



# Notice of 2019 Annual General Meeting

Notice is given that the 2019 Annual General Meeting of The Law Society of New South Wales (**Law Society**) will be held at **4.30 pm on Thursday, 24 October 2019** on Level 3, Law Society Building, 170 Phillip Street, Sydney in the state of New South Wales.

Additional information regarding proposed resolutions to be considered by members is set out in the Explanatory Memorandum which accompanies and forms part of this notice of meeting.

## Items of Business

### 1. Financial Statement and Reports

To receive and consider the Financial Report of the Law Society and its controlled entities and the reports of the Councillors and auditor for the year ended 30 June 2019.

(The reports may be viewed at [www.lawsociety.com.au/about/organisation/annualreports](http://www.lawsociety.com.au/about/organisation/annualreports))

*No resolution is required relating to the Financial Report but members will be given the opportunity to ask questions about, or make comments on, the operations and management of the Law Society at the meeting.*

### 2. Composition of Council – Clause 8.1.9 of the Articles of Association

The Council reports to the Annual General Meeting that it has reviewed the composition of the Council in accordance with clause 8 of the Articles of Association. The Council considers that the Reserved Positions on the Council may no longer adequately reflect the current composition of the membership of the Law Society.

The Council intends to conduct a more comprehensive review of the size and composition of the Council in the next six months, to determine any recommendations to members at the next Annual General Meeting regarding the size and composition of the Council that the Council believes appropriate to reflect the composition of the membership of the Law Society.

### 3. Special Business

**Proposal to approve and adopt a Constitution in substitution for the existing Memorandum and Articles of Association of the Law Society.**

#### 3.1 To consider and, if thought fit, pass the following resolution as a SPECIAL RESOLUTION:

That the constitution of the Law Society submitted to the meeting and signed by the Chair for the purpose of identification is approved and adopted as the constitution of the Law Society in substitution for and to the exclusion of the existing memorandum and articles of association, with effect from the close of this meeting.

#### Further Assurances:

#### 3.2 To consider and, if thought fit, pass the following resolution as an ORDINARY RESOLUTION:

That, subject to the passing of the special resolution to adopt the constitution (Item 3.1), each Councillor and Secretary of the Law Society be severally authorised to do any act, matter or thing and to execute and deliver any document as he or she may deem necessary, advisable or incidental in connection with the preceding resolution.



## Notice of 2019 Annual General Meeting *continued*

### 4. Declaration of Election of Councillors

By Order of the Council

#### **Sara Goldstein**

Company Secretary  
24 September 2019

#### **Meeting Notes:**

A special resolution is passed if at least 75% of the votes cast on the resolution are in favour of that resolution. No substantive amendment to a special resolution may be proposed at the meeting.

If a ballot is demanded on any item of special business, the Chair of the meeting intends to vote any undirected proxies in favour of the proposed resolutions set out in this notice of meeting.

#### **Appointing a Proxy**

A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote in his or her stead. A proxy must be a Solicitor Member of the Law Society. A proxy shall be appointed in writing in a common or usual form. You may give your proxy general authority to vote on your behalf or direct how you wish your proxy to vote on an item of business. Should you require any assistance in regard to appointing a proxy, please contact the Company Secretary of The Law Society of New South Wales on (02) 9926 0213.

The document appointing a proxy and any power of attorney or other authority (if any) under which the proxy is signed (or a copy of that power or authority certified to be a true copy by a legal practitioner or justice of the peace) must be given to the Company Secretary at the registered office of the Law Society, Law Society Building, Level 3, 170 Phillip Street, Sydney (or may be given by facsimile to (02) 9926 0166 or a scanned signed copy may be given by email to [secretary@lawsociety.com.au](mailto:secretary@lawsociety.com.au)), **not less than forty-eight (48) hours before the time for holding the meeting** or adjourned meeting at which the person named in the document proposes to vote, and in default the instrument of proxy shall not be treated as valid.

If you return your signed proxy form and have specified the way your proxy is to vote and your named proxy does not attend the meeting, the Chair of the meeting will be your proxy and will vote on your behalf on a ballot as you have directed on the proxy form.



# Explanatory Memorandum

## Adopting a new constitution and repealing the memorandum and articles of association

### 1. Background

- 1.1. The operations of The Law Society of New South Wales (the *Law Society*) are governed by the Memorandum of Association which dates from 22 September 1884 and the Articles of Association which date from 31 October 1996. While the Articles of Association have been updated on several occasions to adapt to changing circumstances, they have not been subject to a comprehensive review or update.
- 1.2. Council recommends that a new constitution drafted in plain English be adopted to reflect best practice for a member-based company limited by guarantee while retaining provisions that are necessary to comply with the Law Society's role and function and the various regulatory requirements applicable to it.
- 1.3. The adoption of a new constitution must be approved by members by special resolution in accordance with section 136(2) of the *Corporations Act 2001* (Cth) (the *Corporations Act*). A special resolution requires the approval of at least 75% of members present and voting, in person or by proxy.
- 1.4. A copy of the new constitution will be available for inspection at the general meeting.

