



BRIEFING NOTE

Bicycle Queensland Moderisation Project

CONTENTS

1.	RESTRUCTURE OF BICYCLE QUEENSLAND	1
1.1	Planning for BQ's future	1
1.2	Impact of COVID and diversification	1
1.3	Restructure proposal	1
2.	BQ CONSTITUTION	2
2.1	Modernisation of the Constitution	2
2.2	Key changes to the Constitution	2
2.3	Changes to membership	2
2.4	Authority to make the change	2
3.	SUMMARY OF NEW CONSTITUTION RULES	2
	SCHEDULE 1	3
	Comparison of Incorporated Associations and Companies Limited by Guarantee	3
	SCHEDULE 2	4
	Amendments to the Constitution	4
	SCHEDULE 3	5
	Membership classes and any changes	5
	SCHEDULE 4	6
	Summary of constitution rules	6

BRIEFING NOTE

1. RESTRUCTURE OF BICYCLE QUEENSLAND

1.1 Planning for BQ's future

Bicycle Queensland (**BQ**) has grown from humble beginnings but now given the size and complexity of our business and the ever-changing regulatory environment, BQ has made the decision to update its current structure from an incorporate association to company limited by guarantee (**CLG**).

The key drivers to update BQ's structure include:

- (a) Not-for-profit (**NFP**) organisations like BQ are facing more demand for structure, accountability and transparency than ever before. There are more community expectations of NFPs than in the past.
- (b) Public perception of BQ is important and the perception is that CLGs are viewed as more serious, trustworthy and credible and are recognised as a credible by the public.
- (c) The change increases BQ's ability to attract grants and funding as it will be able to operate more easily across jurisdictions in Australia.
- (d) The benefits and costs connected with choosing an incorporated association over a CLG have significantly reduced.
- (e) The migration does not create a new legal entity. It remains the same legal entity, with the same ABN. Consequently, transfer duty and capital gains tax considerations are not relevant under this migration process because the assets of the association continue to be owned by the same body, despite the change of corporate status.
- (f) Companies are generally more readily understood than Incorporated Associations by third party contracting parties.
- (g) Charitable status – BQ would like to have charitable status.

Schedule 1 outlines the differences between an incorporated association and a company limited by guarantee.

1.2 Impact of COVID and diversification

The COVID-19 induced changed lifestyles and as a result how work is conducted and the way large events are conducted has significantly impacted BQ and its business.

With the significant reduction/loss of events' revenues BQ is looking to diversify our income stream and this change to a CLG will assist us in this work.

We will be focusing on advancing health, so all the aspects of bicycle riding that increase the health of individuals and our communities. We are also looking to work or engage better in our regions.

1.3 Restructure proposal

Having regard to the above, there is a proposal to change the structure of BQ:

- (a) from an incorporated association regulated by *Associations Incorporation Act 1981* (Qld) (**Associations Act**);
- (b) to a company limited by guarantee regulated by *Corporations Act 2001* (Cth) (**Corporations Act**).

The change to structure will not impact:

- (a) **The brand of BQ.** The new company will remain known as Bicycle Queensland;
- (b) **The members.** The members will continue members as members of BQ and the benefits of membership remains the same;
- (c) **The governing body.** The Management Committee will become a Board of Directors.

As a part of the proposed restructure and modernisation of BQ, BQ must undertake a number of steps, including adopting a new constitution. The purpose of this document is to outline the changes to the BQ constitution.

2. BQ CONSTITUTION

2.1 Modernisation of the Constitution

As a part of the restructure of the organisation, it is necessary for BQ to adopt a constitution which meets the requirements of Corporations Act.

As a part of this process, the Management Committee has taken the opportunity to modernise the constitution for BQ. The current constitution was developed and adopted pursuant to the Associations Act and included a number of provisions which are now either redundant or no longer applicable.

This modernisation is designed for the longevity of BQ by having a governing document which is up to date and consistent with current practices and law.

2.2 Key changes to the Constitution

The proposed amendments to the constitution do not alter the rights of members. Therefore, the Management Committee has made the decision not to outline in detail those changes.

Schedule 2 of this document outlines the key changes to the constitution, including key deletions, additions, variations and matters which are no longer relevant.

2.3 Changes to membership

Schedule 3 outlines the amendments to membership classes.

2.4 Authority to make the change

Rule 79 of the BQ's constitution provides that a constitution may be amended by special resolution of the members and Part 14 of the *Incorporated Association Act 1981*(Qld) with the approval of the chief executive.

3. SUMMARY OF NEW CONSTITUTION RULES

Schedule 4 of this document sets out the summary of the rules of the constitution.

