

## **SHELTER NSW INCORPORATED**

### **History of amendments to the Constitution**

#### **2007**

The Shelter NSW constitution was amended by a special resolution by members present at the Annual General Meeting on 13 December 2007. The amendment are changes to section 7A(z)(zl).

The amendment was lodged with the NSW Office of Fair Trading which accepted registration and the amendments formed part of Shelter NSW's constitution effective from 4 January 2008.

After discussion at the July 2007 Board meeting, it was proposed to make the above amendment. The amendment has the purpose of enabling the Returning Officer to decide who is elected from the candidates for the Board who received an equal number of votes.

#### **2005**

The Shelter NSW constitution was amended by a Special Resolution by members present at the Annual General Meeting on 16 December 2004. The amendments were changes to the following clauses: 3(a); 3(b); 3(d); 6 (c); 7(g); 7A (v); 7A (w); 7A(x).

The amendments were lodged with the NSW Office of Fair Trading which accepted registration and the amendments formed part of Shelter NSW's constitution effective from 5 January 2005.

After discussion at the October 2004 Board meeting, it was proposed to make the following amendments to the Constitution. The resolutions had the following purposes:

- To include a clause to enable the Board to create life memberships. The rules had made no provision for life memberships. It is intended that life memberships could be conferred on individuals who have made an outstanding contribution to the work of Shelter NSW or to low-income consumers of housing in NSW.
- To provide that voting for the election of Directors and Executive Directors shall take place prior to the AGM by postal ballot only. The rules had allowed for postal voting or voting at the meeting.
- To make a few incidental changes relating to the election of Directors and Executive Directors by postal ballot.

#### **2002**

The Shelter NSW constitution was amended by a Special Resolution by members present at the Annual General Meeting on 12 November 2002. The amendments made changes to the following clauses: 3(l); 6 (c), 6 (d); 6 (e); 6 (j); 6 (u); 7 (d)(iii); 7(g); 7 (j); 7 (k).

The amendments were lodged with the Department of Fair Trading which accepted registration and the amendments formed part of Shelter NSW's constitution effective from 10 December 2002.

The changes had the following purposes:

- To require membership fees to be paid within 3 months of the due date.
- Clarify who is eligible to stand for election in order to avoid potential conflicts of interest.
- To provide that Board elections will be held every second Annual General Meeting. Also to provide that any person filling a casual vacancy holds office for the unexpired term of the director she or he replaces. Also amend to delete option of Deputy Directors.
- To provide for postal ballots, so that members across the state can participate in the election of Board members.

Advice on the changes were provided by our pro bono legal adviser, Graham Wheeler.

## **1998**

The constitution was amended at the AGM of 22 October 1998: changes were made to Articles 6 (e) to 6 (g), and these were registered by the Department of Fair Trading on 4 December 1998.

The changes related principally to the terms of office of Directors. They allowed Directors to serve six years continuously on the Board, and four on the Executive, which could be in one or more positions (e.g. Secretary for 2 years, then Chairperson for two more). Advice on the changes was provided by our pro bono legal advisers, Allen Allen and Hemsley.

## **1998**

The constitution was adopted at the 26 February 1998 Annual General Meeting, and came into force once the organisation changed its legal status from a registered cooperative to an incorporated association.

# **CONSTITUTION – SHELTER NSW INCORPORATED**

(In force from 4 January 2008 following registration by the NSW Office of Fair Trading)

## **1. NAME**

The name of the Association shall be Shelter NSW Incorporated (referred to in these rules as “the Association”).

## **2. OBJECTS**

The objects of the Association shall be:

- a) To promote the interests of housing consumers, especially those in need.
- b) To promote discussion on, develop proposals for, and seek implementation of housing policies and programs as affect part, or all, of NSW.
- c) To work in co-operation with National Shelter and Shelter organisations in other States and Territories.
- d) To inform, assist and co-operate with bodies concerned with housing equity issues.
- e) To be involved in all relevant aspects of housing, environment and social development.
- f) To represent the interests of members and housing consumers to all levels of government.
- g) To strive for:
  - i) A just and equitable distribution of, and access to, housing resources in NSW.
  - ii) Community and consumer involvement, participation and representation in planning and implementing housing policies.
  - iii) An integrated approach to housing and human settlements including consideration of necessary facilities, amenities, opportunities and community supports.

