

Changes to the Constitution to consolidate the provisions related to disputes and grievance procedures into Clause 16.

Explanation:

Changes were made to the constitution at the HYGM in 2017 to meet the minimum requirements under the current Associations Incorporation Act (2015). These changes supplemented, rather than replaced, the provisions for dealing with disputes and discipline of members that were already in our constitution, but were inadequate to satisfy the requirements on the Act. As a consequence, complaints against a member and appeals by a member resulting from a disciplinary action by the Club, are now dealt with in our current constitution under both Clause 4 “Membership” and Clause 16 “Disputes”. These proposed changes will remove any duplication of the process of appeals by members against any disciplinary action determined by the General Committee. The proposed changes will consolidate the process into a single path, contained within Clause 16, consistent with modern practice. These changes also remove an implication that the General Committee can decide complaints by employees, the general public and other organisations.

MOTION: That the Constitution be amended by deleting Clause 4 (i) “Complaints against Members” and paragraphs (vi), (vii), (viii) and (ix) of Clause 4 (j) “Discipline of Members” and by amending Clause 16 by deleting the word which are in ~~red and struck through~~ and inserting the words which are in blue and underlined.

“16. Disputes, grievance procedure

(a) Terms used

In this clause 16:

grievance procedure means the procedures set out in this clause;

party to a dispute includes a ~~person~~ Member who:

- (i) is a party to the dispute; and
- (ii) ceases to be a Member within 6 months before the dispute.

Responsible Officer means:

- (i) the Commodore; or
- (ii) if the Commodore is personally a party to the dispute, the Vice Commodore; or
- (iii) if the Commodore and the Vice Commodore are both personally parties to the dispute, the next most senior elected officer of the Club after the Vice Commodore who is not personally a party to the dispute.

(b) Application of this clause

This procedure set out in this clause 16 (the grievance procedure):

- (i) applies to disputes which, without limitation, include:
 - (a) disputes between Members; or
 - (b) ~~except as provided in paragraph (ii),~~ disputes between one or more Members and the Club; or
 - (c) a complaint by a Member against another Member written notice of which has been given to the Responsible Officer by the complaining Member; and
 - (d) the disciplining of a Member by the Club under clause 4(j).
- ~~(ii) does not apply to a dispute with respect to a Member's expulsion from the Club or suspension of membership where:~~
 - ~~(a) the Member does not appeal the expulsion or suspension under clause 4(j)(vii) within the time period specified in that clause; or~~
 - ~~(b) an appeal against the expulsion or suspension under clause 4(j)(viii) is not upheld by~~

~~resolution of Members as provided in that clause.~~

(c) Parties to attempt to resolve dispute

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.

(d) How grievance procedure is started

(i) If the parties to a dispute are ~~unable to resolve~~ have not resolved the dispute between themselves within the time required by period specified in sub clause (c), any party to the dispute may within a further 7 days start the grievance procedure by giving written notice to the Commodore Responsible Officer of:

- (a) the parties to the dispute; and
- (b) the matters that are the subject of the dispute.

If no notice is given within the 7 day period the parties forfeit the right to use of this grievance procedure with respect to the particular dispute.

(ii) Within 28 days after the Commodore Responsible Officer is given the notice, a General Committee meeting must be convened to consider and determine the dispute.

(iii) The Commodore Responsible Officer must give each party to the dispute written notice of the General Committee meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.

(iv) The notice given to each party to the dispute must state:

- (a) when and where the General Committee 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 General Committee about the dispute.

(v) If:

- (a) the dispute is between one or more Members and the Club or involves the disciplining of a Member; and
- (b) any party to the dispute gives written notice to the Commodore Responsible Officer within 5 days after the date notice is given by the Responsible Officer under paragraph (ii) stating that the party:
 - (A) does not agree to the dispute being determined by the General Committee; and
 - (B) requests the appointment of a mediator under sub clause (f),

the General Committee must not determine the dispute.

(vi) If a Member of the General Committee is a party to the dispute then:

- (a) subject to paragraph (vi)(b), the dispute shall be heard by those Members of the General Committee who are not party to the dispute, who shall for the purposes of this grievance procedure have the powers and authority of the General Committee;
- (b) if any party to the dispute gives written notice to the Responsible Officer within 5 days after the date notice is given by the Responsible Officer under paragraph (ii) stating that the party:
 - (A) does not agree to the dispute being determined as provided in paragraph (vi)(a);
and
 - (B) requests the appointment of a mediator under sub clause (f),the dispute is not to be determined as provided in paragraph (vi)(a).

(e) Determination of dispute by the General Committee

(i) At the General Committee meeting at which a dispute is to be considered and determined, the Committee 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 to the Committee

