

## Explanatory Statement, 10 June 2023, [revised 30 June 2023](#)

### Proposed amendments resulting from review of the Club's Constitution

**Note:** new wording in existing provisions of the Club's Constitution is shown in **bold** lettering.

[Errata, 30.8.2023: Item 18: s 34\(6\) is now renumbered '34\(7\)' – refer Item 15, pt 2, for explanation.](#)

	Issue	Action	Proposed amendment to Constitution
1	<b>TECHNICAL – correction of words or expression in constitution</b>		
2	'Committee's term of office' – used in s 50(2) but not defined.	Define	Add definition to Dictionary by referring to Constitution s 40(6).
3	Paragraph 42(3)(a) – misaligned dash.	Realign.	Add space after 'meeting'.
4	Paragraph 42(3)(c) – erroneous copy and paste from s 53(7)(c).	Make correction.	Substitute ' <b>nominations</b> ' for 'proxies' and ' <b>nomination</b> ' for 'proxy' in s 42(3)(c).
5	<b>Correct a drafting error of omission</b> in s 82(2), to make it consistent with the Committee's powers to expend club income for the purposes of the Club.	Amend the chapeau to s 82(2).	(2) <b>Subject to sections 45 and 46,</b> the Committee and each member of the Committee

	Those powers are set out in Constitution ss 45 and 46.		and Club who handles or uses the Club’s income or property—
6	<b>DISCRIMINATION AMENDMENT ACT 2023</b>		
7	<p>The Legislative Assembly of the ACT passed amendments to the <i>Discrimination Act 1991</i> (‘the Act’) on 23 March 2023. With effect from 11 April 2024, the amendments will <u>remove the exception</u> of voluntary associations (including not-for-profit clubs) from the prohibition against causing disadvantage to a person <i>because</i> the person has an attribute protected by the legislation, including sex and gender identity.</p> <p>We take the view that providing for a reasonable <b>balance</b> of the sexes overall is a reasonable condition in considering applications for membership, in the interests of promoting a secure and congenial social environment in the Club. In our view, it is not discriminatory in the sense used in the Discrimination Act. We also note that offers of familial membership (Constitution, s 17) and honorary life membership (Constitution, s 23) are not conditional on the balance principle.</p> <p>The amendments to the Act will mean that the balance principle cannot be used to exclude a person interested in becoming a member, if the reason for</p>	<p><b>Amend s 15(6)(a) (Membership).</b></p> <p>The amendment would make clear that a gender identity that is neither ‘male’ nor ‘female’ will not exclude a person from consideration for membership.</p> <p>Our Constitution provides that ALL potential members must, during participation in Club activities as an interested person, demonstrate that they—</p> <ul style="list-style-type: none"> <li>(i) hold a commitment to the Objects of the Club;</li> <li>(ii) actively and harmoniously engage in social</li> </ul>	<p>(a) that would be consistent with maintaining a reasonable balance of the sexes in the Club, <b>while acknowledging the right of people who identify otherwise to be considered for membership according to all other criteria for membership under this Constitution;</b> and</p>

	<p>exclusion is that the person does not neatly identify as ‘male’ or ‘female’.</p> <p>For the past year, the Club has published on its website a Diversity Policy that acknowledges the place in our community of those who may identify in way that is non-binary.</p> <p>The proposed amendments to the Constitution would prepare the Club and Club members for the commencement of the amended provisions of the Act.</p>	<p>interaction in the Club as a nudist; and</p> <p>(iii) uphold the published Constitution, by-laws and guidelines of the Club.</p>	
8	<p><b>Addressing the <i>Discrimination Amendment Act 2023</i>, cont’d.</b></p> <p>As in the current Model Rules and Draft Model Rules set out in regulations under the <i>Associations Incorporation Act 1991</i>, Constitution s 11 applies the <i>Legislation Act 2001</i> to interpreting its provisions.</p>	<p><b>Renumber s 11 as s 11(1) and insert s 11(2) (further interpretation provision).</b></p> <p>The proposed amendment would have the same effect as s 145(a) of the <i>Legislation Act</i>, in interpreting gendered pronouns.</p> <p>Proposed s 11(2) would express that in plain language.</p>	<p>(2) Grammatical use of personal pronouns in this Constitution applies to all people regardless of the way each person self-identifies.</p>
9	<p><b>Addressing the <i>Discrimination Amendment Act 2023</i>, cont’d.</b></p> <p>With effect from 11 April 2026, the Act will place an obligation on organizations to take positive</p>	<p><b>1 Amend s 6(b) (in ‘Fundamental objects of the Club’), to reflect the Club’s commitment to respectful and</b></p>	<p>(b) to establish and maintain a secure, <b>respectful</b> and congenial environment for</p>

