

The Returned and Services League of Australia (New South Wales Branch)

Draft Constitution (issued 11 June 2019)

Submission by Geoff Lazar, President, Burwood Sub-branch

| Clause            | Issue  | Suggestion   |
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| General           | Throughout we use “sub-Branch”. This is a solecism, except in headings where we use “Sub-Branch”.  | Change the appellation to a defined term “Sub-branch” or “Sub-Branch”.   |
| Preamble          | 3 <sup>rd</sup> paragraph uses “Events in the last few years”. This is very time limited and should not appear in that form.   | “Events early in the 21 <sup>st</sup> century”   |
| 3.1 -3.3          | There is no “and” after the semi-colon at the end. This implies, as a matter of construction that each could be an alternate.  | Insert “and” after the semi-colon in each sub-clause   |
| 3.5 (c)           |  | Insert “and former” after “serving” to include the good name, etc of former members  |
| Whole of clause 5 | Uses the word “business” which implies that RSL NSW may be a business and thus subject to Australian Consumer Law  | Changes “business” wherever it appears to “operation”  |
| 5.3               | For more abundant caution there needs to be something to state that when pursuing and implementing the Charitable Purpose it is done only legally and as provided by the Constitution  | Insert “properly” immediately before the word “pursuing”   |
| 9.17              | Approval of Independent Director. This is a default provision with no “fail safe” provision. Clause 12.48 only requires “reasonable notice” of a District Council Presidents’ meeting. There is a gap.   | Give the Board the power to send a “circular resolution” to each District President, rather than having a meeting.   |
| 9.21 (a)          | Requires a 75% majority but all other places in the constitution, including 7.1 to change the constitution it is only 66%  | Change to 66% to be internally consistent.   |
| 9.27 (c)          | Remove the comma after “and” where it first occurs   |  |
| 9.27 (f) & (g)    | The sub-clause does not include “District Council Presidents” which is a defined term  | Include “District Council Presidents” after “district Council Delegates”.  |
| 9.29 (d)          | Delegation of any Board power to an employee of RSL NSW. This is contrary to the concept of separation of functions. The board is to provide policy and high level oversight. Employees are to implement policy and conduct day-to-day operation. It is wrong to delegate all powers to employees; vide AICD: <a href="https://aicd.companydirectors.com.au/resources/not-for-profit-resources/not-for-profit-governance-principles/principle-2-roles-and-responsibilities">https://aicd.companydirectors.com.au/resources/not-for-profit-resources/not-for-profit-governance-principles/principle-2-roles-and-responsibilities</a><br>Vide also clause 11.4 which is consistent | Either remove this power altogether or restrict what powers can be delegated. Suggest limit delegation to day-to-day operations and NOT such things as disciplinary, budgetary, selection of Independent Directors, etc. |
| 12                | Establishing District Councils   | Our view is that District Councils are not needed any more. Their functions, e.g.  |

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|               |   | communication, determining and assessing Members' views, etc can be undertaken by more efficient, quicker and cheaper means, e.g. electronically, surveys, etc. |
| 12.1          | This clause uses the term "RSL NSW sub-Branch network". This is not a defined term and implies that there is some form of structure and means of communication, which latter is stated as a responsibility in clause 12.31 (d).   | Replace with " All RSL NSW sub-Branches will be divided into Districts"   |
| 12.7 & 12.8   | The clause states "To hold office as a District Council Executive, a person...". District Council Executive is a defined term in Appendix "A" and is the body, not the person.  | Insert "member of a" immediately before "District Council Executive"  |
| 12.9          | The same applies <i>mutatis mutandis</i> as for 12.7. & 12.8  | Insert "member of a" immediately before "District Council Executive"  |
| 12.10         | Eligibility of District Council President. This is inconsistent with clause 12.8(b) even with the words in 12.8(b). It also implies that a person (see 12.7 & 12.8 above) can stand for longer than 6 years.  | Delete the clause.  |
| 12.12         | States "six years has lapsed".  | Change "lapsed" to "elapsed"  |
| 12.13         | States "A District Council Executive". This is a defined term for the whole body. It may be to envisage where the whole body resigns but I doubt it.<br><b>NB:</b> Insert "member of a" immediately before "District Council Executive" same applies <i>mutatis mutandis</i> in clauses 13.13 & 13.17 | Insert "member of a" immediately before "District Council Executive"  |
| 12.21         | Clause uses the phrase "Notice of a meeting may be given". May implies not mandatory.   | Delete "may be given" and insert "Must be given before"   |
| 12.29         | There is no equivalent to clause 9.52 (as it applies to the Board) for decisions made by District Councils where procedure and compliance with the constitution has not been fully followed.  | Insert similar clause to clause 9.52  |
| 12.32         | The clause states "in its District any other District Council Officers". It is not clear what is intended.  | Suggest insert "or" before "any".   |
| 12.34 & 12.42 | While it is implied, the power to delegate to a District Council should be specifically spelt out   | After the words " may delegate" insert the words "in accordance with this constitution" in each clause  |
| 12.36         | This clause rightly allows for funding of District Councils. However, it is not mandatory.  | Delete "may" where it first appears and substitute "will". Further, insert after "be submitted" the words "before the end of the financial year"                |

