

Feedback on proposed new draft RSL NSW Constitution (2019) by

BUNDEENA RSL SUB-BRANCH

14th July, 2019

In President's Update 01-19 it was acknowledged that the first replacement Constitution produced by ANZAC House in 2018, which was resoundingly rejected by the "grass roots" membership at the Extraordinary Congress of 4th December, 2018, was "too rushed". It was also stated that "you (the sub-Branches) need several months to discuss any further recommended changes (to the Constitution) within your sub-Branches."

If the 2018 proposed Constitution was "too rushed", this current one is just as "rushed" if not more so, particularly in relation to the time given to sub-Branches to consider it - just 3 weeks and 2 days. As far as time goes, that 3 weeks and 2 days is simply nowhere near enough. Once again, this whole process is being "rushed" to an absolutely ludicrous extent, and certainly gets nowhere near the "several months" alluded to in President's Update 01-19.

In Bundeena's view, having read the draft 2019 Constitution, then having carefully gone through it Clause by Clause and noted and referenced the foreseeable difficulties and omissions, and the glaring mistakes and proof reading errors, (of which there were far too many) and then having compared the proposed new Constitution with the Constitution currently in force to ascertain what is missing and what has changed or been introduced, and what in Bundeena's view must be included, the time available has been nowhere near enough

Given also that the sub-Branch Executive was already involved in reading, meeting and considering what was needed by the sub-Branch to resume fund raising, (which is another story altogether) and that members of the Executive were also involved in meetings with the SMDC sub-Branches to consider the provisions of the proposed new draft 2019 Constitution. Additionally, with the last monthly sub-Branch meeting at Bundeena having been held on Sunday, 16th June, and the next being held on Sunday, 21st July, there has been no opportunity whatsoever available to the Executive to discuss the matter at a sub-Branch meeting and revise its submission, before lodging the comments by 15th July.

It should also be remembered that in Bundeena, (and many, many other sub-Branches), all Executive Members are retired and have other responsibilities to sub-Branch members in need of assistance, as well as to family, friends and a wide range of other organisations to which they belong.

I repeat again, that the time frame imposed was absolutely ludicrous.

It's ironic, and if Bundeena was a little cynical, it could be said that the timing of the release of the proposed new draft of the 2019 Constitution, was also deliberately aimed to coincide with a very busy period for sub-Branches, being the return to fundraising, which many see as critical. For larger

sub-Branches with lots of members who can form Committees and deal with these issues, it might not be unreasonable, but for smaller sub-Branches where the vast majority of the day to day work falls to members of the Executive, it has been extremely unreasonable.

And, it should also be remembered that the same thing happened last year, with the timing of the release of the final draft of the (rejected) 2018 proposed new Constitution. At that time in its response to the Final Draft, Bundeena stated:

"The timing of the release of the Final Draft and the associated documentation has been most unfortunate, as it has essentially coincided with the end of the Invictus Games, and the lead up to the Remembrance Day Commemorations of the 100th Anniversary of the signing of the Armistice ending WW1, and it also coincided with the start of the "silly season". This has adversely affected the amount of time available to seriously review the Final Draft, to hold appropriate discussions, and to seek and gain advice in relation to it. And it has restricted considerably the opportunity to place the concerns held about the document before sub-Branches for their consideration prior to them meeting to consider their position, and to give the appropriate instructions to their Delegate.

"There has essentially only been one month provided to consider the Final Draft, whereas some two months were available to review the "First Draft", which as even ANZAC House acknowledges, should not have been released as a "First Draft". And that two months to review the "First Draft" was nowhere near enough time either."

And now, here we go again. Insufficient time was available to seriously consider the first 2019 draft, and that there will be little time to consider the final draft, due to the rapidly approaching 2019 Congress, and the fact that (certainly for smaller sub-Branches) all arrangements for Remembrance Day will need to be in place prior to departure for Congress. And there will be no opportunity (as happened with the previous rejected final draft Constitution in 2018) to amend the proposed new Constitution prior to voting on it at Congress.

Additionally of course, the proposed "suite" of OPP's, sub-Branch SOP's and District Council SOP's, which will replace all current By-Laws and Regulations, will not have even been sighted by sub-Branches until the Final Draft new Constitution is released, as they are to accompany it. That of itself is a huge concern. Essentially, those documents MUST actually form a part of the Constitution, and be defined as such, and should have been available for consideration along with the proposed new draft 2019 Constitution. If the proposed OPP's, sub-Branch SOP's and District Council SOP's do not form a part of the Constitution, then once again the Service Members are being disenfranchised as they have always been the final arbiters of the By-Laws and Regulations and must remain so.

In President's Update 01-19 the following words appeared:

The next draft must of course also address the many shortcomings of the current Constitution, that is: internal inconsistencies and errors, inconsistencies with RSL Australia and other states, the need to recognise RSL Lifecare in our aims and objects, lack of compliance with the RSL NSW Act and the ACNC Act, and enshrined procedures that conflict with the Charitable Fundraising Act.

The amended Constitution will also be accompanied by a full suite of policies and procedures, so that members can see

what they are signing up to.

And now we find that "Lifecare" doesn't get a mention, the "aims and objects" have been deleted in favour of "charitable purpose", which might not be a bad thing, as long as some of the extremely important provisions of the "aims and objects" are replicated elsewhere in the new draft, which just hasn't happened. But worse, "the full suite of policies and procedures" won't be seen until far too late. So much for "seeing what they are signing up to".

Why are such matters contained in a President's Update only to be ignored in the reality?