	<p>measures to prevent discrimination against people because they have a protected attribute.</p> <p>A modest amendment of the objects of the Club set out in the Constitution would support the Club's efforts to implement the statutory measures. An educative process in the ACT community, likely led by the ACT Human Rights Commission, is expected to roll out pending commencement of the new duty.</p>	<p>harmonious social interaction of nudists.</p> <p><b>2</b> <b>Insert a <i>Note</i> to explain</b> how the Discrimination Act will apply to the Club.</p>	<p>nudist recreation and social interaction in the Australian Capital Territory; and</p> <p><i>Note:</i> The objective of anti-discrimination legislation is that clubs and other community bodies not treat people unfavourably or unreasonably cause them disadvantage because the person has a 'protected attribute'. Such attributes include race, disability, sex, gender identity, sexuality, age, pregnancy, breast-feeding, relationship status and parental, family and carer responsibilities, etc. The law expects community organizations to take positive measures to prevent discrimination.</p>
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10	<b>TRANSFER OF RIGHTS AND OBLIGATIONS AND ALLOCATION OF SITES</b>		
11	<p><b>No member title over Club property</b></p> <p>Create awareness amongst officers and members of the Club that property and legal rights of the Club are vested in the Club as an incorporated entity, not in individual members.</p> <p>Site holders do not ‘own’ their sites. Use of sites is subject to conditions determined by the Committee in accordance with the Constitution and By-laws.</p> <p>A member may only transfer a site to another active member (and to no-one else), with the Committee’s consent.</p> <p>In relation to ownership of club property, see <i>Associations Incorporation Act 1991</i>, ss 52 and 53.</p>	<ol style="list-style-type: none"> <li>1. Amend s 84(1)(c) by deleting the word ‘continuing’, <u>which appears before ‘use’</u>.</li> <li>2. <b>Add new s 84(7)</b> to clearly state the Club’s rights over the use of sites allocated to members.</li> <li>3. <b>Add a Note to s 84(7)</b> to <del>define</del> <u>explain</u> the term ‘Club Rules’.</li> <li>4. <b>Add new s 84(8)</b>, to make clear that 84 applies equally to transferees of sites.</li> <li>5. <b>Consolidate rights and obligations over sites in s 84</b>, by— <ol style="list-style-type: none"> <li>(a) relocating s 29(6) to s 84(5) and replacing ‘<del>no longer</del> required’ with ‘uses’; and</li> <li>(b) amending s 29(1)(a) by replacing ‘occupy’ with ‘use’</li> </ol> </li> </ol>	<p><del>In Paragraph s-84(1)c</del> <u>to now read—</u></p> <p>(c) before allocating a site for use by a member, the Committee must first—</p> <p><b>To s 84 add—</b></p> <p>(7) Nothing in this section has ever created or creates for a member any right to deal with a site without regard to the Club’s Rules.</p> <p style="padding-left: 40px;"><i>Note:</i> ‘Club Rules’ are defined in <del>this</del> <u>the</u> Constitution’s Dictionary.</p> <p>(8) This section applies equally to any transferee of a right to use a site.</p> <p><u>Insert in s 84(5)—</u></p> <p>(5) If—</p> <ol style="list-style-type: none"> <li>(a) a member’s membership lapses; or</li> <li>(b) the member no longer <b>uses</b> the site for temporary shelter and</li> </ol>

