

**THE SOUTH AUSTRALIAN BAR  
ASSOCIATION INC**

**CONSTITUTION**

**(Last Amended 5 August 2020)**

1. The name of the Association is The South Australian Bar Association Inc.
2. The objects and purposes for which the Association is established are:
  - (a) to maintain the Roll of Counsel established in South Australia on 23 December 1964;
  - (b) to represent the views and wishes of members as practising barristers;
  - (c) to promote fellowship and the exchange of views between members of the Association;
  - (d) to maintain a library and other facilities for the use of practising barristers;
  - (da) to arrange and provide schemes of insurance and/or superannuation for members;
  - (db) to arrange and provide such benefits, services or facilities for or available to members as the Bar Council thinks fit from time to time;
  - (e) to promote the administration of justice;
  - (f) to affiliate with other professional bodies with a view to furthering the interests of practising barristers;
  - (g) to maintain high standards of professional conduct and for that purpose to establish and maintain barristers' rules;
  - (h) to promote or conduct training for readers in the skills and practices of barristers;
  - (i) to promote and if thought fit by the Bar Council conduct continuing legal education or professional development seminars for members and such other persons as the Bar Council thinks fit;
  - (j) to promote law reform and make recommendations with respect to legislation, evidence, procedure and court business;

- (k) to advance the interests of barristers and of the Association and comment in respect of matters of public importance or interest with the media and with government;
- (l) to promote or conduct marketing of barristers and the Association;
- (m) to promote and enhance relationships between barristers (and the Association) and clients and prospective clients (including solicitors and patent attorneys);
- (n) to promote and uphold the importance of relationships between barristers (and the Association) and the judiciary, the courts and governments;
- (o) to promote and enhance relationships between barristers (and the Association) and the Law Society, the Law Council of Australia, the Australian Bar Association, sister Bar Associations or Councils and other professional bodies;
- (p) to conduct functions (including lunches, dinners and other activities) which implement or facilitate any of the above objects;

and such other useful objects as a general meeting of the Association shall from time to time determine.

### **THE ROLL OF COUNSEL**

3.

- (a) For the purposes of this Constitution, the Association shall maintain the Roll of Counsel established on 23 December 1964 (“the Roll”) and signed by those barristers who in South Australia have elected to practise exclusively as counsel.
- (b) The Roll shall be under the control of the Bar Council of the Association who shall be entitled to make rules prescribing the requirements consistently with this Constitution for a barrister to sign or remain upon the Roll and to regulate applications to sign the Roll and otherwise to regulate the maintenance of the Roll.

- (c) Only persons being, or having been, ordinary members, interstate members, life members and honorary members, are entitled to sign, or remain on, the Roll.
- (d) No person shall be entitled to remain on the Roll if:
- (i) that person's name is struck off the roll of the Supreme Court of South Australia;
  - (ii) that person ceases to practise exclusively as counsel or at all (except life members and honorary members);
  - (iii) the Bar Council, after due inquiry in accordance with Article 15, resolves that:
    - that person's name should be removed from the Roll of Counsel on the ground that the person has committed a breach within the meaning of the Barristers Rules, or
    - that person is no longer eligible to remain as a member pursuant to this Constitution.

## **MEMBERSHIP**

4.

- (a) The members of the Association shall be:
- (i) “*ordinary members*” being those persons entitled to become members in accordance with Article 5 and have signed the Roll unless otherwise admitted to membership;
  - (ii) “*bar reader members*” being those barristers who have agreed or agree to become ordinary members of the Association in accordance with this Constitution and who is a Bar Reader;
  - (iii) “*interstate members*” being those persons entitled to become members in accordance with Article 5C and have signed the Roll unless

otherwise admitted to membership;

- (iv) “*international members*” being those persons entitled to become members in accordance with Article 5E unless otherwise admitted to membership;
  - (v) “*associate members*” being those persons entitled to become members in accordance with Article 5G unless otherwise admitted to membership;
  - (vi) “*life members*” being those persons entitled to become members in accordance with Article 8A and have signed the Roll unless otherwise admitted to membership;
  - (vii) “*honorary members*” being those persons admitted to membership in accordance with Article 9.
- (b) In addition to the classes of membership set out in Article 4(a), the Association shall have such other classes of members and enjoying such rights as the Association in general meeting from time to time may determine (collectively called “other members”).
- (c) For the purposes of the SABA Professional Standards Scheme dated 1 July 2017 and any subsequent Scheme, “ordinary member” means both ‘ordinary members’ under Article 4(a)(i) and ‘bar readers members’ under Article 4(a)(ii).

