
AHTA Constitution

Member Consultation – Discussion Paper

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A. Introduction and reasons for change

This Discussion Paper outlines the Australian Hand Therapy Association (AHTA) constitution review project, including the reasons for the review, the process and timeline and a summary of the proposed changes for the new Constitution. The AHTA has contracted a firm, Associations Forum to help guide us through the process.

Members are invited to submit any comments or questions on the proposed changes outlined in this document by **Friday 29 January 2021** to Kathy Nguyen, Associations Forum via email Kathy@associations.net.au.

AHTA is currently an incorporated association under the Queensland law, which is appropriate for Queensland based associations. As AHTA is a national association with operations in Victoria and Western Australia and members around Australia, it is appropriate to consider transferring to the national law (Corporations Act) as a company limited by guarantee.

The Management Committee (MC) now seeks to replace the current Own Rules (appropriate for an incorporated association) with a Constitution (required for a Company Limited by Guarantee). The Constitution will:

- replace the Own Rules;
- provide the AHTA with accepted best-practice governance;
- enable the AHTA to deliver its strategic objectives so that we can be flexible and proactive;
- set up AHTA structure to be eligible for charitable status;
- allow bylaws to continue and be adaptive without the need for constitution reform;
- remove any ambiguities and address any omissions in the existing Own Rules, and
- ensure that the organisation is well placed to remain effective, relevant, and flexible in meeting the needs of members now and well into the future, building on the tremendous work undertaken by everyone involved with AHTA over many years.

B. Key dates

The aim is to have a new constitution for approval or otherwise by the members at the 2021 AGM. Leading up to the 2021 AGM, members will be consulted on the proposed changes and have the opportunity to comment and provide feedback. This Discussion Paper is the first stage in the consultation process.

If the new Constitution is accepted, it will come into effect when the company is registered with ASIC; however, with a gradual transition to the new structure.

The following schedule is proposed to develop the new Constitution:

Discussion Paper available to members	End November 2020
Member forums/teleconferences if required	Thursday 21 January 2021

Deadline for feedback on Discussion Paper	Friday 29 January 2021
Draft Constitution available to MC	Feb 2021
Draft Constitution available to members	March 2021
Member forums/teleconferences if required	April 2021
Deadline for submission of comments on the draft	May 2021
Final draft endorsed by COM	June 2021
Notice of Annual General Meeting referring to motion to pass a special resolution to adopt new Constitution	Mid-July (6 weeks before AGM)
Annual General Meeting held at the National Conference – members to vote on new Constitution	26-29 August 2020 at (Conference) AGM

C. Legal structure

AHTA is an incorporated association under the Associations Incorporation Act 1981 (Qld). Associations that incorporated under the Queensland Act can only operate in other states and territories by registering with Australian Securities & Investments Commission (ASIC) as a registered Australian body and obtaining an Australian Registered Business Number (ARBN). The alternative is to transfer its incorporation to a company limited by guarantee under the Corporations Act 2001 (Cth).

AHTA is an association with members from and activities across Australia. It is, therefore, more appropriate for AHTA to be incorporated under the Corporations Act 2001 (Cth) as a company limited by guarantee.

The MC is therefore proposing that AHTA transfer its legal structure from being an incorporated association to a company limited by guarantee. The new Constitution will be written to comply with the requirements of a company limited by guarantee.

Changing the Association's mode of incorporation from an incorporated association to a company limited by guarantee does not alter the Association's legal status or identity. It is still the same entity with the same assets and liabilities, and any existing contracts will continue unaffected.

The advantages for AHTA of being a company limited by guarantee include:

- Widely accepted structure: companies are a widely recognised and understood structure. They meet the expectations of authorities, funders and other interested parties.
- companies limited by guarantee have appropriately rigorous compliance requirements and a perception of a higher level of governance;
- AHTA would no longer need to be a registered Australian body with ASIC to allow it to operate beyond Qld and hence report to two regulators, i.e. Qld Fair Trading and ASIC;
- rights of the various parties (members, Directors, Officers) are more precise under the Corporations Act, including the right for members to remove Directors subject to due process by ordinary resolution;
- Constitution: section 134 of the Corporations Act allows a company's Constitution to be more independent of the Corporations Act whereas under

the Qld Act is relatively prescriptive about matters that must be addressed in the Constitution. Further, under the Qld Act, any change to the rules of the incorporated Association must be approved by Qld Fair Trading. With the Corporations Act, if Members pass a special resolution changing the Constitution it applies as determined by the resolution.

