CRC?	NA	SGLMG is a community based organisation and due to its successes has grown, and now has the legal obligations and governance requirements of a large charity and company. Changes to the constitution are aimed at ensuring the ongoing support of the community.
35	If you present this document as one, I fear you have set this process up to fail. Amendments should be allowed.	NA	We are actively seeking feedback to develop a final version. Feedback is informing amendments.
36	Will there be another discussion meeting or just survey?	NA	Comments are being received through the survey, emails and the Constitution Review Facebook page. All comments are being reviewed and considered. There will be ongoing responses to questions posted on the Projects page of the website. There are many similar comments, suggestions and questions which are informing discussions around amendments.