#### **ADMISSION OF MEMBERS**

5. No person shall be entitled to be admitted as an ordinary member unless that person:
- (a) is admitted as a practitioner of the Supreme Court of South Australia; and
  - (b) is the holder of a current practising certificate issued under the Legal Practitioners Act; and

- (c) undertakes:
  - (i) to practise exclusively as a barrister in accordance with the Barristers' Rules; and
  - (ii) to comply with this Constitution and with the Barristers' Rules; and
  - (iii) to abide by the rulings of the Association; and
  - (iv) that by becoming and remaining a member of the Association, the member agrees to become and remain (unless already a member) a member of the ABA, subject to the constitution of the ABA; and
  - (v) that if they cease to be a member of the Association they thereby cease to be a member of the ABA, unless otherwise provided by the constitution of the ABA.
- (d) has completed the relevant Bar Readers' Course or is exempted from that requirement, whether wholly or partially, by the Bar Council; and
- (e) has received the Bar Council's approval of the application for membership.

5A. Where a person is admitted as:

- (a) a bar reader member of the Association; and
- (b) they have not completed the Relevant Bar Readers' Course; and
- (c) the Bar Council has not resolved to admit the bar reader member to ordinary membership of the Association,

the bar reader member is not entitled to sign the Roll and they are not to hold themselves out as an ordinary member of the Association but may refer to themselves as a reader member of the Association.

5B. When the Bar Council has resolved to admit a bar reader member to ordinary membership of the Association, the bar reader member is admitted as an ordinary

member of the Association and the limitations imposed by Article 5A shall cease to apply to that person.

5C.

An interstate member is:

- (a) a person admitted to practice, and is practising, without restriction exclusively as a barrister and in another State or in a Territory of the Commonwealth of Australia;
- (b) a member of an Association that is a constituent member of the Australian Bar Association;
- (c) a person who shall have:
  - (i) completed an application to be a member of the Association;
  - (ii) provided such proof as might be required of their current right to practice (including the holding of acceptable professional indemnity insurance position) in the other State or Territory and of their membership of the constituent Association;
  - (iii) provided any other particulars as might be required by the Membership Committee of the Association;
  - (iv) agreed to be bound by the undertakings set out in Article 5(c);
  - (v) agreed to pay the sum prescribed by the Association for interstate membership;
- (d) a person approved by the Bar Council to admission and to sign the Roll as an interstate member of the Association.

5D. An interstate member is entitled to the same benefits and carries the same obligations as an ordinary member save:

- (a) as is set out in Article 5(c)(v); and
- (b) that they are not entitled to:
  - (i) vote at a meeting of the Association;
  - (ii) hold office in the Association;
  - (iii) be subscribed to any insurance or superannuation scheme in which the Association participates.

5E. Where a person is admitted to practice in a country outside of the Commonwealth of Australia, then that person is entitled to be admitted as an international member of the Association provided that they:

- (a) complete an application to be a member of the Association providing such proof as might be required of their current right to practice in the other country and other particulars as might be required by the Membership Committee of the Association;
- (b) acknowledge that they have no present intention to practice in South Australia;
- (c) agree to be bound by the undertakings set out in Article 5(c)(ii) & (iii);
- (d) pay the sum prescribed by the Association for international membership.

5F. An international member is entitled to hold themselves out as an international member of the Association, attend all social events conducted by the Association, to attend all continuing practise development sessions offered to ordinary members of the Association and to have access to the members facilities of the Association, but is not entitled to vote at a meeting of the Association or to hold office in the Association or to be subscribed to any insurance or superannuation scheme in which the Association participates.