The Association is a non-profit organisation operating to achieve the above benevolent purposes.

## **3. MEMBERSHIP**

- a) There shall be organisation, individual, and life membership of the Association, and subscriptions
- b) Applications for organisation and individual membership shall be made in writing to the Board of Directors. Organisation and individual memberships are granted once approved by the Board, or the Executive if the approval is delegated to the Executive.

Life membership may be granted to an individual person of any age by resolution of the Board.

- c) The Board is not required to supply a reason for accepting or rejecting an application for membership.
- d) Organisation and individual members and subscribers shall pay such fees as are determined by the Annual General Meeting. There shall be no fee payable for life membership.
- e) Individual membership is open to individual persons being a person of any age.
- f) Organisation membership is open to organisations such as associations, co-operatives and institutions.
- g) Subscribers are entitled to receive nominated publications, but are not entitled to any other benefits of membership.
- h) Each organisation member shall be represented by one delegate appointed by and nominated in writing by the organisation member. This representative shall be known as the organisation member's delegate. The delegate shall be notified to the Association prior to the Association's Annual General Meeting.
- i) Should a dispute about representation arise, in the absence of a written directive from the organisation member, the chairperson shall rule as to how the representation shall be exercised.
- j) Nothing shall prevent an organisation member from recalling a delegate at any time and appointing another delegate in his or her place.
- k) A register of membership shall be kept by the association showing the name, address and dates of commencement and termination of membership for each member.
- l) Membership shall cease upon resignation, death, expulsion by the Board (*see Section 5, Discipline and Disputes*) or failure to pay membership fees within three months of the date due.
- m) Every person or organisation who was a member before the date of registration as an Incorporated Association continues to be a member.

#### **4. MEMBERS' LIABILITY**

The members and subscribers of the Association shall have no liability to contribute towards the payment of debts and liabilities of the Association or the cost, charges and expenses of the winding up of the Association except:

- a) to the amount of any unpaid fees.
- b) if, acting as a Director, fails to prevent the Association from incurring a debt while insolvent.

## **5. DISCIPLINE AND DISPUTES**

- a) Discipline: The procedure for disciplining members shall be fair and reasonable and determined by the Board. Anyone who wishes to appeal against a decision refusing membership, expelling them from membership or otherwise disciplining them may do so at the next general meeting of the association in accordance with the conditions for such meetings set out in rule 7.
- b) Disputes: Disputes between members (in their capacity as members) of the Association and disputes between members and the Association, are in the first instance to be resolved by the Board. If a party remains dissatisfied, the dispute may be referred to a Community Justice Centre for mediation in accordance with the Community Justice Centres Act 1983.

## **6. MANAGEMENT BY BOARD**

- a) The Association shall have its affairs controlled and managed by a Board of Directors consisting of a Chairperson, Secretary and Treasurer and between a minimum of four and a maximum of ten other Directors.
- b) The Chairperson, Secretary, Treasurer and such other Directors as determined by the Board shall constitute the Executive.
- c) Only financial members (including life members) 18 years of age or over may stand for election to the Executive or the Board. The following persons are eligible for election or appointment to the Board but are not eligible for election or appointment to the Executive:
  - (i) a person who is employed by a State or Federal government department or by a parliamentarian as a permanent employee,
  - (ii) a person who is currently employed by a State or Federal government department or by a parliamentarian and has been so employed for more than 6 months in any 12-month period,
  - (iii) a person who is a member of State or Federal parliament.

Any director who becomes a permanent employee of a State or Federal government Department or a Parliamentarian during their term shall stand down from any Executive position that they hold while remaining a Director.