Bundeena sub-Branch was quite angered to read in the "RSL QUESTIONS AND ANSWERS" document which accompanied the proposed new draft 2019 Constitution that:

"RSL NSW then proposed governance changes in 2018 which would have reduced these risks, but they were not approved by members." What self serving, deprecating, insulting rubbish - the problem was that the proposed new Constitution was a complete crock of rubbish, as acknowledged by the President in his Update 01-19:

"The Constitution we presented at the Extraordinary Congress in December was a highly centralised model. You have told us, resoundingly, that it was the wrong model for the League for three main reasons. First, it got the power balance wrong between State Branch and sub-Branches. You don't want a centralised, top-down approach to our governance – in fact that would be a betrayal of the League's grassroots origins and volunteer members. Second, you told us that you feel sub-Branches are being unfairly punished for mistakes made at head office. You don't see why the governance model for sub-Branches needs to change and you don't like the idea suggested by State Branch that changing the governance model of a sub-Branch should be compulsory. Finally, and most importantly, you told us we were doing a lousy job in communicating the need for change, and rushing the process through without sufficient consultation amongst the membership.

In the military these would be called lessons learned. Let's just call them what they were – mistakes".

Might we suggest that every member of the Board and the Senior Executive team of RSL NSW should re-read the two paragraphs immediately above, and very particularly, the final sentence of the large paragraph!

The members were then, and still are, crying out for proper consultation and wider discussions regarding Constitutional change. The compiler of Bundeena's "Comments on the Final Draft of the proposed 2018 Constitution", wrote the following:

"I personally feel that there might be great value and worthwhile benefits in ANZAC House delaying the vote on the proposed new Constitution until say, May of next year, to facilitate the time necessary for full and detailed discussions which really do need to be held with ANZAC House about the "repair" process. To date, there has been a lot of talking "at us" over the last couple of months, but very little talking "with us", and being prepared to sit down and fully discuss, the concerns that many sub-Branches have expressed".

And now, we find that we are going down exactly the same path, of simply no opportunity to sit down and openly, and in company with as many sub-Branches as possible, discuss concerns. And of course we won't know what of the concerns have been taken notice of by ANZAC House until we see

the final draft in September, which "will be voted on" at the October 2019 Congress. If there is still disagreement, then the only option available to sub-Branches is to vote the whole thing down once again, as has just happened in Queensland for the third time!

And bear in mind the findings of the SVA Survey; that there is "little trust" in the Senior Executive of RSL NSW. If there is "little trust", there will be distrust of what might or might not be included in the OPP's and various SOP's, and no chance whatever to amend either them or what could well end up being serious omissions from both the Constitution and the OPP's and SOP's, again leaving no option to the sub-Branches but to reject the proposed new 2019 draft Constitution.

As efficient, collegiate, collaborative and concerned "change managers", ANZAC House has, in Bundeena's view, consistently scored zero or worse, and this current process of a further new Constitution is heading down exactly the same path as the previous one, which might just end up with the same predictable result.

All of the above demonstrates the shortcomings in knowledge of the Board and the Senior Management team of RSL NSW in relation to those matters which are of serious concern to the sub-Branches, and the processes, procedures and timetabling that operate within sub-Branches, and the lack of understanding of the RSL NSW culture and of the nuanced complexity within the RSL NSW membership cohort, which translates into an inability to make clear, logical and sound decisions and provide clear and acceptable direction to the membership.

It was also stated in President's Update 01-19, that: "After ANZAC Day, "they (meaning members of the Board) will work closely with District Councils to convene regional workshops to hear from sub-Branches of the best way to address the big picture the League faces,"

Whatever happened to those "workshops"?

The first sentence of the penultimate paragraph in the "Preamble" to the proposed new draft 2019 Constitution states: "The League is a grassroots organisation, led by its volunteers".

The comments and recommendations hereunder in relation to the proposed new 2019 draft Constitution have been compiled primarily on the basis of ensuring that RSL NSW remains as a "grassroots" led organisation, with the sub-Branch membership as the final arbiter of all matters in relation to the Constitution and governance of RSL NSW.

1. In the Preamble to the proposed new draft 2019 Constitution, the fourth (and largest) paragraph should simply be deleted, with the exception of one small part of it, to which a few more words should be added. The current fourth paragraph adds nothing to the preamble review of the history, purpose and future of RSL NSW, nor to the provisions of good governance and regulation contained within the Constitution, and essentially enshrines in a Constitution an airing of dirty laundry as to why, in whoever's opinion, RSL NSW needed a new Constitution.

The one small part of paragraph 4 to be retained and the proposed additional words would become a replacement Paragraph 4 thus:

"RSL NSW has been re-constituted by the RSL NSW Act 2018, and this Constitution introduces the rules and structures the new Act requires."

Then in the second paragraph, at the very end, add an additional short sentence: "RSL NSW provides support to RSL National."

Additionally, in the third paragraph, the word "statutory" should be deleted and be replaced by the word "private" to describe the type of corporation created by the new Act in relation to RSL NSW. This was enunciated in the letter dated 14 December, 2018, to Smithfield sub-Branch, from the Hon David Elliott, (then the NSW Minister for Veteran's Affairs), wherein he stated: "RSL NSW IS A PRIVATE CORPORATION GOVERNED BY A CONSTITUTION, NOT LEGISLATION". However, if for some reason RSL NSW does not want to be known as a "private" corporation, then the words "RSL NSW is a corporation created by statute", could be correctly used.

Bundeena is also of the view that some further additional words are needed in the current last paragraph of the Preamble and that some additional provisions from the current Constitution should also be added.

In the current final paragraph:

After the words "highest patriotic ideals" insert the words "and remains so."

After the words "Australian Constitution" insert the words "and the Westminster System of Government, promoting loyalty to the British Monarch and the institution of the Crown, and"

Additionally, the very last sentence of the current last paragraph should read: "The Motto of the League is: 'The Price of Liberty is Eternal Vigilance'".

In relation to the immediately above, the Motto is a part of the RSL National Constitution at Clause 3.4, so the provisions of Clause 17.3 of the National Constitution come into play. The Motto of the League is enshrined in the current RSL NSW Constitution, so any proposal now, or in the future, for any change to the Motto becomes a matter of Constitutional change. That process should remain.

The other added words or phrases have all come from the current Constitution, and in Bundeena's view, should continue to form a part of any proposed new Constitution.