- 5G. A person who has retired from legal practice (or from judicial office) and who has previously been an ordinary member of the Association, and who has not been struck off as a practitioner under Article 13(a), or been removed from the Roll of Counsel pursuant to Article 13(e)(i), is entitled to become an associate member of the Association and to remain such a member for so long as such person remains retired from legal practice (and, if applicable, from judicial office), subject to that person:
- (a) agreeing to pay the sum prescribed by the Association for associate membership;
  - (b) agreeing to be bound by the undertakings set out in Article 5(c)(ii) & (iii) insofar as they may be applicable to a person who has retired from legal practice;
  - (c) signing an application in a form prescribed by the Bar Council (except that this requirement shall not apply in the case of a retiring ordinary member, who has, prior to the end of a membership year in which the member is subscribed as an ordinary member, made a request in writing to the Association to transition directly to associate membership from the commencement of a consecutive membership year).
- 5H. An associate member is entitled to hold themselves out as an associate member of the Association, attend all social events conducted by the Association, to attend all continuing practise development sessions offered to ordinary members of the Association and to have access to the members' facilities of the Association, but is not entitled to vote at a meeting of the Association or to hold office in the Association or to be subscribed to any insurance or superannuation scheme in which the Association participates.
6. Persons who claim to be entitled to membership may be required to sign an application in a form prescribed by the Bar Council. Every such person shall furnish to the Bar Council such evidence (if any) as it may require that the applicant is so entitled to become a member.
7. Subject to Article 8, persons who are members of a partnership, or are employees or servants of any company, corporation or of the Government or any instrumentality of

the Government or who are “in-house” counsel are not eligible to sign or remain on the Roll.

8. Notwithstanding anything contained in this Constitution:

(a) the Solicitor General for the Commonwealth and the Solicitor General for the State of South Australia respectively are eligible to sign and remain on the Roll;

(b) the Chief Counsel of the Legal Services Commission of South Australia is eligible to sign and remain on the Roll at the invitation of the Bar Council and any Queen’s Counsel or Senior Counsel in that office is eligible for membership at the invitation of the Bar Council;

(ba) the Crown Counsel and any Queen’s Counsel or Senior Counsel in the Crown Solicitor’s office is eligible for membership at the invitation of the Bar Council;

(bb) any Queen’s Counsel or Senior Counsel in the office of the Director of Public Prosecutions of South Australia is eligible for membership at the invitation of the Bar Council.

(c) subject to the approval of the Bar Council, a barrister who is employed by a company which is the holder of a current practising certificate is eligible to sign and remain on the Roll if and for so long as that person is a director and shareholder of the company by which that person is employed. The Bar Council shall not grant approval under this rule unless it is satisfied:

(i) that the barrister has effective control of the affairs of the company by which that person is employed and that the barrister cannot be directed by the company to divulge any information or do anything inconsistent with the barrister’s duties and responsibilities as counsel; and

(ii) that the barrister concerned is the sole legal practitioner employed by the company.

8A. Where a person is a former ordinary member of the Association and has served in the judiciary of this State as a puisne justice for at least ten years, then that person is

entitled to be offered admission to the Association as a life member by the Council provided that they agree to be bound by the undertakings set out in Article 5(c)(ii) & (iii) and such of 5(c)(i) (iv) & (v) as may be applicable to their situation.

9.

- (a) The Association may by way of bestowing an honour admit to honorary membership of the Association such persons as it deems fit, in accordance with this rule.
- (b) The following persons are eligible for the award of honorary membership to the Association:
  - (i) members of the South Australian Bar Association;
  - (ii) former members of the South Australian Bar Association;
  - (iii) members of the judiciary (both State and Federal);
  - (iv) members of interstate and Territory Bars including interstate barristers or former barristers;
  - (v) legal practitioners;
  - (vi) persons having the academic qualifications to practice law in Federal, State jurisdiction(s) within Australia;
  - (vii) other persons having a substantial connection with the Bar;
  - (viii) persons who do not fall within any of the above categories who are however considered by a general meeting of the SABA from time to time to qualify for honorary membership.
- (c) The Bar Council may from time to time recommend for honorary membership persons who in the opinion of the Council have rendered distinguished service or contributed substantially to:
  - (i) the Bar;

- (ii) the Courts;
  - (iii) the Administration of Justice.
- (d) No subscription shall be payable to the Association by an honorary member.
- (e) An honorary member shall not be entitled to vote at any meeting of the Association or at any election of members to the Bar Council.
- (f) An honorary member shall not be eligible to hold office as a member of the Bar Council.
- (g) Subject to paragraphs (e) and (f) of this Article, an honorary member shall be entitled to all other rights and privileges of an ordinary member of the Association.