Schedule 1

Comparison of Incorporated Associations and Companies Limited by Guarantee

ITEM	Incorporated Association	Company Limited by Guarantee
1. What is it?	An incorporated association is a body corporate incorporated under <i>Associations Incorporation Act 1981</i> (Qld).	A company limited by guarantee is a public company incorporated under the Corporations Act.
2. Areas of operations and trading	Only operates in Queensland.	Can operate anywhere in Australia.
3. Governing law	<i>Association Incorporation Act</i> and <i>Associations Incorporations Regulation</i>	<i>Corporations Act 2001</i> (Cth) and <i>Corporations Regulations 2001</i>
4. Regulator	Office of Fair Trading	The Australian Securities and Investments Commission (ASIC) until registered as a charity and then the regulator is the Australian Charities and Not-for-profits Commission (ACNC).
5. Separate legal entity	Has a separate legal identity, distinguishable from its members, and: <ul style="list-style-type: none"> is capable of performing all the powers of a body corporate; is capable of suing and being sued in its own name; and has perpetual succession and power to acquire land and dispose of property. 	Has a separate legal identity, distinguishable from its members, and: <ul style="list-style-type: none"> is capable of performing all the powers of a body corporate; is capable of suing and being sued in its own name; and has perpetual succession and power to acquire land and dispose of property.
6. Governing document	Rules or constitution	Constitution
7. Membership	Minimum number of members (7). Members do not have a proprietary interest in the association.	Must have at least one member. Members do not have a proprietary interest in the company.
8. Directors and office bearers	Management Committee (must fill office bearer roles and general committee)	Board of Directors (min 3 directors plus a secretary)
9. Meetings of members	Annual general meeting	Annual general meeting
10. Records	While there is some variation depending on jurisdiction, an association must keep: <ul style="list-style-type: none"> accounts and records regarding its transactions and financial affairs, so true and fair accounts can be prepared and audited; minutes of all general and committee meetings; and a register of members. 	A company must keep: <ul style="list-style-type: none"> a register of members, options and charges; and financial records regarding its transactions and financial position and performance, that would enable true and fair financial statements to be prepared and audited.
11. Limitation of liability	Liability is limited, usually to membership and subscription fees paid in accordance with the association's rules. Members will not be liable to contribute any money for unsatisfied liabilities in the event of dissolution or winding up, except to the extent that their membership or subscription fees are outstanding.	The liability of members is limited to that amount which they have agreed to contribute on the dissolution or winding up of the company, in the event that the company's assets are not sufficient to discharge all of its debts or all its liabilities. The maximum amount of the contribution is fixed upon incorporation and stated in the company's constitution.

Schedule 2

Amendments to the Constitution

(paragraph 2.2)

ITEM	RELEVANT RULE & DOCUMENT	AMENDMENT	IMPACT REASONING
1. Objects	Rule 5 of the Rules of Association Rule 4 of the Constitution	The amendments to the constitution have been included to update the existing objects of BQ so that they align with the current activities of BQ and to assist with the registration as a charity with the ACNC.	The changes proposed do not fundamentally alter the objects of the Company. The amendments are proposed to update/modernise the objects.
2. Registered office	Rule 10	This has not been included in the new document as it is not required.	No additional comment required.
3. Membership	Rule 7 of the Rules of Association (classes of members) Rule 16 of the Constitution and Schedule 2 of the Constitution	Proposed changes to the membership included in the Constitution. This includes the removal of members where there are no members or where the membership class is no longer relevant.	The current membership of the Company included in the existing constitution (with the exception of corporate members).
4. Fees for membership	Rule 12 of the Rules of Association Schedule 2 of the Constitution	The requirement to impose membership fees have been retained with the exception that fees are determined by the Board.	No additional comment required.
5. Directors	Rules 7, and 8 of the Constitution	<ul style="list-style-type: none"> The Board is made up of at least 7 Directors. The Board will aim to have diversity of gender and skills on the Board. The existing members of the Management Committee will transition to become the new board. The Directors serve for 3-year terms with a maximum of 9 years. 	This change is to ensure that appropriately qualified persons are appointed to the board. The rationale is to obtain diversity and skills on the board to ensure that the business carried on by the Company (and the decisions impacting that business) are dynamic and agile.
6. Winding up provision	Rules 27 (new rules)	Introduction of the current requirements for winding up and revocation provisions for constitutions of not-for-profits.	No additional comment required.

