

EXPLANATORY STATEMENT FOR PROPOSED SPECIAL RESOLUTION TO REPLACE CONSTITUTION OF THE NAMBUCCA HEADS BOWLING & RECREATION CLUB LIMITED

BACKGROUND

The importance of having an up-to-date Constitution

It is fundamental to good governance of the Club that its Constitution be consistent with relevant legislation and that it reflects and supports the character and direction of the Club.

When the Club applies for Government grants it is common for the relevant Department to ask whether the organisation's Constitution has been recently reviewed.

Changes in relevant legislation

The Nambucca Heads Bowling & Recreation Club Limited (**NHBRC**) is a registered club under the New South Wales *Registered Clubs Act 1976* (**RCA**).

Under the RCA the Rules of registered clubs like NHBRC are deemed to include extensive rules set out in the RCA.

NHBRC is also a company limited by guarantee subject to the Commonwealth *Corporations Act 2001* (the **Corporations Act**).

Both of these Acts affect what may, and what must, be included in the rules/constitution of NHBRC.

Relevant provisions of the RCA and the Corporations Act were amended in 2021.

There were more further amendments of the Corporations Act in 2022.

Changes in the administration of the sport of bowls

The current NHBRC Constitution still reflects the fact that until recently two separate bodies - the Royal New South Wales Bowling Association and the New South Wales Women's Bowling Association Over the last few years - had been the supervising the sport of bowls in New South Wales.

However, those two bodies have been replaced through a unification process by a single company – Bowls New South Wales Limited (**Bowls New South Wales**).

Regional Bowls bodies have also being going through a process to replace men's zones and women's districts with unified regions and to incorporate the Regional bodies.

The Board's decision to commission a review the Constitution

The Board decided that it was appropriate to have a general review of the NHBRC Constitution to take into account not only changes in legislation and Bowls governance but also to address whether the Constitution was generally "fit for purpose".

The Board engaged Lawyer Gary Rumble of Keypoint Law (**KL**) to work with Johnathon Zirkler to carry out a broad review of the Constitution.

The outcome of the review

Gary and Johnathon reported that the current Constitution would require extensive amendment to take into account legislative changes and the Bowls New South Wales changes and to make other desirable amendments.

Gary and Johnathon also reported that it would be result in a more "user friendly" and accessible Constitution to develop a new Constitution with a more modern drafting style rather than patching the existing Constitution.

The Board agreed to take a "clean-sweep" approach and to move to a new Constitution.

THE FORM OF THE PROPOSED NEW CONSTITUTION

The proposed new NHBRC Constitution which is submitted for approval by the AGM is based on the Golf NSW Constitution template.

The proposed new NHBRC Constitution is more user-friendly than is the current NHBRC Constitution because:

The proposed new Constitution is seven pages shorter than the current NHBRC Constitution.

The proposed new Constitution has less repetition than the current Constitution.

THE COMMENCEMENT OF THE NEW CONSTITUTION

In accordance with section 137 of the Corporations Act and the terms of the special resolution, the new Constitution will come into effect the day after the General Meeting passes the special resolution to adopt the new Constitution.

THE CHANGES OF SUBSTANCE

The main differences of substance between the current Constitution and the proposed Constitution are as follows.

OBJECTS

The current Constitution's statement of the Club's Objects in Rule 12 runs to two pages but the word "Bowls" does not appear at all.

The proposed new Constitution's statement of General Objects in Rule 4 emphasises that the game of Bowls and the Club's connection with Bowls Australia, Bowls New South Wales and regional Bowls organisations are central to the character and purpose of the Club.

The proposed new Constitution at Rule 4.1(i) also declares that the Objects of the Club include:

"To continually explore all business opportunities to facilitate development and growth"

This signals that the Club needs to have a commercial focus so that it can support its central Objects.

MEMBERSHIP

(Registered) Bowling Members

The current Constitution's references to "Bowling Members" defined in Rule 2 by reference to:

affiliation with the Royal New South Wales Bowling Association; or

affiliation with the New South Wales Women's Bowling Association

will be replaced by references to "Registered Bowling Members" defined in new Rule 1.2(u) by reference to

registration as a player of bowls with Bowls New South Wales Limited.

Registered Bowling Members will have the right to play bowls in events and competitions whether or not those events and competitions are limited to players registered with Bowls New South Wales. See Rule 8.3(a). See also new Rule 8.4(a).

The Board intends make by-laws under the new Constitution to transfer Members who are currently Bowling Members into the new class Registered Bowling Member.

The special provisions in relation to of Bowling Members in the current Constitution:

Rule 26(b)(i) [Social members may not vote at General Meetings on matters relating to the Men's Bowling Section or Women's Bowling Section]

Rule 55(a) "The Chairperson shall be a bowling member."

Rule 55(b) “There shall not be more than Three (3) Social members on the Board at any one time.”

Rule 115 “This Constitution may only be amended ... by a three quarters majority of financial members in the class of Bowling Membership ...”

are continued with similar provisions in the new Constitution:

Rule 8.12(b)(i)

Rule 16.1(b)

Rule 16.1(c)

Rule 27 and Rule 8.12(b)(ii).

Social (Bowling) Members

The new Constitution (see Rules 1.2(v), 8.3(b) and 8.4(b)) will create this new class of membership.