### 2. Summary of changes

#### 2.1. Overview

- 2.1.1 This explanatory memorandum provides an overview of the areas where the new constitution varies from the existing memorandum and articles of association to assist and enable those members entitled to vote to do so with full knowledge of the reasons behind the proposed changes. No substantive changes have been proposed at this time to provisions relating to the size and composition of the Council, regional law societies or the categories of membership. However, the Council intends to conduct a review of the size and composition of the Council in the next six months.
- 2.1.2 The summary below deals with the key changes only. There are a number of typographical, definitional or conforming changes that have also been made that are not described below. Members are encouraged to view the proposed constitution in its entirety.

#### 2.2. Single constitution

- 2.2.1 The existing memorandum and articles are replaced by a single constitution, consistent with modern practice.
- 2.2.2 The objects of the Law Society that were previously contained in the Memorandum of Association have been retained and now appear in Clause 3. The rules relating to the not for profit nature of the Law Society have been retained and now appear in Clause 4.
- 2.2.3 The provisions in the Memorandum of Association in relation to winding up have been retained and modernised and now appear in Clause 20.

#### 2.3. Definitions (Clause 1)

- 2.3.1 The proposed changes to the Definitions in the new constitution are as follows:

- (a) Deletion of the definition of "Assistant Secretary"

The office of Assistant Secretary is no longer specifically provided for in the constitution as it is more common in modern companies to appoint an additional secretary or secretaries if required.



## Explanatory Memorandum *continued*

### (b) Updated definitions of “Corporate Member” and “Government Member”

The new definitions substantially track the Legal Profession Uniform Law but are based upon a person being “primarily” engaged in the relevant activities rather than being “only” engaged in those activities. This will enable those Members wishing to nominate as Councillors to be considered for the Reserved Position most applicable to them, notwithstanding they may also have some involvement in additional activities such as pro bono or volunteer work.

### (c) Updated definition of “Life Member”

This definition has been updated to recognise that Life Members are a subset of Solicitor Members. A number of the operative clauses have also been updated to clarify that this is the case. These are clarificatory rather than substantive changes – there has been no change to the actual treatment of Life Members.

### (d) Definition of “Immediate Past President” inserted

The term is now defined consistent with other office bearers.

### (e) Updated definition of “Officer”

The definition has been updated to cover both current and former officers, where appropriate.

### 2.3.2 Consolidation of Interpretation clauses (Clause 1.2)

The interpretation clauses have been consolidated and simplified.

## 2.4. Clarification of positions (throughout the constitution)

2.4.1 The new constitution removes many of the specific references to the role of Secretary. This change provides greater flexibility for the Council to delegate responsibility under the constitution and to remove some of the burdens placed on the Secretary.

2.4.2 As noted in item 2.3.1(c) above, changes have also been made to clarify the fact that Life Members are a sub-set of Solicitor Members.

## 2.5. Replaceable Rules (Clause 2)

The new constitution disapplies the replaceable rules as set out in the Corporations Act with the exception of section 198B. Section 198B of the Corporations Act provides for the execution of negotiable instruments by the Law Society.

## 2.6. Qualification and Admission to Membership (Clause 5)

2.6.1 The new constitution replaces an outdated provision requiring the register of members to be closed between the date of closure of candidate nominations and the annual general meeting with a new clause (Clause 11.2.8(b)) that has the same intended purpose of clarifying a cut-off date for eligibility to vote in Council elections.

2.6.2 The new constitution clarifies that the Council will determine the qualifications and rights applicable to any new classes of membership determined by the Council from time to time.

## 2.7. Cessation of Membership (Clause 7) and Annual Membership Fees (Clause 8)

2.7.1 The new constitution provides that automatic termination of membership will occur if membership has lapsed (for failure to pay the annual membership fee within a period determined by the Council after the due date for payment) or if an Incorporated Legal Practice Member has ceased to be an incorporated legal practice, and it removes outdated automatic termination of membership provisions expressly related to mental health or disability.

2.7.2 To avoid circumstances of unintended termination of membership, the new constitution provides for Council to have discretion to determine that a member’s membership will not cease, or to readmit a member on terms and conditions thought fit, where considered appropriate.