- about the dispute; and
 - (b) give due consideration to any submissions so made; and
 - (c) determine the dispute.
 - (ii) The General Committee must give each party to the dispute written notice of the Committee's determination, and the reasons for the determination, within 7 days after the Committee Meeting at which the determination is made.
 - (iii) A party to the dispute may, within 14 days after receiving notice of the Committee's determination under paragraph (ii), give written notice to the ~~Commodore~~ Responsible Officer requesting the appointment of a mediator under sub clause (f).
 - (iv) If notice is given under paragraph (iii), each party to the dispute is a party to the mediation.
- (f) Mediation
- (i) This sub clause (f) applies if written notice has been given to the ~~Commodore~~ Responsible Officer requesting the appointment of a mediator by a party to a dispute under:
 - (a) sub clause (d)(~~5v~~)(b)(B);
 - (b) sub clause (d)(vi)(b)(B); or
 - (c) sub clause (e)(iii).
 - (ii) If this sub clause (f) applies, a mediator must be chosen or appointed under sub clause (g).
- (g) Appointment of mediator
- (i) ~~The Subject to paragraph (ii), the~~ mediator ~~must is to~~ be a person chosen by agreement between the parties to the dispute.
 - (ii) ~~If there is no agreement for the purposed of paragraph (i)~~ If the parties to the dispute do not agree on a mediator within 14 days after the date notice is given to the Responsible Officer under sub clause (f)(i), then, subject to paragraphs (iii) and (iv), the General Committee must appoint the mediator.
 - (iii) The person appointed as mediator by the General Committee must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by:
 - (a) a party to a dispute under sub clause (d)(~~5v~~)(b)(B); or
 - (b) a party to a dispute under sub clause (e)(iii) and the dispute is between one or more Members and the Club.
 - (iv) The person appointed as mediator by the General Committee may be a Member or former Member of the Club but must not:
 - (a) have a personal interest in the matter that is the subject of the mediation; or
 - (b) be biased in favour of or against any party to the mediation.
- (h) Mediation process
- (i) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
 - (ii) 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.
 - (iii) In conducting the mediation, the mediator must:
 - (a) give each party to the mediation every opportunity to be heard; and
 - (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.
 - (iv) The mediator cannot determine the matter that is the subject of the mediation.
 - (v) 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.

(vi) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

(i) Inability to resolve a dispute

If a dispute ~~cannot be~~ is not resolved under the procedures set out in this clause 16 within 60 days after the date notice is given to the Responsible Officer under sub clause (f)(i) any party to the dispute may within a further 10 days apply to the State Administrative Tribunal to determine the dispute in accordance with the Act or otherwise at law after which time the right to so apply under this grievance procedure lapses without prejudice to the party's rights at law or in equity.

Moved:

Bill MacLeod.

Bill MacLeod on behalf of the General Committee

Clause 4 (i) and 4 (j) are included here for information and clarity only.

The amendment above will delete Clause 4 (i) "Complaints against Members" and paragraphs (vi), (vii), (viii) and (ix) of Clause 4 (j) "Discipline of Members" by deleting the words which are in ~~red and struck through~~.

~~(i) — Complaints against Members~~

- ~~(i) — The General Committee is responsible for dealing with any complaint against a Member.~~
- ~~(ii) — Any complaint by a Member of the Club, employee of the Club, Member of the public, body corporate or organisation against a Member of the Club should be received in writing, signed by the Complainant and addressed to the Commodore. In the event the Complainant refuses to put the complaint in writing, the Vice Commodore (or nominee in the event of his or her unavailability) must be informed of the complaint, assess its seriousness and refer the complaint to the General Committee for action or mention only.~~
- ~~(iii) — The General Committee will nominate at least two elected officers of the Club to investigate any complaint as soon as possible after the complaint was received and the nominated officers will meet with the persons involved individually to enable a comprehensive report to be made to the General Committee.~~
- ~~(iv) — Any Member who is notified as being the subject of a complaint will, upon request, make him or herself available for an interview with the nominated officers within two weeks of receipt of such request. Failure to attend the interview may render the Member liable to suspension of Member privileges or such other disciplinary action as may be determined by the General Committee.~~
- ~~(v) — The General Committee shall deal with any complaint against a Member of the Club as an item of Business at a scheduled General Committee Meeting or at a meeting convened solely to deal with the complaint.~~

(j) Discipline of Members

- (i) Subject to the provisions of this Constitution, the General Committee may, by resolution carried by a three fourths majority at which at least two thirds of the General Committee are present, discipline a Member by:
 - (a) Expulsion from membership; or
 - (b) Suspension from membership for a period not exceeding six months; and/or
 - (c) The withdrawal of benefits and privileges of membership as appropriate.
- (ii) A Member may be disciplined for conduct which is detrimental to the interests, Objects or good reputation of the Club, including without limitation conduct which is detrimental to the enjoyment of the Club facilities by the Members or to the health or welfare of Members or Club employees or any other persons at the Club premises or utilising Club facilities with the express or implied authority or permission of the Club.
- (iii) If the General Committee considers that a Member has acted in such a fashion as to warrant an investigation as to whether disciplinary action should be taken against that Member, it shall advise the Member in writing of the:
 - (a) Notice of the time, date and place of a meeting at which the question of discipline will be considered, being a date at least seven (7) days after the date of the letter; and
 - (b) Particulars of the conduct giving rise to the meeting.
- (iv) The General Committee will undertake its inquiries and conduct the meeting having regard to the nature of the complaint, the principles of natural justice and the provisions of common and statute law. It may do all things and inquire into all matters it considers necessary to arrive at a fair decision, including adjourning the meeting as it sees fit.

- (v) At the conclusion of its inquiries, the General Committee shall decide what action, if any, should be taken against the Member and communicate that decision in writing to the Member.
- ~~(vi) Any decision of the General Committee to expel or suspend a Member shall take effect seven (7) days after the date of the written notification of the decision, unless the Member appeals the decision.~~
- ~~(vii) A Member appealing against such expulsion or suspension shall be entitled to have the matter addressed at a Special Meeting of Members by presentation of a Notice of Motion provided that the Notice of Motion is received within fourteen (14) days after delivery of the written notification of the expulsion or suspension and is otherwise in accordance with the provisions of this Constitution.~~
- ~~(viii) An appeal against a decision to expel or suspend a Member shall be addressed in a Notice of Motion at a Meeting of Members and the matter decided by a resolution carried by a two thirds majority of Members present by secret ballot.~~
- ~~(ix) The General Committee is empowered to impose restrictions on the Member's privileges pending resolution of the appeal and may from time to time promulgate rules or by-laws for the purpose of implementing its powers under this Clause.~~