The purpose of this new class is to provide for those members who wish to play bowls occasionally but who do not wish to play regularly.

Members in this class will be entitled – subject to the Club’s obligations as a member of Bowls New South Wales – to play bowls in events and competitions which are not limited to players registered with Bowls New South Wales.

The Club will manage this Social (Bowling) Membership in accordance with its commitments as a member of Bowls New South Wales (see new Rule 4.1(c) and Rule 8.3(b)).

Bowls New South Wales has issued By-Laws indicating that it requires member Clubs to report – and pay a levy calculated accordingly – for all financial members whose membership gives them a right to play bowls regularly *whether or not they are registered with Bowls New South Wales*.

However, Bowls New South Wales does not require Clubs to account and pay a levy for members who participate in barefoot, promotional or irregular events.

It is likely that the Board will set fees for this Class which are lower than the fees for Registered Bowling members.

Social Members

There is no change in the rights of this Class. Membership in this class allows the member to access facilities and amenities other than bowls facilities.

Junior Members

The current Constitution Rule 23 allows persons over the age of 5 and under the age of 18 to become Junior Members but only if they can provide the consent of a parent or guardian who is a financial member of the Club.

That restriction provides a barrier to encouraging Juniors to take up the game of bowls.

The proposed new Constitution Rule 8.4(d) still requires that a Junior Member have parental or guardian consent but no longer requires that the parent or guardian be a financial member of the Club.

The proposed new Constitution also makes clear – as is required by RCA – that Junior Members may only become members to take part in Bowls (and not to use the general social facilities and amenities of the Club other than as guests of Members). Rule 8.4(d).

SECTIONS

The current Constitution refers to the Men's Bowling Section and Women's Bowling Section and some Rules operate expressly by reference to those Sections – see for example Rules 22 and 26(b)(i).

The new Constitution does not refer to existing Sections.

The Board does not propose to impose unification on the current Men's and Women's Bowling Sections.

But the fact that the new Constitution does not embed the current two Sections gives the flexibility to use the broad by-law power in new Rule 17.5 to change Sections in the future without having to go through a process to amend the Constitution.

TRANSITION

The new Constitution enables the Board to manage the transition from the current to the proposed new Constitution and to transition any future amendments of the Constitution affecting membership classes and/or sections by making by-laws to:

Transfer members to new classes of membership; and

Continue current sections with – as is considered appropriate – changes in section eligibility, transfer of members from one section to another, changes in the name of sections.

See Rules 8.3(e) and 17.5(g).

DISCIPLINE

Clubs NSW recommended that any review of the Constitution consider the discipline provisions.

The proposed new Constitution changes the discipline procedures to:

give a member who has had an adverse disciplinary decision the right to be provided with a written statement of reasons from the Board or the disciplinary Committee. Rule 12.2(j).

give a member a right of appeal against an adverse decision. Rule 12.2(k)-(s)

exclude from participation in Board or Disciplinary Committee processes and decisions any Board member whose own conduct is under consideration. Rule 12.2(t) and (u).

ELECTRONIC NOTICE AND CONDUCT OF MEETINGS

Both the RCA and the Corporations Act have been amended to:

facilitate and encourage calling general meetings of members, Board meetings and any committee meetings using electronic means (such as e-mail) and

allow "virtual" participation in such meetings using technology.

In accordance with the amended RCAs and Corporations Act the proposed new Constitution:

sets up an "opt-out" system for giving notice of General Meetings under which the Club is entitled to give notice using electronic means (such as email) unless the member has expressly opted out of electronic notification and requires hard copy. Rule 24.

allows the Club to allow "virtual attendance" and/or electronic voting at General Meetings. Rules 21.3 and 1.2(ff) and (gg).

allows Board meetings to be called and held using technology. Rules 18.1(d) and (e).

allows other Committees' procedures to be governed by the provisions applying to Board meetings. Rule 17.4(c).

PRIVACY OF APPLICANTS

The current Constitution in Rule 37(e) requires the address – as well as other information about an applicant for membership – to be posted in the Club.

The RCA has been amended to remove the requirement for posting of an applicant's address because of privacy concerns.

The proposed new Constitution no longer requires (or authorises) the posting of an applicant's address. See Rule 8.5(d).

FREQUENCY OF BOARD MEETINGS

The current Constitution requires the Board to meet every month. Rule 73.

In accordance with changes to the RCA under the proposed new Constitution the Board would only be required to meet quarterly. Rule 18.1(a).

It is expected that the Board would still meet most months. However, the change would allow flexibility for the Board.

CRIMINAL RECORD

The current Constitution Rule 56(b) declares ineligible for election to the Board a member who has "at any time been convicted of an indictable offence".

This current exclusion regardless of how long ago the conviction occurred is inconsistent with the policy of Spent Convictions legislation that people who have been convicted of an offence should – with some exceptions – be able to have a "clean slate" after a certain amount of time.

This exclusion could also deny to the Club the benefit of a Board member who can make a contribution to the governance of the Club.

The proposed new Constitution Rule 16.2(iii) provides that a member is ineligible to be elected to the Board if the member:

"has been convicted of an indictable offence which is not a spent conviction within the meaning of the Criminal Records Act."