### **REGISTER OF MEMBERS**

10. The Bar Council shall cause to be prepared, and to be kept, a register of the members of the Association. The following particulars shall be entered therein, viz:
- (a) the name of the member;
  - (b) the address of the member;
  - (bb) the category of membership taken;
  - (c) the date (if after the incorporation of the Association) of admission as a member;
  - (d) the date (as and when the same occurs) of the removal of the person's name from the Register;
  - (e) such other particulars as the Bar Council may from time to time think fit.

## CESSATION OF MEMBERSHIP

11. Any member may resign from the Association by notice in writing. Upon receipt of such notice the Association shall cause an entry to be made in the Register and the Roll of Counsel removing the person's name therefrom.
12. If any member neglects to pay that person's annual subscription to the Association within six months after the same becomes due, then, the Bar Council may resolve (by ordinary majority) that such person shall cease to be a member and the Bar Council shall have the power in that event to remove the name from the Register and Roll of Counsel.
13. No person shall be entitled to remain as a member if:
  - (a) that person's name is struck off the roll of the Supreme Court of South Australia;
  - (b) in the case of an ordinary member, bar reader member or interstate member, that person ceases to hold a current practising certificate;
  - (c) in the case of an ordinary member or bar reader member or interstate member, that person fails to complete the prescribed training (as defined in the Barristers Rules) during a relevant year to the satisfaction of the Bar Council or its delegate in accordance with the Barristers Rules;
  - (d) that person ceases to practise exclusively as counsel or at all (except associate members, life members and honorary members);
  - (e) the Bar Council, after due inquiry in accordance with Article 15, resolves that that person's name should be removed from the Roll of Counsel on the ground that:
    - (i) the person has committed a breach within the meaning of the Barristers Rules, or
    - (ii) that person is no longer eligible to remain as a member pursuant to this Constitution.

14. The Bar Council may require any person whose name is on the Roll to furnish such particulars as the Bar Council requires to determine whether such person is practising exclusively as counsel.
15.
  - (a) The Bar Council or its delegate consisting of not less than three members (in this Article “the Bar Council”) has the powers to reprimand, suspend or expel a member or otherwise act as set out in the Barristers’ Rules.
  - (b) The Professional Responsibility Committee has the powers to make rulings, conduct investigations, promote the resolution of disputes, prosecute complaints and otherwise act as set out in the Barristers’ Rules.
  - (c) In the exercise of their respective powers, the Bar Council and the Professional Responsibility Committee shall follow the procedures set out in and comply with the requirements of the Barristers’ Rules.

#### **MANAGEMENT AND OFFICE BEARERS**

16. Subject to the direction of the members in General Meeting the management of the Association shall be vested in the Bar Council.
17.
  - (a) The President of the Association shall hold office for two (2) years concluding on the day of the Annual General Meeting two (2) calendar years after the meeting of the election of the President. The President shall be entitled to an honorarium of a sum to be determined by the Bar Council biannually paid on such terms as the Bar Council thinks appropriate.
  - (b) The Office Bearers of the Association shall comprise:
    - (i) the President;
    - (ii) the Vice President;

(iii) the Treasurer/Public Officer,

or such other officers as the Association in General Meeting shall determine.

(c) The Bar Council of the Association shall comprise:

(i) the Office Bearers;

(ii) the Immediate Past President;

(iii) the Chair of the following (or an alternate nominated in writing by that Chair):

(a) the Criminal Law Committee;

(b) the Commercial & Civil Law Committee;

(c) the Family Law Committee;

(d) the Professional Development Committee;

(e) the Membership Committee;

(f) the Member Services Committee;

(g) the Professional Responsibility Committee;

(h) the Women at the Bar Committee;

(iv) and no more than eight (8) ordinary members of the Association at least four (4) of whom shall be members of the junior Bar at the time of the election.

(d) The Association in General Meeting shall elect in the following order:

(i) the Office Bearers;

(ii) the Chairs of the Standing Committees; and

(iii) the ordinary members of Council,

and all save the President shall be elected annually.