- d) The Executive and other members of the Board shall be elected at every second Annual General Meeting. Any casual vacancy occurring in the Executive or the Board may be filled by a member appointed by the Board.
- e) Each member of the Board and Executive shall hold office from the date of their election, appointment or re-appointment (as the case may be) until the second Annual General Meeting after the date of their appointment or re-appointment (as the case may be). However, a person appointed to fill a casual vacancy shall only hold office for the unexpired term of the Director she or he replaces. A current Director may,

subject to Article 6(f), be elected or appointed at any Annual General Meeting for a further term.

- f) No Director may hold a position of office bearer for a period exceeding four consecutive years. No person shall be a Director for a period exceeding six consecutive years. However, these provisions shall not apply where less than the minimum number of nominations for Directors have been received.
- g) The Board shall meet as often as necessary to conduct the business of the Association and not less than once in each two months.
- h) The quorum for any meeting of the Board shall be:-
  - 4 when there are 7 or 8 Directors,
  - 5 when there are 9 or 10 Directors,
  - 6 when there are 11 or 12 Directors,
  - 7 when there are 13 Directors.
- i) Notice of meetings shall be given at the previous meeting or by such other means as the Board may decide upon.
- j) A member of the Board shall cease to hold office upon resignation in writing, insolvency, removal as a member of the Association (*this clause needs to be read in conjunction with 5 (a) and 3 (l)*) or absence from three successive Board meetings without approval by the Board.
- k) The Association in general meeting may by resolution remove any Director from the Board before the expiration of the Director's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the Director so removed.
- l) If a Director to whom such a proposed resolution relates makes representations in writing to the Chairperson or Secretary (not exceeding a reasonable length) and requests that the representations be notified to the members of the Association, the Chairperson or Secretary may send a copy of the representations to each member of the Association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.
- m) The Board may function validly provided its number is not reduced below the quorum. Should numbers fall below the quorum the remaining members may act only to appoint new Board members or to summon a general meeting.
- n) Questions arising at any meeting of the Board shall be decided upon by the majority of votes of those present. In the case of an equality of votes the person chairing the meeting shall have a second or casting vote.
- o) If within half an hour of the time appointed for a Board meeting a quorum is not present the meeting shall be dissolved and can be adjourned for a week.

- p) Additional meetings of the Board may be convened by the Chairperson or any two members of the Board.
- q) The Board may establish and dissolve Committees as it thinks fit.
  - i) The Board may delegate any of its powers to Committees consisting of such members or such employee or employees of the Association as it thinks fit.
  - ii) Such a Committee shall conform to any conditions that may be imposed on their delegated powers by the Board, including that the Board reserves the right to ratify, reject or adopt the recommendations of the Committee.
  - iii) A Committee may elect a Convenor of their meetings.
  - iv) A Committee may meet and adjourn as they think proper.
- r) All meetings of the Board or Committees shall be open to members except where the Chairperson of the meeting, with the consent of the voting members of the Board or Committee, resolves that the meeting, or any part of the meeting shall be closed to members not entitled to be present whereupon the Chairperson shall close the meeting to such members for such length of time as the Board or Committee shall deem.

Any member may speak on any issue at a meeting with permission of the Chairperson, provided that such permission may be conditional.

Any person may be invited to attend or speak at a meeting of the Board, Committees, or of the Association by the voting members of such a meeting.

- s) The Board has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Association, including, but not limited to, the power to:
  - (i) appoint and, at its discretion, remove or suspend staff, and to fix their powers, duties, and remuneration, and
  - (ii) make rules for the management of the Association's finances by the establishment and variation of a special purpose fund or funds.
- t) The Board shall cause to be kept a register of the members of the Board containing their names and residential addresses, the date at which the person became a member of the Board, and any other particulars prescribed. This register must be kept at the residential address of the Public Officer of the Association. The Association must record in the register any change in the membership of the Board within one month after the change occurs.

#### TRANSACTION OF BUSINESS OUTSIDE BOARD MEETINGS

- u) The Board may transact any of its business:

- (i) (a) by the circulation of papers among all the members of the Board, and a resolution in writing by a majority of those members is to be taken to be a decision of the Board;
- (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting, can be heard by the other members.
- (ii) For the purpose of this Rule the Chairperson of the Board and each member of the Board have the same voting rights as they have at an ordinary meeting of the Board.
- (iii) A resolution approved under paragraph (i)(a) is to be recorded in the minutes of the meetings of the Board.
- (iv) The Secretary may circulate papers among members of the Board for the purposes of paragraph (i)(a) by facsimile or other transmission of the information in the papers concerned.