2. in relation to "Police Veterans", Bundeena understands that some time ago, "Police Veterans", being primarily members of the Australian Federal Police who served as "Peacekeepers" under the flag of the United Nations in Cyprus for example, working with and alongside British Army personnel, and in a number of other geographic areas of the world, and also including at least Victorian and New South Wales State Police who have served as "Peacekeepers" in various areas of conflict

around the world, (including Cyprus and the Solomon Islands), generally in concert with Australian Federal Police, were admitted to the RSL as Service Members, which is why the provisions of Clause 1.10 exist in the current Constitution. This should be seriously looked at again, and consideration given to the continuation of Clause 1.10 in an appropriate area of the proposed 2019 Constitution, with appropriate words, as Bundeena understands for example, that Australian Federal Police Officers continue to serve in at least Cyprus.

3. In sub-Clause 1.2, the word "statutory" should be deleted and be replaced with the word "private", or the words "RSL NSW is a corporation created by statute", for the same reason as is outlined in the 5th paragraph of 1. above.

4. In Clause 7 - Amendments to Constitution, of the 2019 draft Constitution, add two new sub-clauses 7.4 and 7.5:

"7.4 A General Meeting alone, by way of a majority of at least 66% of delegates present and entitled to vote, has the power to:

(a) make an amendment, variation or rescission ('Amendment') to this Constitution and to any Operational Policies and Procedures made by the Board, which includes the power to make any consequential amendments to sub-Branch or District Council Standard Operating Procedures, or Operational Policies and Procedures, arising from such amendments made to this Constitution; and

(b) direct the Board to make an Amendment to any Operational Policy or Procedure, District Council Standard Operating Procedure and sub-Branch Standard Operating Procedure, which the Board has previously refused to amend.

7.5 This Constitution, including all Operational Policies and Procedures and sub-Branch and District Council Standard Operating Procedures may only be amended in accordance with this Constitution.

(a) A motion submitted to the Board by a sub-Branch or Subsidiary relating to a proposed new Operational Policy or Procedure or sub-Branch or District Standard Operating Procedure, or an Amendment to an existing Operational Policy or Procedure or a sub-Branch or District Council Standard Operating Procedure, may be approved or rejected by the Board for any reason.

(b) Any motion submitted by a sub-Branch or Subsidiary relating to a proposed new Operational Policy or Procedure or sub-Branch or District Council Standard Operating Procedure which has been rejected by the Board may be submitted to the Annual General Meeting or a General Meeting, in accordance with this Constitution, for review and consideration."

Additionally, the definition of the word "Constitution" found in Appendix A of the draft 2019 Constitution should include the words: "and the Operational Policies and Procedures, District Council Standard Operating Procedures and the sub-Branch Standard Operating Procedures" after the word "appendices".

5. In terms of the "Powers of the Board" it seems to Bundeena that the whole of Clause 9.27 is simply aimed at being able to direct sub-Branches in how they will invest their assets, how it is to be managed, where the revenue from investments is directed, and all manner of associated circumstances. As such it could well be construed to be ultra vires the corporate model of RSL NSW. Bundeena is having difficulty in understanding how on the one hand, RSL NSW can profess to wash its hands of all responsibility in relation to fundraising by sub-Branches (note the prefix "sub"), and profess to make sub-Branches solely and individually responsible for the discovery and adherence to all of the rules, requirements and conditions of holding a Fundraising Authority, and yet on the other hand claim the powers to itself articulated in Clause 9.27. The two processes do not sit comfortably with each other. With "power" comes "responsibility", but here it appears that "power" without any "responsibility" is being proposed.

Additionally, RSL NSW could well be ultra vires in any endeavour to direct sub-Branch Trustees in relation to the distribution of Trust revenue, provided that the Trustees are distributing it appropriately in accordance with the Charitable Purpose of RSL NSW.

In terms of Clause 9.27, Bundeena would as a minimum, want the following amendments to Clause 9.27:

In sub-Clause 9.27(b); delete all words after the word "law";

Sub-Clause 9.27(c); delete the entire sub-clause.

After sub-Clause 9.28(b) insert a new sub-Clause 9.28(c):

9.28 (c) make amendments to any Operational Policies or Procedures or sub-Branch or District Council Standard Operating Procedures provided that at all times they are:

- (i) in accordance with this Constitution; and
- (ii) are not retrospective; and
- (iii) are not contrary to any direction of a General Meeting or Annual General Meeting.

6. In relation to the "Optional Model of Incorporation" for sub-Branches; in Bundeena's view such a process will become administratively unwieldy and cumbersome. Notices will need to be addressed to "Boards of Directors" & "sub-Branch Executive Members" and similarly, other notices will need to be addressed to "Trustees" & "sub-Branch Executive Members". "Trustees" will be bound by the provisions of the Trustee Act, 1925, but "Boards of Directors" will not be so bound. "Boards of Directors" will be bound by the provisions of the "Corporations Act, 2001", (a Federal Act), or by the Associations Incorporation Act, 2009, (a State Act), with all of the attendant cautions necessary, as to the differing requirements.

In Bundeena's view all sub-Branches should be of an identical model. Administratively, this would be the most efficient and sensible process. Bundeena has previously suggested that Senior Counsel

expert legal opinion should be sought as to what may be the best model for sub-Branches, and that if RSL NSW has such legal opinion then it should be released to the sub-Branches for consideration. However to date no such legal opinion has been released, so the question remains, has it been sought?

And also in relation to the Optional Model of Incorporation, if it survives, and ends up included in any new Constitution, the provisions of Clause 7(b) of any "Deed for the Provision of Accommodation Services and Recognising Existing Obligations", being the provision relating to "Events of Termination" of the Deed, which, certainly in Bundeena's Deed, states "the incorporation of the sub-Branch under any legislation", should be the subject of a clear warning to any sub-Branch even contemplating Incorporation, to consider such provision (wherever it may appear in their Deed or similar document) and its ramifications should such sub-Branch proceed to Incorporation.

7. Why does the RSL NSW Executive Team have such difficulty with using the nomenclature "member" in relation to those persons who are part of a sub-Branch? The preferred nomenclature in both the 2018 and now the 2019 proposed new draft Constitutions was that such members are "attached" to a sub-Branch.