(e) The quorum for a meeting of the Bar Council shall be no less than nine.

(f) The Bar Council shall be entitled to delegate all or any of its power (other than that of delegation) to a sub-Committee of three or more members of the Association as the Council from time to time may determine and to revoke any such delegation.

18. There shall be standing committees of the Bar Council, known as:

(a) the Criminal Law Committee;

(b) the Commercial & Civil Law Committee;

(c) the Family Law Committee;

(d) the Professional Development Committee;

(e) the Membership Committee;

(f) the Member Services Committee;

(g) the Professional Responsibility Committee;

(h) the Women at the Bar Committee;

comprising at least three members of the Association. Each standing committee may delegate its powers in the same manner as the Bar Council.

19. An office bearer of the Association shall be deemed to have vacated his/her office:

(a) if by notice in writing and accepted by the Bar Council the office bearer resigns his/her office;

(b) upon the happening of an event which disentitles the office bearer to practise as a barrister;

- (c) if the office bearer ceases to be a member of the Association;
  - (d) if the office bearer accepts office as a Judge of any Court or as a Magistrate.
20. In the event of any casual vacancy occurring within the Bar Council or amongst the officers of the Association, then the Bar Council may appoint any member of the Association to fill such vacancy until the next Annual General Meeting.
21. The Association shall have a Public Officer and until otherwise determined by the Bar Council, the Treasurer for the time being of the Association shall be the Public Officer.
- 21A. The Association shall have an Executive Officer who is not a member of the Bar Council, but who shall hold office on such terms and with such privileges as the Council shall determine from time to time.
22. The Association shall have a common seal which may be used and affixed by any two or more members of the Bar Council.

### **SUBSCRIPTIONS AND LEVIES**

- 23.
- (a) Members (except honorary and life members) shall be required to pay an annual subscription.
  - (ab) Without limiting the generality of sub-article (a), a member's annual subscription fee may include an amount in respect of the member's participation in any group insurance and/or superannuation scheme arranged and provided by the Association for members.
  - (b) The amount of the annual subscription shall be fixed by the Bar Council except if the Bar Council proposes to increase the subscription by more than ten percent (10%), in which case the amount shall be fixed by the Association in general meeting.

- (ba) For the purposes of fixing annual subscriptions, the Bar Council may fix different subscriptions for the following categories of ordinary members and for any other categories of members determined by the General Meeting pursuant to Article 4(b) of this Constitution:
- (i) Senior Counsel/Queen's Counsel;
  - (ii) Members of five or more years of standing;
  - (iii) Members of less than five years standing;
  - (iv) Bar Readers (applying from the date of acceptance as a Bar Reader until the end of the financial year in which the Bar Reader completes the Relevant Bar Readers' Course);
  - (v) such other categories as the General Meeting determines in accordance with Article 4(b) of this Constitution.
- (c) If any member neglects to pay that person's annual subscription to the Association within one month after the same becomes due, such person shall pay interest to the association at the rate of two percent (2%) for each month or part thereof on the amount of the subscription from the date that the subscription fell due until the date that it is fully paid.
- (d) Members shall pay such additional levies as may be determined from time to time by the Association in general meeting.
- (e) In the case of any applicant for membership who has formerly ceased to be a member owing to non-compliance with any rule of the Association, the Bar Council may, if it thinks fit, require the applicant to pay the whole, or any part, of the subscriptions and levies which would have become due if the applicant had not ceased to be a member.

## **THE ANNUAL GENERAL MEETING AND ELECTION OF OFFICERS**

24.

- (a) The Bar Council shall once in every year convene a general meeting of the Association to be deemed the Annual General Meeting of the Association.
- (b) At the Annual General Meeting the office bearers and Bar Council members to hold office until the next ensuing Annual General Meeting shall be elected.
- (c) At least 14 days prior to the date of each Annual General Meeting the Bar Council shall call for nominations for election and appoint a time within which written nominations shall be in the hands of the Executive Officer.
- (d) In the event of more candidates being nominated than there are relevant vacancies then an election by ballot shall be conducted.