- Under the Corporations Act, there is more scope for flexibility regarding appointment and election of directors. For example, under the Qld Act, it may not be possible to appoint non-member directors or to conduct elections by ballot prior to the AGM. The Qld Act requires all directors to be elected by members at the AGM.
- Legal clarity: there is a much greater body of law that has clarified the meaning of the Corporations Act, including law related to meetings and how the law operates for directors of companies than for incorporated associations.
- Avoid insurance risks: while the matter may not have been tested in court, some lawyers are of the opinion that if an incorporated association operates outside of its State or Territory of registration, even when properly registered under the Corporations Act with an ARBN, if a problem occurred outside of that State or Territory of registration then insurance cover may be voided.

D. Composition of new Constitution

1. Introductory comments

Before the drafting of the new Constitution commences, the key elements need to be presented to the members for their feedback and comments. These elements are included in this Discussion Paper.

In this paper, the current MC is referred to as the **Board**. The proposal is to rename the MC to the "Board" which is consistent with contemporary governance terminology. The individuals on the Board will be called Directors which is the term used in the Corporations Act.

2. Name

- 2.1. Upon transferring incorporation to a company limited by guarantee, the suffix to the organisation's name will change to Ltd. The new name will therefore be Australian Hand Therapy Association Ltd.

3. Objects

- 3.1. The objects of an association describe the reason that it exists and also influence its taxation status. The proposed objects should reflect the vision, mission and activities of the Association.
- 3.2. The proposed objects enhance the possibility of being registered as a charity with the Australian Charities & Not-for-profits Commission (ACNC). Being ACNC registered will allow AHTA to be eligible for certain tax concessions.
- 3.3. A more flexible contemporary format for the Objects rule is to make a statement of intent, which encompasses the broad purpose for the entity. Specific elements of the type of work that the entity does can then be given as an indication of the types of actions that the entity may take in pursuing its Objects. Key advantages of this broader and more flexible approach include:

- a) whether any particular element is pursued or not does not in itself raise a question as to the veracity of the pursuit of the entity's Objects
- b) if a particular activity ceases to be functional, it does not have to be removed from the Constitution
- c) if a new activity becomes functional, it can be adopted without having to be included in the Constitution.

3.4. Table: current Objects vs. proposed Objects

Current	For consideration
<p>The objects of the Association are –</p> <p>(1) To maintain and promote high standards of Hand Therapy practice in Australia.</p> <p>(2) To promote and provide ongoing professional education by way of (a) An annual national conference (b) Divisional Hand Therapy interest group meetings (c) Seminars and practical workshops (d) Distribution of quarterly newsletter (e) Provision of resource library (f) Access to international Hand Therapy meetings and surgeons' conferences.</p> <p>(3) To establish and maintain criteria for membership which recognise occupational therapists and physiotherapists with significant expertise in the management of hand and upper limb conditions.</p> <p>(4) To be a national organisation encouraging representation from all six divisions comprising Queensland/Northern Territory, New South Wales/Australian Capital Territory, Victoria, Tasmania, South Australia and Western Australia.</p> <p>(5) To encourage members to undertake research in aspects of Hand Therapy via the establishment of research grants.</p> <p>(6) To maintain links between the Australian Hand Therapy Association and the Australian Hand Surgery Society.</p> <p>(7) To maintain links between the Australian Hand Therapy Association and the Australian Physiotherapy Association and Occupational Therapy Australia.</p> <p>(8) To maintain membership of the International Federation of Societies for Hand Therapy IFSHT and foster international communication with associated organisations and individuals.</p> <p>(9) To promote formal recognition of the practice of Hand Therapy in Australia.</p>	<p>The Objects of AHTA are to encourage and promote the pursuit of excellence in Hand Therapy, for the advancement of the health and welfare of those in the community with upper limb conditions resulting from injury, disease or deformity.</p> <p>AHTA pursues the Objects through a range of activities and services that may include but is not limited to:</p> <ul style="list-style-type: none"> a) the setting, promoting and continually reviewing national 'best practice' standards for Hand Therapy in the patient; b) assisting providers of patient care in Hand Therapy to reach the highest standards of professional competence, to assist them in the rehabilitation of the upper extremity; c) providing an influential national peak body and central reference point for, and consultancy service on, Hand Therapy policy, procedures and practice, to assist other organisations and industry stakeholders in advancing rehabilitation of the upper extremity for the health and welfare of the patient; d) encouraging and promoting research projects relating to Hand Therapy to increase knowledge and learning in the Hand Therapy field; e) promoting educational opportunities for practitioners of Hand Therapy to further their knowledge and skills; f) To maintain links and foster communication with Australian and overseas organisations relevant to Hand Therapy or with similar objects g) doing anything ancillary or incidental to the Objects or any of the above.