## **7. GENERAL MEETINGS**

- a) An Annual General Meeting of the Association shall be held each year within six months from the end of the financial year of the Association.
- b) The Board may, whenever it thinks fit, convene a special general meeting of the Association. A special general meeting must be convened by the Board within three months of receiving a written request to do so, which should state the objects of the meeting, from at least five per cent of the membership of the Association.
- c) At least 21 days written notice of all general meetings and notices of motion shall be given to members.
- d) In the case of the Annual General Meeting the following business shall be transacted:
  - i) confirmation of the minutes of the last Annual General Meeting and any recent general meeting;
  - ii) receipt of the Executive's report upon the activities of the Association in the last financial year;
  - iii) election of the Executive and other members of the Board (every second year);
  - iv) appointment of the auditor
  - v) determination of membership fees
  - vi) receipt and consideration of a statement from the Executive which is not misleading and gives a true and fair view of the:

- income and expenditure of the Association during its last financial year;
  - assets and liabilities of the Association at the end of its last financial year;
  - any securities affecting any of the property of the Association at the end of its last financial year.
- e) Within one month after the date of each Annual General Meeting the Public Officer must lodge with the Commissioner a statement containing the information supplied at the Annual General Meeting
- f) The quorum for a general meeting shall be five per cent of members. Those present in person are to be counted for the quorum. No business is to be transacted by the meeting unless a quorum is present. If within half an hour of the time appointed for a general meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present shall be a quorum.
- g) Voting at general meetings shall be by a show of hands unless a secret ballot is demanded. Decisions shall be made by a simple majority vote. Proxy voting is allowed, although limited to elections or motions specified on the notice paper. Proxy voting forms are to be made available to members. Only one person can exercise the vote of an organisation member. In the case of an equality of votes the person appointed to chair the general meeting shall have a second or casting vote.
- h) Each member is entitled to appoint another member as proxy by notice given to the Secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed. The notice appointing the proxy is to be in the form set out in Appendix [1] to these Rules, and to be valid must clearly guide the proxy on how the member wishes to vote in regard to any elections or notices of motion as listed on the agenda for the meeting.
- i) The Association in General Meeting may rescind or amend any decision of the Board, subject to these Rules, the Act, and the Regulations except where decisions of the Board have resulted in its entering into legally binding agreements in accordance with its powers under the Act and the Regulations.
- j) Conduct of meetings shall be governed by a set of Standing Orders, which should be adopted annually by the incoming Board.

## **7A. ELECTION OF THE BOARD**

The elections for Directors shall occur every second year in accordance with this clause.

### ***Returning Officer***

- a) The Board must appoint a person as Returning Officer for the purpose of conducting the election of Board members. The Returning Officer must not be a person who will be a candidate for election.

- b) The Returning Officer must establish a system to ensure that only financial members are able to vote and that each financial member lodges no more than one ballot paper for each ballot.

### ***Calling for nominations***

- c) The Association must notify all members of the date of each annual general meeting and invite members to lodge nominations for the Board election. The notification must be given to members at least 2 months prior to the date of the annual general meeting and must include information on how to make a nomination.

### ***Nomination procedure***

- d) Any two members of the Association may nominate any individual member for election to the Board.
- e) The nomination of a person for election to the Board must:
  - i) be in writing,
  - ii) be signed by the candidate, the proposer and the seconder,
  - iii) specify the position for which the nomination is made, and
  - iv) be lodged with the Returning Officer at least 21 days before the date of the annual general meeting at which the election is to take place.
- f) If there is more than one candidate for any office bearer position each candidate for that position will also be taken to be nominated for a position as an ordinary member of the Board.
- g) A person must accept only one nomination for election to the Board.
- h) A candidate may withdraw his or her nomination at any time up to 21 days before the date of the annual general meeting.