		<p>and referring to s 84.</p> <p><b>6. Add new s 29(10).</b></p> <p><b>7. Amend the definition of ‘Club property’ in the Constitution Dictionary.</b></p>	<p>recreation during visits to the Club; or</p> <p><b>In s 29—</b></p> <p>(1) Except for transferring voting rights by proxy in accordance with section 63, a member may not transfer to another person a right as a Club member unless—</p> <p style="padding-left: 40px;">(a) the right to be transferred is a right to <b>use</b> a site in the Club’s grounds <b>in accordance with section 84;</b> and</p> <p>(10) The provisions of section 84 apply equally to a transferee under this section.</p> <p>Amend the definition of ‘<i>Club Property</i>’—</p> <p><b><i>Club property</i></b> includes Club records and other documents, whether in physical or electronic form, and includes tangible and intangible property, <b>including the Club’s leasehold rights to use the land.</b></p>
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12	<p>The Constitution provides, by ss 13(3) and (5), that members' rights and obligations are equal. However, long-standing Club policy and practice is to apply a qualifying period of 12 months' membership before a new member may be allocated a site.</p>	<ol style="list-style-type: none"> <li>1 <b>Insert</b> s 13(5)c) to reflect Club policy and practice on the allocation of sites.</li> <li>2 <b>Add a Note</b> to direct the reader to s 84, which provides for the allocation of sites.</li> <li>3 <b>Correct the definition of 'privilege' in the Constitution Dictionary.</b></li> </ol>	<p>To s 13(5) add—</p> <p><b><i>except that—</i></b></p> <p>(c) a new member may apply to have a site allocated for use by the member only after having served a period of 12 months' membership.</p> <p><i>Note:</i> For allocation of sites, see section 84.</p> <p><b>In the Dictionary, amend 'privilege' to read—</b></p> <p><b><i>privilege</i></b> means a benefit of membership that is not guaranteed by law or by this Constitution.</p> <p><b>For example,</b> subject to s 13(5)(c), the opportunity to apply for a powered site is a <b>right</b>. However, because there may be insufficient powered sites to satisfy every application or in other relevant circumstances, the allocation of a site to a</p>
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			<p>member is a <b>privilege</b>. Once a member is allocated a site, the member has the <b>right</b> to enjoy it, <b>subject to</b> the Constitution, by-laws and an agreement <b>with the Club</b> for use of the site. Allocation of a site does not create any rights of tenancy.</p>
13	<b>DISCIPLINARY PROCEDURE</b>		
14	<p><b>Disciplinary resolution</b></p> <p>Draft Model Rule cl 22 would enable a committee to pass a resolution for ‘proposed disciplinary action’. In contrast, the Club’s Constitution, s 34(1)(d), enables the Committee to begin a disciplinary proceeding with a ‘disciplinary resolution’ to take specified actions.</p> <p>The approach in the Draft Rule is preferable, because it better expresses the actual right, in our Constitution, of the sanctioned member to respond before the resolution is confirmed.</p>	<ol style="list-style-type: none"> <li>1. Amend and renumber s 34(1)(d) as s 34(2)(d), as explained in Item 15 following.</li> <li>2. Amend Constitution Dictionary definition of ‘disciplinary resolution’.</li> </ol>	<p>(2)(d) the Committee may <b>approve a resolution that proposes disciplinary action</b> (‘disciplinary resolution’) to—</p> <p><b>disciplinary resolution</b> – see sub-section 34(2)(d)</p>