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| 12.40  | Endorse that District Council provide minutes of meetings to the Board but also make it mandatory that they be provided to Sub-branches   | Require that those minutes be provided to each Sub-branch within its District and in a timely manner   |
| 12.61  | As with 12.36 the timing of such budgeting should be spelt out  | Insert after "be determined" the words "before the end of the financial year"  |
| 13.4   | 2 issues arise. Firstly is a minimum of 10 Service Members realistic? Is it efficient and/or cost effective? Shouldn't such a small number become a Chapter of a larger entity? Secondly, if a Sub-branch incorporates, can this provision be imposed on a legally separate entity? |  |
| 13.5 (b)   |   | Omit the comma after "by"  |
| 13.7   | "Chapter" is defined in Appendix A but this clause does not really expand or clarify what a Chapter is.   | Fully define Chapter in Appendix A   |
| 13.8 vs 13.12 (b) & (f), together with 14.1 & 14.2 | "sub-Branch executive" is a defined term in Appendix A and relates to an entity including the committee etc of a sub-Branch. However, in clauses 13.12 (b) & (f), together with 14.1 & 14.2, the words are used to (apparently) refer to a person.                                  | If clauses 13.12 (b) & (f), together with 14.1 & 14.2 refer to a person then insert "a member of a" in front of "sub-Branch executive" where it appears in each clause |
| 13.15  | The clause allows delegation of powers. It does not restrict the power to further delegate  | Insert "except the power to further delegate" after the phrase "any of its powers"   |
| 13.22  | It is presumed that both sub-clauses are inclusive, not alternate.  | Insert "and" after the semi-colon in subclause (a)   |
| 13.26  | Are the sub-clauses in this clause supposed to be inclusive? Clause 13.27 suggests so   | If inclusive, add "and" between sub-clauses (a), (b)   |
| 13.26  | It is not stated but seems to be implied that RSL Custodian will act to give effect to the decision to incorporate.   | After sub-clause (d) add "(e) RSL Custodian will do all things necessary to transfer legal and equitable ownership of all property to the newly incorporated body."    |
| 13.29  | This clause sues the defined term "sub-Branch Executive". If it is the entity is each member of the Executive jointly or severally liable?  |  |
| 13.31  | Should reference be made to the <i>Trustee Act</i> ?  |  |
| 13.35  |   | Insert the word "is:" after "If it" at the start of the clause   |
| 13.39 (a)  | This clause refers to "SBA1, SBA2 and SBA3" but these are not defined terms in Appendix A. It is suggested to change the words used, rather use these specific terms. If they change then a constitutional amendment is needed.   | Either define the terms OR (better choice) change the terms to "all prescribed financial and membership returns".  |
| 13.39 (b)  | This sub-clause contains the word "Subsidiary" but this is not a defined term in Appendix A. Does it have the same meaning as in the <i>Corporations Act</i> ? It   |  |

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|           | appears not as it uses the word “associated” which is not used in the <i>Corporations Act</i> . If it is intended that the entity be a subsidiary, then there needs to be an extension of the constitution to such subsidiaries  |   |
| 13.40     | This clause ought to operate from the date of receipt of the notice, not the notice date.  | Insert the words “receipt of” after the word “of” where it last appears in the clause.  |
| 13.41     | It appears that the sanctions in this clause are not mutually exclusive.   | If so, insert the word “and” after the semi-colon in sub-clause (a)   |
| 13.41     | Further to the above, the clause on its wording implies that both sets of sanctions must apply yet, on the wording in the second half of the clause, it is not a requirement that RSL NSW must take action. Good governance indicates that if such a situation arose, then RSL NSW must take some action.  |   |
| 13.42     | The wording of this clause mandates that 100% of members of a sub-branch must consent. That is virtually never going to occur. A better way would be for an absolute majority 66% of members entitled to vote at a general meeting, ordinary or extraordinary vote in favour. That is then consistent with other voting clauses.   | Delete “all” in the preamble to the clause and insert “of at least 66% of all members entitled to vote”                                     |
| 13.43 (a) | Commas are in the wrong grammatical position.  | Delete THE COMMA AFTER “Appendix D” and insert a comma after “including” and after “to”.  |
| 13.46     | For internal consistency, after this clause there ought to be an insurance clause in similar terms to clause 15.17.  |   |
| 13.47     | The order of words in this clause is confusing. Reorder the words.   | Remove the words “provided it has complied...this Constitution” from their present position and insert them at the beginning of the clause. |
| 13.51     | We are against the use of proxies, in all the situations involved in the constitution. Using proxies is unnecessary given each sub-branch is allowed a Delegate and an Alternate Delegate to the AGM/Congress. Further allowing proxies can (and often does) lead to “proxy fights” which should be avoided at all costs. Further, use of proxies cuts across the “one person, one vote” concept and, most importantly, allows sub-branches to derogate from their right and duty to attend and vote at AGM/Congress. If a sub-branch cannot be bothered to attend, it gives up its right, rather than passing it to some other sub-branch who may not have the same interests as the “defaulting” sub-branch. | Remove this clause and clauses 33-40 inclusive of Appendix C.   |