### ***When no election is required***

- i) If there is only one candidate for any office bearer position there will be no ballot for that position and the person nominated will be declared elected to the position at the annual general meeting.
- j) If there is no candidate for any office bearer position there will be no ballot for that position and the vacancy will be filled by the Board as a casual vacancy.
- k) If the number of candidates for ordinary membership of the Board equals the number of vacancies there will be no ballot for those positions and the persons nominated will be declared elected at the annual general meeting.
- l) If the number of candidates for ordinary membership of the Board is less than the number of vacancies there will be no ballot for those positions and the persons nominated will be declared elected at the annual general meeting and the remaining vacancies will be filled by the Board as casual vacancies.

- m) When determining the number of candidates nominated for ordinary membership of the Board the Returning Officer must include any candidates nominated for an office bearer position, but only if there is more than one candidate nominated for that office bearer position.

#### ***Preparation of ballot papers for ordinary members of the Board***

- n) Where an election is required to fill ordinary Board member positions, the Returning Officer must prepare a ballot paper listing the names of all properly nominated candidates. The order of listing is to be determined by drawing the names at random.
- o) The ballot paper for the election of ordinary Board members must also include any candidates nominated for an office bearer position, but only if there is more than one candidate nominated for that office bearer position.
- p) The ballot paper may identify those candidates who are presently on the Board and may be accompanied by information prepared by the candidates about themselves.

#### ***Preparation of ballot papers for office bearers***

- q) Where an election is required to fill an office bearer position on the Board the Returning Officer must prepare a ballot paper listing the names of all properly nominated candidates for that position. The order of listing is to be determined by drawing the names at random.
- r) The ballot paper may identify those candidates who presently hold office and may be accompanied by information prepared by the candidates about themselves to a maximum of 100 words.

#### ***Issue of ballot papers***

- s) The Returning Officer must ensure that ballot papers are delivered to all members no later than 14 days before the date of the annual general meeting.

#### ***Completion of ballot papers***

- t) A full member wishing to vote must mark the ballot papers by placing a tick or cross opposite the names of the number of preferred candidates required to be elected to fill the vacancies and placing them in a “ballot envelope”.
- u) If there is a ballot for both ordinary members of the Board and for one or more office bearer positions a valid vote may only be made if:
  - i) the names of the persons who a member voted for in the election of office bearers are deleted from the ballot paper for the election of ordinary Board members, and

- ii) the ballot papers for the election of office bearers are placed in the same “ballot envelope” as the ballot paper for the election of ordinary Board members.

### ***Postal voting***

- v) A member who wishes to cast a vote may do so by returning the completed ballot papers in a sealed “ballot envelope” to the Returning Officer no later than 7 days before the date of the Annual General Meeting.
- w) This clause deleted.

### ***Declaration of the ballot***

- x) Counting of ballot papers must not commence until the close of the ballot. The ballot shall close at the close of business on the date 7 days prior to the date of the Annual General Meeting.
- y) After the ballot is closed the Returning Officer must count the ballot. In doing so the Returning Officer must decide which votes (if any) are informal or invalid.
- z) Each candidate may appoint one scrutineer who may scrutinise the votes with the Returning Officer at any time prior to the declaration of the election. A candidate may request a recount of votes prior to the declaration of the election.
  - (z1) In case of an equality of votes for any position, the Returning Officer must decide who is elected by drawing the required number of names from the candidates who received an equal number of votes.
  - (z2) The Returning Officer must report the results of the elections in writing to the chairperson of the annual general meeting who must then declare the results to the meeting.
  - (z3) The Returning Officer must destroy all ballot papers at the end of the annual general meeting unless otherwise directed by the meeting.

## **8. OFFICE BEARERS**

- a) The Chairperson shall act as chairperson at each general meeting and Board meeting of the Association.
- b) If the Chairperson is absent from a meeting or unwilling to act, the members present at the meeting shall elect one of their number to act as Chairperson.
- c) The Secretary shall ensure that records of the business of the Association including the rules, register of members, minutes of all general and Board meetings and a file of correspondence are kept at the offices of the Association. These records shall be available for inspection by any member.