The definition of "sub-Branch Member" in the 2019 draft Constitution is "the RSL NSW Members attached to a sub-Branch". The view of Bundeena sub-Branch is that such definition should read: "those RSL Members who are members of a sub-Branch".

Bundeena would urge the RSL NSW Executive Team to examine the following clauses of the RSL National Constitution, and then make an assessment as to whether or not the proposed 2019 new Constitution is in breach of the National Constitution or not by the continued use of the word "attached":

Clause 17.3 Governance of State Branches
State Branches must adopt a Constitution or Rules and governance structure consistent with Federal and State laws, this Constitution and the By-Laws.

Clause 17.2 Composition of State Branches
Unless agreed otherwise between the RSL and a State Branch, a State Branch shall comprise:
(a) Sub-Branches; and
(b) individual members of Sub-Branches.

It is the submission of Bundeena sub-Branch, that unless RSL NSW can produce documented evidence of an "otherwise agreed" position between RSL NSW and the RSL in relation to nominating those persons who would otherwise be "members" of a sub-Branch as only being "attached" to a sub-Branch, the proposed new 2019 draft Constitution in relation to this matter would be in breach of the RSL National Constitution.

The applicable areas of the proposed draft 2019 Constitution should be amended accordingly.

8. In the "RSL NSW Question And Answers" document which accompanied the proposed new 2019 draft Constitution, under the major heading of "What remains the same as the current Constitution" and sub-Heading of "District Councils", the number of "Delegates" that sub-Branches must nominate to District Councils is incorrectly quoted as one (1), and similarly with "Alternate Delegates". Thankfully, the draft Constitution itself quotes the correct number of two (2) for both "Delegates" and for "Alternate Delegates" to District Council.

The "Slideshow" is also incorrect in exactly the same way as immediately above.

Additionally, under that sub-heading of "District Councils" it states that:

" . . . each DC (District Council) will be able to send a delegate and alternate delegate to State Congress".

And under the sub-heading of "Congress - delegates" it states:

"Each compliant sub-Branch and DC will be entitled to send a delegate (and an alternate delegate) to Congress to exercise a vote on behalf of the sub-Branch or DC respectively at the AGM".

But nowhere in the draft Constitution can any reference be found to District Councils being able to send a delegate and alternate delegate to Congress to vote on behalf of the DC at the AGM or any GM.

So the provisions of Clauses 13.47 to 13.50 (as amended below) of the proposed draft 2019 Constitution, suitably amended to reflect the fact that they now apply to District Councils, should be inserted after Clause 12.36 as Clauses 12.37, 12.38, 12.39 and 12.40, under the heading of "District Council Voting Rights".

Additionally, the definition of the word "Delegate" in Appendix A, "Definitions" of the draft 2019 Constitution, should be amended by adding after the word "sub-Branch" the following words: "or District Council"

Clause 13.47 of the draft proposed 2019 Constitution, states that only the "Delegate" of a sub-Branch may be present at the AGM, but not the alternate delegate. Why not? Traditionally, both the delegate and the alternate delegate have been in attendance as it gives them the opportunity to discuss issues and both be across what is happening at the AGM, and for the alternate delegate to relieve the delegate should the need arise that the delegate needs to excuse themselves from the meeting for a short time or longer. The exclusion process of only the Delegate attending the AGM is not a cost cutting measure, rather it's effect is the opposite, as both the delegate and the alternate delegate will be in attendance at State Congress. This clause must be changed to allow both the delegate and alternate delegate to attend the AGM and any GM, but yes, only the Delegate is to speak and vote, unless the Delegate is absent from the room, in which case the alternate delegate may speak and vote as per the definition of "Alternate Delegate" in APPENDIX A.

So in Clause 13.47, the word "one" should be deleted and be replaced with the word "both".

9. With the position of "Treasurer" having been deleted as one of two separately voted for positions, (the other position being that of President) in the new draft 2019 Constitution, and the title of "Treasurer" being replaced with a Director who will become the "Chair of the Finance Committee", Bundeena would submit that such a proposition could well produce some apparently unforeseen difficulties.

Whilst it is recognised that those Service Members seeking election as a "Director", and who hold the requisite qualifications to be appointed as the "Chair of the Finance Committee", would no doubt include such information in their short "biographical information" for election, there is no guarantee whatsoever that such nominee/s are going to be successful. What would happen if say, three or four of up to fifteen or so candidates, actually hold the qualifications, but none of the three or four are successful in being elected as a "Director"? There could well be a situation where there is no Director elected who holds the requisite qualifications.

It would seem to be a much more sensible and certain process that either the position of "Treasurer", or "Chair of the Finance Committee" (whichever), be a separately elected position, voted on by all the Service Members (same as for the position of President), which would satisfy the "one member, one vote" requirement of the Act. Suitably qualified applicants could nominate for the position, and also be able to nominate for election as a Director. One of them would then definitely be elected to the separately elected position, as it would be a separately voted for position, and those unsuccessful candidates might or might not be successful in being elected as a Director, and contribute in that way.

The process outlined immediately above would appear to be the only mechanism available to ensure the election of a "suitably qualified candidate" as "Treasurer" or "Chair of the Finance Committee", whichever is the preferred title.

10. Appeal against RSL NSW Tribunal Disciplinary Recommendation and/or Board Disciplinary Resolution contained in the 2019 draft Constitution.

It would be Bundeena's submission that in the interests of procedural fairness and independence, there must be an Appeal to the National Tribunal as provided for in the current Constitution at Clause 12, against any RSL NSW Tribunal Disciplinary Recommendation and/or Board Disciplinary Resolution.

11. There appears to be an interchangeability in relation to the words "RSL Auxiliary" and "Auxiliary member" and "Auxiliaries" within the proposed new 2019 draft Constitution.

An "RSL Auxiliary" is what used to be titled a "Women's Auxiliary", but that title was changed by a vote of Women's Auxiliaries and then Congress (which is still controversial) in 2018. Thus whenever the words "RSL Auxiliary" or "RSL Auxiliaries" are used, it has, since 2018 Congress, only been in relation to the previous "Women's Auxiliary", and not to describe any other "Auxiliary" of a sub-Branch.

