

1 Overview

We have reviewed the existing constitution for Sydney Gay and Lesbian Mardi Gras (the **company**) and updated it in collaboration with the constitutional review committee for market practice, and to reflect your purposes and governance arrangements.

Your existing constitution referred to provisions of the Corporations Act that no longer apply, and contains a number of lengthy procedural matters that do not need to be included in the constitution.

The table below provides an overview of the proposed constitution and compares it against the existing constitution, noting relevant differences.

2 Constitution review table

| Proposed constitution | | Existing constitution | | Comments |
|-----------------------|--------------------|-----------------------|-----------------------------|---|
| Rule | Description | Art | Description | |
| 1 | Company's name | 1.1 | Interpretation & alteration | The name remains Sydney Gay and Lesbian Mardi Gras Ltd. |
| 2 | Company's purposes | 2.1 | Objects | The purposes as currently expressed in your existing constitution do not refer to the charitable purposes of the company, which is a risk exposure in relation to maintaining charity registration and tax concessions. The purposes have been updated to encapsulate the company's charitable purposes, while remaining broad and flexible. The proposed purposes are consistent with and aligned with the existing purposes. |
| 3 | Company's powers | N/A | | Proposed rule 3 stipulates that the company has all of the powers of a company limited by guarantee under the Corporations Act, which are that of a natural person. These powers can only be exercised to carry out the company's purposes. |
| 4 | Not for profit | 2.2 | Objects | Proposed rule 4 is the standard not-for-profit provision which states that the company's income and property must be applied solely towards its purposes. It also prohibits payments of directors fees. |

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| Rule | Description | Art | Description | |
| 5 | Membership | Ch III-V | Membership, admission, fees, register | <p>Proposed rule 5 simplifies the rules and procedures regarding membership.</p> <p>People who are currently members will continue to be members, and Life Members will retain their current status.</p> <p>Life membership continues to be at the invitation of the board with a resolution of members. It is not a separate category of membership, rather an exemption of payment of subscription fees.</p> <p>The constitution removes the category of 'associate member' but there are no associate members so this will not have a practical impact on the membership.</p> <p>The current constitution contains fairly specific requirements regarding the application process which are not required to be in the constitution. The board may adopt a membership policy to set out some of these more procedural matters, and may make this available to members via the website.</p> <p>The proposed constitution does not have a membership period and renewal process. Rather, this is managed by the annual subscription fee process. We note that the proposed constitution enables the company to waive fees, if it chooses.</p> <p>Directors continue to have the ability to expel members, though the proposed constitution raises the minimum majority from two third to at least 75% voting in favour of expelling a member. The board will adopt a code of conduct or membership policy against which it will decide whether to expel a member, which will be made available to members via the website.</p> |
| 6 | Liability and guarantee of members | 21.2 | Members' contribution | <p>The amount of the guarantee remains \$1. This is the maximum amount a member must contribute in the event the company is wound up and its liabilities exceed its assets.</p> |
| 7 | Winding up | 22.1 | Winding up | <p>The winding up provision operates in largely the same manner. However, the proposed constitution does not explicitly require the company to transfer any surplus to an entity that has 'similar objects' upon winding up. This is to avoid a situation where a suitable entity exists whose purposes are broader than the company's. Further, it is often difficult to construe what is meant by 'similar objects'. In the event of winding up, the company is regardless required to apply the funds for the purposes for which they were raised. This proposed drafting allows flexibility for funds to be applied for an Australian charity carrying out the company's purposes without requiring the company to have similar objects per se.</p> <p>Under the proposed constitution, the directors decide the entity to receive funds on winding up.</p> |
| 8 | Altering this constitution | 1.6 | Interpretation & alteration | <p>While your existing constitution contains the requirement that any alteration to the constitution must be made by special resolution, it does not contain the provisions regarding charity registration and notification to regulators,</p> |

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| | | | | which is contained in the proposed constitution. |
| 9 | General meetings | Ch VI | General meetings | <p>The ACNC Act ‘turned off’ a number of provisions of the Corporations Act relating to general meetings, and as such those references are no longer valid so have been removed. The ACNC Act requires charities to be accountable to their members.</p> <p>Proposed rule 9 contains the requirements for holding member meetings. It continues to enable members with 5% of the votes to requisition a meeting, and continues to require the company to give 21 days’ notice of a general meeting. 5% of members may also propose a resolution at a meeting, which has been changed from the existing draft which requires on 2 members to propose a resolution.</p> <p>The notice provision has removed the requirement to place notice in the public area of the company’s place of business, as this is no longer relevant. It also removes the differentiation between a general meeting and annual general meeting, as this distinction is not required.</p> <p>Proposed rule 9.5 maintains the quorum requirement to have the lesser or 10% or 50 members present.</p> <p>The proposed constitution has removed the ‘Notice of Business’ requirement as well as the requirement for every resolution to have a proposer and seconder, as this is no longer market practice.</p> <p>Proposed rule 9.7 requires the chair of directors to chair the general meeting, rather than a member nominated by the board.</p> <p>Proposed rule 9.11 enables the directors to decide whether written votes may be permitted in addition to proxy voting. Voting by notice or written voting enables members to vote without attending a meeting or appointing a proxy. The directors decide whether this will be permitted for a meeting.</p> |
| 10 | Directors | Ch VIII | Directors and office-holders | <p>We have amended the process for the composition of the board in the proposed constitution. Proposed rule 1 refers to a board composition policy, which will set out the requisite diverse mix of skills, background and expertise for candidates. This will include the need for at least one First Nations director.</p> <p>As well as this, the company will be moving to a board which is comprised of a majority of elected directors and a minority of directors appointed by the board. This is to ensure an appropriate mix of background, skills, experience and diversity of the board, as well as continuity and stability of the board composition.</p> <p>The proposed constitution has changed the minimum and maximum number of directors to 5 and 9, respectively. Up to 5 directors are elected by the members, and up to 4 directors are appointed by the board after the election general meeting takes place. If the office of an elected director becomes vacant, the directors may appoint a person to fill that vacancy, but that person will stand for election at the subsequent general meeting.</p> |

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| | | | | <p>The proposed constitution also clarifies that each elected director must retire and offer themselves for re-election by the members every three years. This is a change from the two year term in the existing constitution. We have also amended the maximum to from 6 to 9 years. These changes are considered best market practice and common among charities with broad based membership. Three year terms enables stability within the organisation, while ensuring there is regular turnover.</p> <p>We also note that the proposed constitution enables members to nominate for directorship, but it is usual practice for directors to consider nominations and make recommendations to the membership regarding their preferred candidates to reflect the desired composition of the board. Elections will utilise a preferential voting system.</p> |
| 10.5 | Powers and duties of directors | Ch IX | Directors: powers & duties | The proposed constitution provides that the directors have all the powers of the directors under the Corporations Act that are not required to be exercised by members in general meeting. The proposed constitution also refers to the ACNC governance standards, which the directors are subject to. Specific provisions relating to signing of cheques and other procedural matters have been removed as they are not necessary. |
| 11 | Meetings of directors | Ch X | Directors: proceedings | No material change. |
| 12 | Secretary | Ch XI | Secretary | No material change. |
| 13 | Indemnity and insurance | Ch XVIII | Indemnity | No material change. |
| 14 | Notice | Ch XVII | Notice | No material changes but some clarifications regarding timing of notice. |