4. Standard not-for-profit clauses

- 4.1. The Association must not distribute any income or assets to members.
- 4.2. If the Association is wound up, any surplus assets must not be distributed to members and must be distributed to another not-for-profit organisation.
- 4.3. The liability of members is limited to the guarantee amount. The guarantee is the amount that members agree to pay towards certain debts if the Association winds up. The guarantee amount will be \$1.00 for each member.

5. Membership

Eligibility criteria and voting rights

- 5.1. The new Constitution will provide for three classes of membership
 1. Accredited Hand Therapist (AHT) including Life Members
 2. Associate Members
 3. Non-voting Members
- 5.2. The Non-voting member class may be further classified into sub-categories. The Board will have the power to create these categories of membership within the Non-voting class of membership without the categories having to be specified in the Constitution. This provides flexibility allowing the composition of membership to change as circumstances change.
- 5.3. Table: Proposed membership classes and criteria

Class	Criteria	Voting Rights
AHT	Criteria remain unchanged from the current Constitution (i) Be a clinician or an educator; and (ii) Be a practising, qualified Occupational Therapist or Physiotherapist and have state registration where applicable; and (iii) Be proposed by the Credentialing Council as required by the By-Laws (iv) Be approved by the management committee (v) Satisfy any additional requirements as specified in the AHTA By-Laws	Voting rights Eligible to be elected to the Board.
Associate	Criteria remain unchanged from the current Constitution (i) be a qualified Occupational Therapist or Physiotherapist and have national registration where applicable; and	Non-Voting rights Eligible to be elected to the Board, subject to a requirement for the Board to have no more than two Associates on the Board

	(ii) satisfy any additional requirements as specified in the AHTA By-Laws Occupational Therapists and Physiotherapists, who are members of hand therapy associations in countries which are IFSHT members, may be accepted as an Associate of the AHTA.	
Non-voting	Individuals and organisations that support the Objects and who satisfy any requirements as specified in the AHTA bylaws may apply to be non-voting members.	No voting rights Not eligible to be elected to the Board

Associates

- 5.4. Currently, Associates do not have voting rights and are not eligible to be elected on to the Board.
- 5.5. In order to be more inclusive and have a broader representation of the membership on the Board, the proposed change is to grant Associates eligibility to be elected on to the Board, subject to there being no more than 2 Associates on the Board at any one time.

Membership application process

- 5.6. Application for membership will be in the form and manner as prescribed by the Board from time to time.
- 5.7. The Board may at its discretion, accept or reject an applicant as a member. The Board may delegate the application process to the Credentialing Council (in the case of AHT membership), a committee or a designated individual but will retain the ultimate authority to determine applications.
- 5.8. Life Members will be appointed by the Board following a nomination process covered in Bylaws.

Cessation of membership

- 5.9. The Constitution will include a list of events that cause a member to cease to be a member without disciplinary procedures being initiated. These cessation events include if a Member:
- a. resigns
 - b. ceases to be eligible
 - c. dies or if a body corporate is wound up
 - d. becomes an individual who is liable to be dealt with in any way under the law relating to mental health
 - e. fails to pay the membership fee within a certain time
 - f. fails to meet circumstances prescribed in terms of membership, unless resolved otherwise by the Board

- g. is convicted of an indictable offence, unless resolved otherwise by the Board
- h. if their registration is revoked by AHPRA for professional misconduct.

Disciplinary procedures

- 5.10. The Board should have the power to expel a member who:
- a. has failed to comply with the Constitution;
 - b. has failed to abide by any code of conduct; or
 - c. is guilty of any conduct that is prejudicial to the interests of the Association.
- 5.11. Any process to expel a member needs to be procedurally fair to the member.

6. General Meetings

- 6.1. The Corporations Act requires an Annual General Meeting to be held at least once in each calendar year and within five months after the end of the financial year.
- 6.2. The Annual General Meeting is a type of "General Meeting", therefore any rules covering General Meetings will apply to the Annual General Meeting.
- 6.3. The usual notice period for a General Meeting is 21 days.
- 6.4. The quorum for a general meeting will continue to be the number of voting members equal to double the number of Directors plus 1. For example, if there are eight directors, the quorum will be 17 (16+1).
- 6.5. Voting Members who are unable to attend a meeting in person may appoint a proxy to attend and vote on their behalf.
- 6.6. 5% of the voting Members may requisition the calling of a General Meeting.
- 6.7. Provision will be made to enable direct voting at General Meetings. Direct voting enables members to exercise their voting rights without having to either attend the meeting or appoint a proxy. Direct voting will sit alongside the proxy system. It may be an additional option for members if the Board determines to use direct voting for a general meeting.
- 6.8. Provision will be made for using technology to help conduct General Meetings.