In the proposed new Constitution, the title seems to be being used for all and any "Auxiliaries" of a sub-Branch or of RSL NSW. In Bundeena's case, we also have a very strong and well run "RSL Day Club", which is now hard to define, and seems to be included as an "RSL Auxiliary" or as an "Auxiliary", or as one of a number of "Auxiliaries".

If it is the intention, as seems to be the case when the provisions of Clause 8.2 are examined, that all previous members of a "subsidiary" are to be "Auxiliary members", then what would be the title of the previous "RSL Auxiliary" (aka Women's Auxiliary); they seem to have had their title taken over and usurped within the Constitution, seemingly to leave them "nameless". Day Clubs, Youth Clubs, etc., are not so badly affected. When the definition of "Auxiliary Member" in the proposed new Constitution is examined, it means: "any person who was a member of an RSL Auxiliary immediately before the Commencement Date". Thus only members of the "RSL Auxiliary" (aka Women's Auxiliary") who were members prior to the Commencement Date fall within the definition. That also raises the question of whether such membership category as "Auxiliary Member" is to be granted to people who join an RSL Auxiliary after the Commencement date?

The current Constitution at Clause 39, (and Clause 32.3) provides for "subsidiaries", and allows them to be established by RSL NSW or by a sub-Branch, and any so established are to be provided with a "Charter". Both RSL NSW and the sub-Branch are given control over any "subsidiary" so established. The word "Subsidiary" is very clearly defined in the "Definitions" clause of the current Constitution, but doesn't even appear in the new proposed Constitution "Definitions" at Appendix A, although the words "subsidiary" and "subsidiaries" do appear in a few places in the draft 2019 Constitution. The word "Auxiliary" though is defined in the proposed draft 2019 Constitution to mean "an Auxiliary of members which is part of a sub-Branch; formed in accordance with and governed by this Constitution", which essentially lumps all of the previous "subsidiaries" under the one heading of "Auxiliaries".

It should also be noted that in relation to the word "members" used in the above definition, and elsewhere in the body of the proposed new Constitution, that it is not defined within the "Definitions" in Appendix A. In Bundeena's case, whilst a number of the members of our Day Club and RSL Auxiliary are Affiliate Members of the sub-Branch, many others are not. (This has seemingly mainly had to do with the fact that as an Affiliate Member, they have to pay the prescribed membership subscription, and as a member of the Bundeena RSL Auxiliary, they have to pay another prescribed membership subscription to belong to the subsidiary - so they are "double paying" which is an impost).

Also, in the current Constitution, the definition of "subsidiary" includes District Council, Chapter, RSL Auxiliary, Youth Club, Day Club, or other body . . .".

Whilst the current Constitution is thus very clear in relation to the definition, establishment and control available over any "subsidiary", the new proposed 2019 Constitution is vague, ambiguous and very confusing, particularly in relation to the apparent interchange use of the various words, and needs to be addressed, otherwise there is no certainty or clarity as to how they are to be established or controlled, and in relation to a sub-Branch, the control and disciplinary options available.

As noted above, under the current Constitution, a District Council is a "subsidiary", (obviously of RSL NSW), and a "Chapter" is also a "subsidiary", (but obviously of a sub-Branch), so as a part of RSL NSW, how are they to be described?

This matter also affects Clause 17 "Auxiliary Member" of Appendix B.

This all has to be made very clear and unambiguous, particularly in relation to the establishment, control and disciplinary provisions applying and available to a sub-Branch, otherwise forget about them being "members" of a sub-Branch, and simply make them all an "auxiliary" of RSL NSW, with all establishment, control, discipline, supervision and adherence to fund raising requirements falling squarely on RSL NSW.

It also needs to be noted that RSL Day Clubs have "members of the public" as elderly attendees or "members", as well as family members (mainly widows) of veterans, and veterans themselves attending, so just how those "members of the public" might be affected by the definitions of "Charitable Purpose" is yet to be explained.

12. The provisions of Clause 21.8 (regarding the replacement of a "Delegate" or "Alternate Delegate" on one (1) day's notice to the State Secretary) from the current Constitution (suitably amended to reflect AGM and GM's) need to be inserted as sub-Clause 25.a) of Appendix C - Members' Meetings Conduct and Voting Procedure. Otherwise District Councils and/or sub-Branches may be disenfranchised, by not having both their Delegate and Alternate Delegate available.

13. Life Members MUST be recognised as "National Members" - it is that recognition which gives Life Membership its interstate portability. It needs to be inserted in Appendix B under "Membership Awards".

Additionally, the provisions of the "Awards" Clause of the RSL National By-Laws available to deserving members also needs to be inserted in Appendix B, unless it is the intention to include "Awards" in OPP's. If this is the intention, then it needs to be clearly stated, otherwise members are unaware of what is to happen with such matters, which again reinforces why the "suite" of OPP's, and SOP's should have been made available at the same time as the first draft of the proposed new 2019 Constitution, so that members are under no illusions as to what provisions are within the "suite" or the Constitution, and which are not, and can take the appropriate remedial action.

The same situation as immediately above applies with the "badge" and who owns it, and what is to happen in relation to a member's badge should they resign, or otherwise cease membership of the RSL. Such information and requirements must be nominated in this proposed new draft 2019 Constitution.

14. In the 2019 draft Constitution, there is no provision for the disciplinary measures a sub-Branch can take in relation to its members or subsidiaries (or Auxiliaries). RSL Auxiliary members are not necessarily members of the sub-Branch, so unless a sub-Branch has some constitutional control provided, they are in no position to discipline any such Auxiliary member.

Clause 11 of the current Constitution provides the Disciplinary powers of a sub-Branch in relation to its members, and should be replicated, together with the relevant provisions of the current By-Laws.