Schedule 3

Membership classes and any changes

(paragraph **Error! Reference source not found.**)

Class of membership	Eligibility criteria	Rights	Changes (if any)
Life Members	<ul style="list-style-type: none"> An individual approved by the Board Member of the Company (or Bicycle Queensland Inc) for a continuous period of not less than 5 years prior to nomination or becoming a life member 	<ul style="list-style-type: none"> Right to vote on a decision to appoint Directors Right to receive notice of meeting and to attend meeting Voting rights at a meeting of members Right to participate in discussions at meetings of the Company Life Members approved by the Board Right to access company register and members register Right to access financial information of the Company No requirement to pay annual fees 	No change
Individual Members	Must be at least 18 years of age	<ul style="list-style-type: none"> Right to vote on a decision to appoint Directors Right to participate in discussions at meetings of the Company Right to receive notice of meetings and to attend meetings Voting rights at a meeting of members Right to nominate for positions on the Company's board or committees Right to access company register and members register Right to access financial information of the Company Requirement to pay membership fees as determined by the Board 	No change
Household Member	Must be at least 18 years of age	Has the same rights as two Individual Members.	No change
Corporate members	Not applicable	Rights of an individual member. The right to appoint a delegate.	Class of members no longer exists.

Schedule 4

Summary of constitution rules

(paragraph 3)

Rule	Details	Summary of Rule
1.	Definition & Interpretation	This rule sets out the relevant definitions for the document and the rules upon which the document is interpreted.
2.	Name of Company	This sets out the name of the company which is proposed to be Bicycle Queensland.
3.	Charitable Institution	This rule provides that the company is a charitable institution which is seeking endorsement pursuant to Division 50 of the <i>Income Tax Assessment Act 1997</i> (Cth).
4.	Objects	<p>This rule sets out the proposed objects for the Company, being:</p> <p><i>The objects for the Company are to:</i></p> <p>(a) <i>promote bicycle riding for fitness, recreation and transport;</i></p> <p>(b) <i>influence government policy and investment in infrastructure to improve riding experiences across Queensland;</i></p> <p>(c) <i>facilitate participation in riding within the community (by reducing barriers to riding and by building rider confidence);</i></p> <p>(d) <i>promote and advocate for the recognition of riders' needs, rights and responsibilities (including riders who are not Members of the Company);</i></p> <p>(e) <i>impact health outcomes for the wider community by promoting the benefits of cycling (and being active) as a means to improve mental well-being and prevent and control diseases connected with physical inactivity;</i></p> <p>(f) <i>collaborate with public or private sector research initiatives that examine issues relating to riding that help fulfil or promote the Objects of the Company;</i></p> <p>(g) <i>promote bicycle riding as a low impact, healthy, convenient and sustainable form of active transport to improve environmental sustainability and build more livable, productive and socially connected communities across the state;</i></p> <p>(h) <i>receive all gifts of money or property for this purpose and invite the public to make gifts of money or property for the promotion of the Objects of the Company;</i></p> <p>(i) <i>support and promote the charitable aims and objectives of similar organisations or charities, or private not for profit organisations which have been created with Objects similar to the Company as considered appropriate by the directors of the Company;</i></p> <p>(j) <i>attract and encourage and acquire gifts, bequests and all forms of deferred gifts to enable the fulfilment of these Objects;</i> and</p> <p>(k) <i>do all things necessary to promote the objects of the Company contained in rules 4.1(a) to 4.1(j) above.</i></p> <p>The funds derived by the Company will be applied to the above objects.</p>
5.	Public Company	This rule sets out the status of the company as a company limited by guarantee and it provides that the members liability in respect of the company's debts and liabilities (and for other costs and charges) is limited to \$10. Further, this rule excludes the operation of the replaceable rules.
6.	Income and Property	This rule provides that the funds derived by the Company must be applied in furtherance of the objects (as set out in