## Explanatory Memorandum *continued*

- 2.7.3 The new constitution clarifies that a member's membership will continue while their application for renewal of membership is being determined.
- 2.8. General Meetings (Clause 9)
- 2.8.1 The new constitution removes references to "extraordinary general meetings", consistent with the approach taken in the Corporations Act. The Law Society will have an annual general meeting and all other meetings will be general meetings.
- 2.8.2 The new constitution deletes the provision that required the annual general meeting to be held on the fourth Thursday of October and replaces it with the Corporations Act requirement to hold the meeting within 5 months of the financial year end.
- 2.8.3 The new constitution replaces the old standing orders with a new clause (Clause 10.3) that is commonly found in modern constitutions. The new clause provides for the general conduct and procedures of a general meeting to be managed by the Chair of the meeting. The Chair is given a broad range of powers to ensure the orderly conduct of the meeting and to determine the validity of votes cast.
- 2.8.4 Having regard to the notice requirements for general meetings in the Corporations Act, the new constitution extends the time within which a general meeting must be held after a requisition is received, consistent with section 249D of the Corporations Act, to ensure there is sufficient time for a notice and explanatory memorandum (if any) to be prepared and sent to members.
- 2.9. Proxies (Clause 10.7)
- 2.9.1 The new constitution includes a simplified provision in relation to proxies. Some of the key changes include:
- (a) the deletion of the prescribed proxy form and the inclusion of an obligation on the Law Society to accept a form of appointment of proxy that meets the requirements of the Corporations Act. This reflects the fact that the Corporations Act now contains detailed provisions in relation to proxies;
  - (b) allowing the Council to implement internet lodgements of proxies; and
  - (c) making clear that a proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on the relevant resolution.
- 2.9.2 The new provisions will operate in conjunction with the provisions in the Corporations Act dealing with proxies.
- 2.10. Composition of the Council (Clause 11.1)
- The new constitution removes now redundant transitional provisions in respect of the composition of the Council and sets out the Council make up as at the current date and going forward, until further amended.
- 2.11. Procedures for election of Councillors (Clause 11.2)
- 2.11.1 The new constitution removes the requirement for a nomination for election as a Councillor to be in a prescribed form and supported by 7 other Solicitor Members. Nominations must now simply be in writing, signed by the candidate and quote the candidate's Law Society membership number.
- 2.11.2 The new constitution permits the Law Society to send a voting paper to each of the voting members in electronic format.
- 2.11.3 These changes are designed to streamline the Councillor nomination process.



## Explanatory Memorandum *continued*

### 2.12. Appointment of alternate Councillors (Clause 11.7)

2.12.1 The new constitution provides that any Solicitor Member appointed by the Council as an alternate Councillor must be from the same Reserved Position category as the Councillor in whose place the alternate Councillor seeks to stand.

2.12.2 This change ensures a consistent number of Councillors from each of the Reserved Positions are represented in the Council.

### 2.13. Election of Councillors by General Meeting (Clause 11.8)

2.13.1 The new constitution requires that nominations be due 28 days before the meeting, to ensure there is sufficient time for a notice advising nominations to be prepared and sent to members under Clause 11.8.3 of the new constitution.

### 2.14. Power to delegate (Clause 13.2)

2.14.1 Consistent with section 198D of the Corporations Act, the new constitution clarifies that the Council may delegate its powers in relation to the management of the Law Society to the Chief Executive Officer of the Law Society, an employee of the Law Society or any other person, on such terms and conditions as Council thinks fit.

### 2.15. Meetings of the Council (Clause 14)

2.15.1 The new constitution includes a modernised clause in relation to meetings of the Council. The amendments:

- (a) allow a meeting to be called using any technology consented to by the Council, provided that all Councillors are able to read the written contribution and hear each of the other participating Councillors; and
- (b) clarify that the Councillors can signify their assent to a circulating resolution through electronic means.

### 2.16. Notices (Clause 19)

2.16.1 The new constitution provides that notices of general meetings or notices of elections of Councillors may be given to members electronically, using forms of technology other than facsimile or electronic mail (where considered appropriate in future), and by publication in or accompanying Law Society publications, to any address provided by a member to the Law Society.

### 2.17. Officers' Liability Insurance (Clause 21) and Indemnity of Officers (Clause 22)

2.17.1 The new constitution includes modernised clauses in relation to officers' liability insurance and indemnity of officers, aligning the provisions with the Corporations Act and clarifying and confirming applicability to legal costs incurred with respect to a broader range of matters, including appearances, investigations and inquiries.

2.17.2 The new constitution permits the execution of deeds of indemnity, where considered appropriate, provided the terms are not inconsistent with the relevant provisions in the constitution.

### 2.18. Deletions

2.18.1 The outdated provisions in relation to the maintenance of a seal register have been deleted.

2.18.2 The provisions in relation to accounts of the Law Society have also been deleted, consistent with modern practice. The Law Society considers the obligations to prepare accounts and make them available to members are sufficiently dealt with in the Corporations Act.