15. With the Elected Directors of RSL NSW proposed in the 2019 draft Constitution to be representing the "whole of the League in NSW" and no longer representing the "Southern Country", "Northern Country" or "Metropolitan" Districts, the opportunity for some Directors to become intimately aware of the special needs and concerns that exist in any of those areas will be lost. With that "loss", essentially the members in those areas are being disenfranchised and having the raising of any concerns specific to their areas made that much more difficult.

Whereas with the existing "District" representation by specific Directors elected by the members in those very areas, contact with the appropriate Director/s to raise any area specific concerns was well known to all. The new proposed system of Elected Directors representing the "whole of the League" will mean that members wanting to raise area specific issues, could well be dealing with "Smith" this week, "Jones" next week and "Brown" the week after, etc.. Thus members will not be certain as to whom they should address concerns, and could well end up with the typical Public Service/big business call centre problem of not getting to speak to the same person about a previously raised issue, and having to start from the beginning every time. And if the response from ANZAC House to that immediate last statement is that "well, they can speak to the same person each time", then that simply reinforces the need for specific Directors to be responsible for specific areas.

It also means that no Elected Director gains an intimate knowledge of who is on the various District Council or sub-Branch Executives in specific areas; who they might speak to about an issue; who might have knowledge about the other side of an issue; what are the issues of concern in specific "Districts" and why, etc., etc.. So the Board becomes the poorer in knowledge as a consequence, and will be in danger of losing touch with the membership base.

The previous method of having specific Directors for specific "Districts" also supports the "one member, one vote" requirement of the Act, as only the Service Members in a specific "District" would elect specific candidates standing only in that "District", to represent them. This is an identical process to Federal and State Lower House elections which are also based on a "one person, one vote" process. The establishing of Electorate boundaries, and the boundary "redistribution"

process are of course aimed simply at preserving the "value" of the "one man, one vote" process in Electorates. The USA operate similar processes and procedures based on similar principles.

Under the current processes a State Councillor/Director had to make a real effort to assist the members in their "District", otherwise they were at serious risk of not being re-elected. Under the now proposed system, Elected Directors might not be overly concerned at not dealing with an issue, or not gaining a satisfactory outcome for members regarding an issue, as they aren't dependent on the members in a defined area for their election or re-election, rather they are dependent on the membership as a whole, many of whom may not even be aware of the unsatisfactory nature of an issue in another "District" of the State. It could even result in members in one "District" lobbying members in the rest of the State not to vote for a particular Board candidate due to unsatisfactory outcomes of particular issues.

If Elected Directors representing the "whole of the League in NSW" was a more desirable process than the tried, trusted and proven process of "District" representation, then why did the most recent ex President find it necessary to let the membership know in his President's Update 07-19, that "four of the ten Director positions are filled by Directors from regional NSW"; it must obviously have been seen as an important issue, but, can anyone guarantee that such "regional" representation will always be the case?

It has been said that we are a unique organisation, and a unique organisation sometimes needs unique processes.

16. A provision MUST also be inserted in the proposed new 2019 Constitution ensuring that any proposed changes to the "charitable status" of RSL NSW, say to become a Public Benevolent Institution, is a matter that cannot be done without the approval of Delegates at an AGM.

Suggested wording of an appropriate Clause would be:

"The Charitable status of RSL NSW may not be changed without approval of a motion to do so by delegates at an Annual Congress or Extraordinary Congress".

17. In relation to the "Appointment of sub-Branch Trustees" contained in the draft 2019 Constitution:

Sub-Clause 13.52 (c):

This sub-clause should read "three Service Members and RSL Custodian (as Joint Trustees)".

The provision has always been three sub-Branch Trustees plus RSL Custodian if RSL Custodian is to be a Joint Trustee. In Bundeena's case, RSL Custodian is only a Joint Trustee in relation to the "Sale proceeds and Insurance Payout", and the three Trustees of the sub-Branch continue as the Trustees in relation to the Personal Property of the sub-Branch. Three trustees are thus the minimum that the sub-Branch can have for the Personal Property, and it would be incongruous that one of those three Trustees would need to step aside in dealings with the "Sale Proceeds and Insurance Payout"

Trust. It would also be a very costly exercise to have to prepare and register amended Trust Deeds to change the number of sub-Branch Trustees from "three" to "two", and a needless expense, which would certainly apply to quite a number of sub-Branches.

The reality also is that to date there have been quite a number of minor dealings with Ethinvest Pty. Ltd., based on recommendations made by them to the Trustees in relation to various shareholdings and other investments, including Term Deposits. Such matters have usually required decisions to be made quickly due to falling interest rates and stock market volatility, particularly in relation to share reinvestment offers and the most recent Term Deposit expiry and reinvestment. Bundeena's experience to date has shown that RSL Custodian simply cannot react and make needed decisions within reasonable time frames, so having three Trustees making such minor decisions, and able to do so rapidly, would appear to be a much more satisfactory and secure arrangement than simply having two Trustees making such decisions.

Sub-Clauses 13.53 to 13.57:

It is Bundeena's understanding that for a "General Trust" there is a "settlor" who "settles" money in the Trust, for example, say \$10 to actually open the Trust. But with "Charitable Trusts" there is no "settlor". However, there is an "appointor", who in RSL NSW's case is the President of the sub-Branch (as per 13.53). But in the case of RSL NSW and its sub-Branches, the "appointor" (i.e., the President) does not have the usual powers of an "appointor", as there is no power to "remove" a Trustee as is usually the case. The "appointor" President's only powers are to "appoint" Trustees approved by the sub-Branch.

Bundeena also understands that a "settlor" is not to benefit from the Trust. If that is the case, then it would be quite clear that the President of a sub-Branch cannot be the "settlor".

Thus there is no valid reason why a President cannot also be a Trustee, and there are quite a number of such arrangements in place in sub-Branches. Again, it would be a totally avoidable and needless expense to have to amend and re-register Trust Deeds simply to remove a President as a Trustee, and appoint another sub-Branch member in their place.

Therefore in sub-Clause 13.54 the words "other than the President" need to be deleted, and in sub-Clause 13.57 the words "as the settlor of the sub-Branch Trust" also need to be deleted.