- d) The Treasurer shall ensure that all money received by the Association is paid into accounts or investments as approved by the Executive in the Association's name. Payments shall be made through (i) a petty cash system or (ii) by cheque signed by two signatories authorised by the Board, one of whom shall be a Board member, or (iii) by such other means as the Board authorises.
- e) The Treasurer shall ensure that correct books and accounts are kept showing the financial affairs of the Association. These records shall be available for inspection by a member and shall be held at the offices of the Association
- f) The Treasurer shall ensure that end of year statements, and a copy of the report of the auditor be sent to members, and displayed 14 days before the Annual General Meeting.

## **9. SPECIAL RESOLUTIONS**

- a) A special resolution must be passed by a general meeting of the Association to effect the following changes:
  - i) a change of the Association's name;
  - ii) a change of the Association's rules;
  - iii) a change of the Association's objects;
  - iv) an amalgamation with another Incorporated Association;
  - v) to voluntarily wind up the Association and distribute its property;
  - vi) to apply for registration as a Company or a Co-operative.
- b) A special resolution will be passed in the following manner:-
  - i) a notice must be sent to all members advising that a general meeting is to be held to consider a special resolution;
  - ii) the notice must give details of the proposed special resolution and give at least 21 days notice of the meeting;
  - iii) a quorum must be present at the meeting;
  - iv) a three-quarters majority vote of those present or voting by proxy shall determine the resolution;
  - v) in situations where it is not possible or practicable for resolution to be passed as described above, a request may be made to the Commissioner of Consumer Affairs for permission to pass the resolution in some other way.

## **10. PUBLIC OFFICER**

- a) The Executive shall ensure that a person is appointed as Public Officer.
- b) The first Public Officer shall be the person who completed the application for incorporation of the Association.
- c) The Public Officer may be an Executive or Board member, or any other person regarded as suitable for the position by the Executive.

- d) The Executive may at any time remove the Public Officer and appoint a new Public Officer provided the person appointed is 18 years of age or older and a resident of New South Wales.
- e) The Public Officer shall be deemed to have vacated their position in the following circumstances:
  - i) death
  - ii) resignation
  - iii) removal by the Executive, Board or at a special meeting
  - iv) bankruptcy or financial insolvency
  - v) mental illness
  - vi) residency outside New South Wales
- f) When a vacancy occurs in the position of Public Officer, the Executive shall within 14 days notify the Commissioner of Consumer Affairs by the prescribed form and appoint a new Public Officer within 14 days.
- g) The Public Officer is required to notify the Commissioner of Consumer Affairs by the prescribed form in the following circumstances:
  - i) appointment (within 14 days)
  - ii) a change of residential address (within 14 days)
  - iii) a change in the Association's objects or rules (within one month)
  - iv) a change in the membership of the Executive (within 14 days)
  - v) of the Association's financial affairs (within one month of the Annual General Meeting)
  - vi) a change in the Association's name (within one month)

## **11. MISCELLANEOUS**

- a) The Association shall effect and maintain insurance as is required under the Associations Incorporation Act together with any other insurance which may be required by law or regarded as necessary by the Association.
- b) The funds of the Association shall be derived from the fees of members and subscribers, donations, grants and such other sources approved by the Association.
- c) The Common Seal of the Association shall be kept securely in the offices of the Association and shall only be affixed to a document with the approval of the Board, unless it has delegated that power to the Executive. The stamping of the Common Seal shall be witnessed by the signatures of two members of the Board.
- d) The Association may at any time pass a special resolution determining how any surplus property is to be distributed in the event that the Association should be wound up. The distribution of surplus property shall be in accordance with section 53 of the Associations Incorporation Act 1984, including that it must not be distributed to any member or former member of the Association, but should be transferred to a like-minded non-profit community group operating for similar benevolent purposes.

- e) Service of documents on the Association is effected by serving them on the Public Officer or by serving them personally on two members of the Executive.
- f) Notices sent by post shall be deemed to have been received two days after date of posting.
- g) The income and property of the Association shall be used only for promotion of the objects of the Association and shall not be paid or transferred to members by way of dividend, bonus or profit.