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| 13.57                | The clause refers to the sub-branch President being the “settlor” but there is no extant deed, it may be implied but the <i>Trustee Act 1925</i> speaks in terms of appointment of a new trustee. Therefore, the President of a sub-branch is the appointor.  | Remove “settlor” where it appears and insert “appointor” in its place.  |
| 13.69                | In the second sentence of this clause it refers to “ <u>the accounts</u> ” (my underlining” but this not referred to anywhere in the Part of the constitution.  | Remove “Accounts” in the second sentence and insert “records”.  |
| 13.71                | This clause correctly identifies what sub-branch trustees must do upon incorporation of a sub-branch but there is no matching obligation upon RSL Custodian.  | Insert a matching clause requiring RSL Custodian to also transfer all sub-branch property to the newly incorporated entity. |
| 13.76, 13.77 & 13.78 | Each clause refers to a limit of \$5,000. This seems very low in this century and as RSL NSW is an operation of over \$2Bn.   | Change \$5,000 to \$10,000  |
| 13.81                | There is much law that indicates a guarantor of a debt or similar should seek and obtain independent legal advice before entering into any guarantee, surety or indemnity. Who will provide and who will pay for that independent advice? Further, the Board should also have independent legal advice before agreeing to any such situation. Such situations are fraught with danger and seem contrary to supporting and pursuing the Charitable Purpose | Remove the clause   |
| 14.1 (d)             | It is not clear whether the use of “sub-Branch Executive” in this clause means the entity or a person who is a member of a sub-Branch Executive acting in that capacity. Sub-clause (a) implies it is the entity but better drafting is required as (a) implies a person in their private capacity.   | After “Executive” insert “or a member of a sub-Branch Executive”  |
| 14.2 (c)             | The wording of the whole clause implies it applies to individuals and the remained of the sub-clause with Sub-Branch Trustee” reinforces that but “sub-Branch Executive” is a defined term meaning the total entity. It does not appear that it is intended to mean the entity.   | Insert “member of a” before “sub-Branch Executive”.   |
| 15.2 (a)             | This sub-clause uses the defined term “Related Body Corporate” as defined in Appendix A but is there a “holding company” to which s 50 and Division 6 of Part 1 of the <i>Corporations Act</i> applies?   |   |
| 15.2 (c)             | There is a missing word without which the sub-clause does not make complete sense   | Insert “which” after “Related Body Corporate”.  |
| 15.2 (d)             |   | Remove the word “the” where it third occurs and inert “those” instead   |
| 15.2 (e)             | Why does not sub-clause (d) also apply?   |   |
| 17.1                 | Pedantic but the clause refers to a “RSL NSW Member” which is a defined term in Appendix A.   | After “RSL NSW Member is” where it thirdly appears, insert “also” and also insert   |

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|                    |  | at the end of the clause “and any such payment or distribution is made to that person only in his or her capacity as a separate charity”. |
| 17.2 (a) & (b)     | It is assumed that the requirements in this clause are all inclusive.  | Insert “and” at the end of sub-clause (a)   |
| 18.4               | Grammatical error  | Remove “are” and insert “is” in its place.  |
| 20.7               | Inconsistent sentences in the clause. If all disciplinary powers are revoked then the second sentence is of no effect. The sentences in the clause needs to be split into 2 sub-clauses (a) and (b). | After “revoked” insert “except as specifically referred to in sub-clause (b).”.   |
| 20.10              | Not clear wording  | After “that Charter and” insert “will continue”   |
| 20.12              | See prior comments. Sub-Branch Executive is a defined term in Appendix A and means the entity, not the persons.  | Insert after “All” the words “members of a”   |
| Appendix A         | The definition of “Chapter” is a definition in its own terms that does not really define the term and the constitution does not either   |   |
| Appendix C         | See above re Proxies   | Remove clauses 33-40 inclusive of the Appendix  |
| Appendix D.2       | The clause refers to “until that procedure” but it is not clear which procedure is intended  |   |
| Appendix D 12 (d)  | Refers to “A sub-Branch Executive” but the clause refers to “an RSL NSW Member”.   | Insert “as a member of” before “a sub-Branch Executive”.  |
| Appendix D 14 & 15 | See Appendix D 12 (d) above. Same applies  |   |