18. In relation to Clause 6 of Appendix C, and sub-Clauses 9.21(b) and 12.44(a) of the draft 2019 Constitution, it would seem that the proposed new Constitution envisages Service Members attending an Annual General Meeting or General Meeting where elections are to be held, or in relation to the appointment or removal of Directors. That would appear to be an absurdity given that there are some 35,000 Service Members. The logistics of such a process, and the expense, is beyond comprehension.

It is assumed that in relation to the "removal of Directors" this is due to the fact that as Directors are elected by the Service Members, they should only be "removed" by the same process.

In Bundeena's view it would be a much simpler, and more cost effective process, for all such elections and appropriate "removal" processes to be undertaken by a Postal Vote system, with the results simply being announced at an Annual General Meeting or General Meeting, or preferably, to have the "one member, one vote" process removed from the Act, and revert to the process that has successfully operated for some years, where sub-Branches considered the candidates standing in their "District" and voted as a sub-Branch.

19. In relation to Delegates to Annual State Congress, Annual General Meeting and General Meetings under the draft 2019 Constitution:

It is imperative in Bundeena's view that the provisions of paragraphs 7, 8 and 9 of the current By-Law 12, "Duties and Responsibilities of Annual State Congress Delegate" be replicated either in the proposed new 2019 draft Constitution or in the OPP's or sub-Branch and District Council SOP's to ensure that the Delegates know exactly what their responsibilities are to their sub-Branch and/or District Council.

There has been some discussion over the last 7 months or so, that Delegates should not be bound by the directions of their sub-Branch or District Council, and should be free to make up their own minds at an AGM or GM, however that raises all sorts of issues. Delegates are elected for the express purpose of representing their sub-Branches or District Council at State Congress, Annual General Meetings and General Meetings. It is a matter for the sub-Branch to instruct them. By reference to Paragraphs 7, 8 and 9 of current By-Law 12, a sub-Branch is not formally required to issue directions to their Delegate in relation to all Motions or Resolutions, it is a matter for a sub-Branch to decide. But where such directions are issued in relation to all, or just one (1) or more of the Motions or Resolutions to be considered, Delegates are duty bound to follow those Directions, and as By-Law 12.7 states, "irrespective of his/her personal opinion". To do otherwise, and mandate that on Motions and Resolutions, at State Congress, AGM or GM's, delegates may vote as they see fit, is to totally obviate the "Delegate" process, and should be accompanied by deleting the necessity for such "Delegates", and throwing open State Congress, AGM's and GM's to all "service members of RSL NSW", so that the majority vote of all members is ascertained, and all members are given the opportunity to speak and vote. The costs and logistics of such an exercise is huge, and would remove enormous sums of money from the organisation which would otherwise go to the Charitable Purpose.

However, it is possible that such a process could be undertaken by Postal Ballot, with views supporting the motions or resolutions put into the Notices of Motions as currently occurs. But all of that would need to be sent to all service members, which again would incur huge costs, and a major administrative effort to properly count all of the votes for and against each and every motion.

Whilst the current process might not be perfect, it has been honed over many years, and has been shown to be successful in representing the views of the vast majority of members. It shouldn't be changed simply for change's sake, unless material and demonstrable benefits can be shown to exist.

20. In relation to the proposals in Clauses 33 to 40 of Appendix C of the 2019 draft Constitution, to provide for the appointment of "proxies", Bundeena is vehemently opposed to such a process.

The very reason that "Alternate Delegates" are elected and exist is so that they can step in and replace the "Delegate" should the necessity arise, either before they both leave to attend a Congress or AGM or GM, or whilst in attendance. This ensures that sub-Branches and District Councils always have a voice at such meetings, and obviates any need for "proxies".

It should also be recognised that if "proxies" are to be allowed, then it should not be the "Delegate" appointing a "proxy" but rather it should be the sub-Branch or District Council. "Delegates" are in essence the "proxy" of a sub-Branch or District Council, and thus are in the main, representing the views of their sub-Branch or District Council, so it should be the sub-Branch or District Council who appoint any other "proxy" and issue the appropriate voting directions.

And, as Proxies must be submitted ahead of time and received no later than five (5) days out from the Meeting they apply to, there is time available to a sub-Branch or District Council to elect a replacement "Delegate" if for some reason, neither the "Delegate" nor the "Alternate Delegate" can attend.

Under the provisions of sub-Clause 21.8 of the current Constitution, it has long been available to sub-Branches and Districts to nominate a "change of delegate" by giving notice to the State Secretary no later than one (1) day out from a State Congress or AGM, and in paragraph 12 above, it has been recommended that the provisions of sub-Clause 21.8 of the current Constitution must be repeated in the draft 2019 Constitution.

The attendance of all sub-Branches at State Congress, AGM's and GM's is a very desirable objective in an organisation such as RSL NSW. The availability of nominating a "proxy" might be seen as an attractive alternative to attendance by some smaller sub-Branches and could well result in much smaller attendances at such meetings, which is a highly undesirable outcome. Given the availability of funding via the "sub-Branch Support Fund", the cost of attendance at such meetings should not be a factor, but the will and desire to attend is not a matter that can simply be overcome. However, every effort should be made to encourage the attendance of sub-Branches, rather than providing options that facilitate non-attendance.

But if the appointment of "proxies" is to be maintained by the Board, then in Bundeena's view any such "proxy" should only be to another sub-Branch via that sub-Branch's Delegate. Neither the Chair nor any Director should be able to be nominated as "proxies". But again, if the nomination of the Chair and Directors as "proxies" is to be maintained, then at the very least, any sub-Branch nominating a "proxy" should be required to nominate how such "proxy" is to vote on all of the various motions or resolutions, and if such nomination is not made, such "proxy" form should be null and void.

It is completely understood that normal business practice is to be able to appoint the Chair and any Director as a "proxy" but it is also normal business practice to be able to appoint "any person" as a "proxy". And at most business Annual General Meetings the appointment or re-appointment of

directors and the passing of the "remuneration report", is the usual business. Other motions or resolutions, whilst not being regular features do occur from time to time, but many such processes are more expeditiously processed by way of an Extraordinary General Meeting.