15	<p><b>Impartiality in relation to disciplinary matters</b></p> <p>To satisfy s 65A of the <i>Associations Incorporation Act 1991</i>, impartiality must be observed in all deliberations of the Committee.</p>	<p>1. <b>Insert new s 34(1)</b>, to deal with impartiality in the disciplinary process.</p> <p>2. <b>Renumber s 34(2)</b> and each following sub-section.</p> <p><del>2.3.</del> <u>Delete old ss 34(2)(d)(v) and 34(3)(c) [new ss 34(3)(d)(v) and 34(4)(c)].</u></p> <p><del>3.4.</del> <b>Renumber all relevant references</b> to <u>specific provisions of s 34</u>, in <u>s 34 and in other sections</u> <del>provisions</del> of the Constitution.</p> <p><del>4.5.</del> <b>Delete old s 34(3)(b)</b> [new s 34(4)(b)], which is supplanted by new s 34(1).</p>	<p>(1) At the meeting that considers a complaint regarding a disciplinary matter and at any further meetings of the Committee or sub-committee dealing with the matter, the Committee or sub-committee must excuse from its membership anyone who—</p> <ul style="list-style-type: none"> <li>(i) is prejudiced or appears to be prejudiced against the member the subject of the disciplinary resolution; or</li> <li>(ii) is biased or appears to be biased in favour of that member; or</li> <li>(a) is personally involved in the matter the subject of the disciplinary resolution.</li> </ul> <p>(3)(b) [Deleted]</p>
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16	<p><b>Meet a requirement of s 65B of the <i>Associations Incorporation Act 1991</i></b>, providing for a member to appoint a representative in a disciplinary procedure.</p> <p><u>The Act does not prevent an association from limiting the number of representatives a party may enlist, but an association must act in accordance with natural justice (Act, s 50).</u></p> <p><u>Accordingly, while allowing the Committee to manage the size of the s 34 meeting by limiting the numbers of people representing the Committee and/or appearing with the member complained of, to provide a fair balance of the parties' representation.</u></p>	<p>1 <b>Amend s 34(2)(d)</b> [new s 34(3)(d)] by adding s 34(3)(d)(vii).</p> <p>2 <b>Delete s 34(3)(c)</b> [new s 34(4)(c)], representation of Committee.</p> <p>3 <b>Add new s 34(4)(g)</b>, with a chapeau beginning 'AND', following s 34(4)(f), regarding numbers of representatives.</p>	<p>(vii) appoint a person to act on behalf of the member in the dispute resolution procedure.</p> <p>AND the Committee may--</p> <p>(g) limit the number of persons representing the Committee or sub-committee and the member under complaint, but not <del>so as</del> to prevent the member from being represented by another person.</p>
17	<p><b>Provide a right to withdraw an appeal</b>, as proposed in cl 32 of the Draft Model Rules.</p>	<p>Insert s 35(5).</p>	<p>(5) At any time, the member may withdraw the appeal by giving notice in writing to the Secretary.</p>
18	<p><b>Provide for written reasons for decision</b>, to make the disciplinary procedure consistent with ss 65B and 65C of the Act.</p>	<p>Amend s 34(6).</p>	<p>(6) When the Committee has made or deferred a decision, the Secretary must inform each party to the dispute of—</p> <p>(a) the outcome of the meeting, <b>giving written reasons for the decision</b>; and</p>

	<b>OTHER PROPOSALS ARISING FROM THE DRAFT MODEL RULES</b>		
19	<p>Draft Rule cl 57 proposes to make provision for unlimited attendance online at general meetings.</p> <p><b>Provide a discretion to the Committee to enable limited online attendance at general meetings</b></p> <p>Availability of an online option may be constrained by, amongst other things, limitations of the service provider on the number of online attendees, duration of the online connection or cost to the Club of securing unlimited access.</p>	Insert ss 60(6)-(7).	<p>(6) The Committee may provide for online attendance at a general meeting, including an annual general meeting,</p> <p>(7) The Committee may limit the number of members who may attend a meeting online or specify the circumstances in which online attendance will be permitted.</p>
20	<p><b>Disqualification from the Committee</b></p> <p>Add further grounds, set out in the <i>Associations Incorporation Act 1991</i>, on which Club officers may be disqualified from holding office.</p>	Amend s 48(i) and insert an explanatory note.	<p>(i) is disqualified from office under sections 63, <b>63A or 63B of the Act</b>; or</p> <p><i>Note:</i> Section 63 of the Act deals with conviction or bankruptcy, 63A with non-compliance with the Act by an incorporated association; and 63B with disqualification of an association officer under other legislation.</p>

21	<p><b>Further specify Committee records</b></p> <p>Draft Rule cl 54 specifies that the committee keep records of meeting notices, minutes and copies of documents considered at committee meetings.</p> <p>Some record-keeping obligations are already addressed by ss 43 and 71-76 of the Constitution.</p>	Amend ss 43(2)(c) (Secretary's responsibilities).	(c) all proceedings at Committee meetings and general meetings, <b>keeping all relevant documents</b> ; and
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