## **MEETINGS GENERALLY**

- 25. The President of the Association or his/her nominee shall be entitled in the first instance to take the Chair at any meeting of the Association or of the Bar Council.
- 26. At any general meeting of the Association each ordinary member shall be entitled to one vote and the Chair of the meeting shall be entitled to exercise a deliberative as well as a casting vote.
- 27. At any general meeting of the Association the presence of ten ordinary members (whether personally or by proxy) shall constitute a quorum for the conduct of business but in the absence of a quorum the Chair may adjourn a meeting so as to enable a quorum to be obtained.
- 28. At any general meeting of the Association ordinary members shall be entitled to vote by proxy upon all questions and upon elections held under these rules.

- 29.
- (a) A general meeting of the Association may be convened by the Executive Officer from time to time and shall be convened upon written requisition of at least five ordinary members. A meeting shall be held within 21 days of receipt by the Executive Officer of the requisition.
  - (b) Any such requisition shall specify the purpose or purposes for which the meeting is requisitioned, and shall be signed by the members taking the same.
30. Any member whose subscription is in arrears or who is in default in payment of levies shall not be entitled to attend or to take part in any meeting of the Association unless the Chair, with the consent of the meeting, decides otherwise.
31. The Chair of a general meeting may, with the consent of the meeting, adjourn the same, from time to time, and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
32. The Chair may, with the consent of the meeting, permit any ordinary member to bring forward any subject for discussion, and to move any resolution, without previous notice, but so that no such resolution shall bind the Association, or be deemed to have any effect whatsoever other than as an expression of the opinion of the individual members voting in favour thereof.
33. Six days' notice shall be given to the members of any general meeting but if any matter of urgency shall arise then the Bar Council may convene a meeting upon shorter notice and the meeting may then proceed to transact business if the majority of members then present consider the notice to have been reasonable in the circumstances. The omission to give any notice to a member shall not invalidate any resolution or other act of a meeting.

## MISCELLANEOUS

34. All members of the Association, by becoming members, agree to be bound by and comply with:
- (a) this Constitution as amended from time to time;
  - (ab) the Constitution of the ABA as amended from time to time;
  - (b) the Barristers' Rules as amended from time to time.
  - (c) any rulings of the Association.
35. The funds of the Association may be invested in the following:
- (a) any investment in which, by the laws of South Australia, trustees are authorised to invest;
  - (b) the purchase or upon mortgage of land of any tenure, improved or unimproved;
  - (c) the shares, stock, debentures, debenture stock, unsecured notes or other securities of any company;
  - (d) on deposit with any bank;
  - (e) any investment approved by the Association in General Meeting;
  - (f) deposits with companies whose shares are listed on the Stock Exchange.
36. The Bar Council may from time to time sell or dispose of any investment and vary or transpose any investments for or into others hereby authorised.
37. Nothing in this Constitution shall empower the Association to carry on trading or secure pecuniary profit whether directly or indirectly to its members.

## AMENDMENT

- 38.
- (a) The Constitution of this Association may be altered by a resolution of the ordinary members of the Association in General Meeting and passed with the concurrence of at least two-thirds of the members then present and entitled to vote.
  - (b) No amendment shall be made to this Constitution unless notice in writing of at least seven days has been given to members of the meeting at which such amendment is to be moved and of terms of the motion.
39. The Barristers' Rules may be amended from time to time by:
- (a) a resolution of the ordinary members of the Association in General Meeting and passed with the concurrence of a majority of the members present (in person or by proxy) and entitled to vote, provided that notice in writing of at least seven (7) days has been given to members of the meeting at which such amendment is to be moved and of the terms of the motion; or
  - (b) a resolution of the Bar Council by not less than a two-thirds majority, provided that no such resolution shall be effective unless and until 28 days have expired after written notice has been given to members of the terms of the resolution for the amendments and 10 members or more have not lodged with the Executive Officer a written objection to the amendments.

## DICTIONARY

40. Unless the context requires otherwise, the following expressions are defined as follows when used in this Constitution:

“*ABA*” means the Australian Bar Association.

“*Barristers' Rules*” means the Rules adopted by the Association in general meeting on 22 November 2000 as amended from time to time in

accordance with this Constitution.

*“Relevant Bar Readers’ Course”* means the Bar Readers’ course conducted by the Association next following a Bar Reader’s application for membership of the Association or as undertaken in accordance with the terms of any exemption or extension of time granted by the Bar Council in its discretion.