It is also normal business practice for Directors to retire by rotation, and if they wish to offer themselves for re-appointment to re-nominate. Retirement by rotation is an excellent method of ensuring continuity of the corporate knowledge base and any business being dealt with by a Board. Retirement every three years of the entire Board, coupled with not being able to remain a Board Member for more than nine years, (as is the case under the draft 2019 Constitution), could well become a recipe for disaster at the end of nine years if there are very few or no retirements of Directors during the nine years. Perhaps RSL NSW should give some thought to approximately one third of the Board retiring by rotation every year, after the initial first three years, and offering themselves for re-election, to maintain continuity of corporate knowledge and the business of the corporation within the Board. The cost benefit of such a process should be a consideration.

21. In relation to the sub-Heading "District President's Council", being sub-Clauses 12.37 to 12.61, of Clause 12 "District Councils", Bundeena notes that the SMDC delegates have recommended that there should not be a "District President's Council", primarily on the basis that it simply adds another layer of administration to RSL NSW, which adds to the administrative costs, which are now becoming burdensome, and are reducing the funds available for the Charitable Purpose.

However, should the Board disagree with such recommendation of SMDC, then Bundeena would draw attention to the following amendments which need to be made:

In Clause 12.39(a): the words "regarding matters" should be deleted as they are simply a repeat of the previous word "matters".

In sub-Clause 12.47: it is recommended that the words "provide to the Board a schedule" should be replaced with the words "inform the Board with reasonable notice", on the basis that if the District President's Council is to carry out the functions given to it, there will be circumstances arising when meetings may need to be arranged on reasonable notice, over and above scheduled meetings. Additionally, there is no prescription in relation to the "schedule" as to how far ahead any such schedule is required.

In sub-Clause 12.50: there is no direction as to what is to happen should there be an equality of votes. Currently, the general situation prescribed by the By-Laws is that Chairpersons do not have a "Casting Vote", so in the event of an equality of votes, the matter is decided in the negative. Such a prescription should be added to the sub-Clause for proper guidance.

22. In Clauses 13.76 and 13.77 regarding "Board Consent", Bundeena notes that the dollar amounts specified have been established at the levels nominated now for a number of years. Perhaps the Board would give some consideration as to the adequacy of those amounts given the time that has

elapsed since they were last set or amended. An increase in line with inflation over that period rounded up or down to an appropriate amount is recommended.

23. In relation to Clause 17, "Winding Up and Dissolution", of the draft 2019 Constitution, an additional sub-Clause 17.4 should be added in identical terms to that contained at sub-Clause 42.2 of the current Constitution for the security and benefit of sub-Branches.

24. Bundeena believes also that RSL NSW should publish annually, a complete list of those employees, their positions and annual salary, where such salary is in excess of \$100,000 per annum.

25. Bundeena is also of the view that the following should be enshrined either in the Constitution, or in OPP's:

"RSL NSW will publish on the RSL website and update as necessary:

(a) an organisation chart;

(b) the "Delegations & Authorities Register" clearly indicating the positions of officers, including all members of the Board, who can approve expenditure, and the limitations of such approvals;

(c) the cost benefit analysis for all new staff positions created; and

(d) business and performance objectives for RSL NSW together with a rolling five (5) year Strategic Business Plan, which should inform the budget process. Reports on a six monthly basis to be provided to members, and a Report to be provided at each AGM."

26. Bundeena also notes that in Appendix A "Definitions", the "Commencement Date" for the proposed new draft 2019 Constitution,(provided it is adopted at Congress in October, 2019, or later), is to be 1 December, 2020.

So consequently, given that "Elected Director" is defined in Appendix A to mean "a Service Member elected as a Director of RSL NSW in accordance with the provisions of this Constitution", and that "Director" is defined to mean "a current Elected Director or a current Independent Director of RSL NSW", and that "Election Year" is defined in Appendix A to mean "2020 and every successive third year after 2020", and given that under the current Constitution an election is due to be held in 2020, with (presumably) the results to be announced at the State Congress in October, 2020, there won't be any "Elected Directors" until after 1-12-20, when the first "election" is held "in accordance with the provisions of this Constitution", (presumably 2023 - see paragraph immediately below) but there may be one or two Independent Directors if any are actually "appointed to the Board in accordance with this Constitution" (as per the definition of "Independent Director" in Appendix A) on or after 1st December, 2020.

Bundeena has not had the time necessary to analyse the consequences of the immediate above paragraph in relation to the entire draft 2019 Constitution, but does note the mention of "Elected Director" at sub-Clause 9.11 which states: "An election for Elected Directors will be held in the three months prior to the Annual General Meeting in an Election Year in accordance with the Election Procedures." Bundeena also notes that in accord with the provisions of sub-Clause 9.11, that the first "election" will be in 2023 "under this Constitution" as "this Constitution" does not commence until 1 December, 2020, thus there can be no election under the "Election Procedures" of "this Constitution" as it will not have any force until 1 December, 2020.

Additionally, the "Election Procedures" have not yet been sighted, presumably they will be in the OPP's, but in Bundeena's view should actually form a part of "the Constitution" in accordance with the provisions of Part 2, Section 5, sub-section (3) of the new Act: ". . . the Directors are to be service members who are elected, in accordance with the RSL NSW Constitution, as directors by the service members." Therefore the definition of "Constitution" in APPENDIX A, should be amended by adding the words: "and the Operational Policies and Procedures, District Council Standard Operating Procedures and the sub-Branch Standard Operating Procedures" after the word "appendices".

27. Bundeena, having been one of the sub-Branches assisting SMDC to compile its response to the proposed draft 2019 Constitution, endorses the amendments to the draft Constitution contained in its "feedback" document.

Signed
Paul Griffiths
President
and Trustee

Signed
John Greig
Vice President
and Trustee

Signed
Steve Greening
Secretary/Treasurer
and Trustee