Rule	Details	Summary of Rule
		rule 4).
7.	Composition & number of directors	<p>This rule sets out:</p> <ul style="list-style-type: none"> • The number of directors • The aspirational aim to achieve diversity of gender and skills for the board of directors • The process when a director's appointment ceases and when it will automatically cease (death, resignation, not permitted to act, ceasing to be a member, failure to attend 3 board meetings for a continuous period of 12 months etc) • The rules around casual vacancy for a director (that the board may appoint a director to fill a casual vacancy and how long they will hold a position on the board)
8.	Appointment and removal of directors	<p>This rule deals with the transition of the management committee to the board and the process for nominating and appointing directors and the term upon which a director will serve (3 year terms with a maximum of 9 years (3+3+3 years). Directors must submit for re-election every three years.</p> <p>Further this rule sets out the process for electing directors and the qualification to be a director (i.e. not be employed by the company).</p>
9.	Powers of the board	This rule sets out the powers of the board (i.e. power to manage the company etc) and how the powers are exercised.
10.	Delegation of board powers	This rule sets out the process that the board must follow in order to delegate (including to committees) any powers which the board may exercise and the terms of which that delegation may apply (or be revoked).
11.	Directors' duties and interests	This rule sets out the directors and interests of the company and the obligations of each director to the company. Further, the rule sets out the obligations around disclosure of interests which may impact the ability of the director to decide which would be in the best interests of the company.
12.	Remuneration of directors	This rule provides that the directors will not be paid for their role as a director.
13.	Officers' indemnity and insurance	This rule sets out the indemnity requirements for directors and the insurance requirements in favour of directors. It notes that the indemnity will continue despite the director ceasing to be a director. It should be noted that the indemnity is limited by the operation of the Corporations Act (that is, certain acts the company may not indemnify a director for).
14.	Board meetings	This rule sets out the process for a board meeting to be called (including who is the chair, the quorum requirements, the process for decision making and the use of written resolutions where there is no meeting). The board must meet a minimum of 6 times in any 12 month period. The board may meeting using the benefits of technology so that the board members may attend despite not being the same location.
15.	Auditor	This establishes the requirement to appoint an auditor (where the law requires). The requirement to appoint an auditor will be dependent on the income derived by the company each year and whether the company is characterised as a small, medium or large company for ASIC/ ACNC purposes.
16.	Membership	This rule sets out the number and classes of members and the process in which a new member is admitted to membership.

Rule	Details	Summary of Rule
17.	Cessation of membership	<p>This rule sets out the circumstances in which a member will cease to be a member of the company. Of relevance is that a member may cease to be a member where:</p> <ul style="list-style-type: none"> • they breach the provisions of the constitution; • the breach any member conduct policy; • where the member's behaviour is such that it is causing harm or likely to cause harm to other members; • where the member is guilty of an act or omission which is unbecoming or prejudicial to the interests of the company. <p>Once expelled, the member is not permitted to re-admission.</p> <p>The member has a right of reply in the case of any circumstance where the board wishes to remove a member.</p> <p>Additionally, a where a member dies or is of unsound mind, their membership ceases. However, it is relevant to note that despite ceasing to be a member, any unpaid subscription fees continue to be due and owing.</p>
18.	Dispute resolution and disciplinary procedures	<p>This rule sets out the process for resolving a dispute between members, the company or the directors. In the circumstances where a member is guilty of misconduct, this rule sets out the process in which the disciplinary procedures will apply. It is relevant to note the specific timeframes which apply.</p>
19.	Meetings of members	<p>This rule sets out the process for a members meeting to be called (including calling the meeting, notice requirements etc). The company may use the benefits of technology to hold the meeting.</p>
20.	Proceedings at meetings of members	<p>This rule sets out the requirements for a members meeting (including who is the chair, the quorum requirements, the process for decision making and business at the meeting).</p>
21.	Proxies, Attorneys and Representatives	<p>This rule prescribes the process for appointing a proxy or attorney and how the votes are cast by a proxy and attorney.</p>
22.	Entitlement to Vote	<p>This rule sets out the process for voting (including limitations on voting) at a meeting of the members, the use of proxies in voting and the ability to call for a poll of decisions.</p>
23.	How voting is carried out	<p>This rule confirms that votes at a meeting are determined by a show of hands, unless a poll is requested.</p>
24.	Resolutions without meetings	<p>This rule allows meetings of members to be passed without a meeting. That is, the resolution must be signed by all members.</p>
25.	Secretary	<p>This rule sets out the process for appointing and removing a secretary. It is important to note that the secretary is appointed by the board (as opposed to the members).</p>
26.	Financial records & audit	<p>This rule permits members to access the minute books of the meetings of members of the company and the right of the members to inspect the records of the company.</p>
27.	Winding up	<p>This rule provides that upon winding up of the company that any surplus assets must be distributed to an organisation with similar objectives to those set out in rule 4.</p>
28.	Amending the constitution	<p>The constitution must be amended by special resolution of the members. It is important to note that where amendments are member, there are relevant notifications to regulators regarding the changes to the constitution.</p>
29.	Notices	<p>This rule provides how notices are provided to members etc.</p>

Rule	Details	Summary of Rule
Schedule 1	Proxy form	This schedule includes the proforma proxy form for members meetings.
Schedule 2	Member classes	Sets out the classes of members and the rights of members.