7. Board of Directors

7.1. Table: Current vs Proposed Board Composition

Current composition	Proposed composition
Name: Management Committee Number: unlimited. No maximum specified. Composition <ul style="list-style-type: none"> • President • President-Elect • Immediate Past President • Treasurer • Secretary 	Name: Board of Directors Number: 9 directors Composition Eight directors elected by the membership comprising: <ul style="list-style-type: none"> • President (must be AHT/Life) • President-Elect (must be AHT/Life) • Immediate Past President (must be AHT/Life)

<ul style="list-style-type: none"> • Other elected members 	<ul style="list-style-type: none"> • Five other elected directors (who may be AHT/Life or Associates subject to there being no more than 2 Associates on the Board) <p>There will be the option for the Board to appoint one (1) Appointed Director who may be but does not necessarily have to be a member. This person may be someone with expertise in allied health policy or financial management etc.</p> <p>See points below re Treasurer and Secretary positions.</p>
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Composition

- 7.2. The Constitution will clarify the size of the Board. The current Constitution is silent on this matter.
- 7.3. The proposed number of 8 directors (with the option to appoint a 9th director) is consistent with the average association Board size according to Associations Forum's Annual Board Survey.
- 7.4. Association boards should be small enough to facilitate a closer working relationship between directors and more effective and efficient decision making, and large enough to represent a diversity of perspectives and skills and broadly reflective of the membership.

Eligibility criteria to be an Elected Director

- 7.5. To be elected as President-Elect and to continue on as President and Immediate Past President, the individual must be an AHT or Life Member.
- 7.6. To be elected as an Elected Director, the individual must be either an AHT, Life Member or an Associate. However, no more than two Elected Directors may be Associates.

Term of Directors

- 7.7. The Presidency will continue to be a 6-year term (2 years as President-Elect, two years as President and two years as Immediate Past President).
- 7.8. Elected Directors will continue to be elected for 2-year terms with a maximum of 4 consecutive terms (or eight consecutive years). The majority of directors must be AHTs. As there are only approximately 300 AHTs, this means a relatively small pool from which to draw candidates. The maximum number of terms that an individual may serve is therefore increased from 3 terms to 4 terms.
- 7.9. Elected Directors will commence their term from the end of the relevant AGM to the end of the second following AGM.
- 7.10. The Appointed Director will be appointed for a term of up to 2 years as determined by the Board. They may be re-appointed subject to the maximum limit of 8 years.

Elections

- 7.11. Elections will be conducted in accordance with the procedures set out in the bylaws approved by the Board. Elections will be held by electronic ballot prior to the AGM after circulation of appropriate biographical details.
- 7.12. The results of the election will be announced at the AGM, and Directors will take office from the end of that AGM.

Casual vacancies

- 7.13. If any vacancy occurs in the position of a Director, the remaining directors may appoint an eligible member/individual to fill the vacancy and that person will hold office for the remainder of the term or, as the Board prefers, until the next AGM.
- 7.14. While filling casual vacancies generally will make sense, there would be no compulsion on the Board to fill casual vacancies unless the Board size falls below the legal minimum number of 3 Directors. This means that if a vacancy occurs close to an AGM, then the Board may elect to leave it open for the members to fill it via election.

Treasurer

- 7.15. The role of Treasurer will no longer be an elected position.
- 7.16. The AHTA now has a CEO responsible for the duties of the previous Treasurer role. In addition, the AHTA has a Finance Audit and Risk Committee to oversee and guide financial performance and risk mitigation.

Secretary

- 7.17. The role of Secretary will no longer be an elected position.
- 7.18. Companies limited by guarantee must have a Company Secretary. The Company Secretary is appointed by the Board and does not have to be a director. The Company Secretary will have no voting rights unless they are a director as well.
- 7.19. The Company Secretary is the liaison person with the regulators, and the role is primarily an administrative and compliance role. It is more appropriate for this role to be fulfilled by someone on an ongoing basis (e.g. person responsible for the administration of the Association) rather than a newly elected volunteer every couple of years.

8. Other matters

- 8.1. Payment to directors: Directors will receive directors' fees for acting as directors subject to any aggregate limits set by the voting members. Directors may receive payments for reimbursement for out-of-pocket expenses or for work they do for the Association other than as a director.
- 8.2. As is currently the case, the Board will have the power to create and amend bylaws that support the Constitution and administration of the Association.
- 8.3. There will be transitional clauses in the new Constitution to outline how the current board structure will transition to the new proposed model.

E. Comments on this Discussion Paper

Please send any comments or questions by **Friday 29 January 2021** to Kathy Nguyen,
Manager – Client Services, Associations Forum Kathy@associations.net.au.