

Senses Foundation Inc

A Summary of Changes Contained within the New Constitution Approved by Members at the Annual General Meeting, 13th October 2010

Prepared by the Chief Executive Officer

Disability has been defined

Disability was not defined in the old constitution. The new constitution now contains the following definition.

“Disability” means any continuing condition that restricts everyday activities. The Disability Services Act (1993) defines “disability” as meaning a disability:

- *which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments;*
- *which is permanent or likely to be permanent;*
- *which may or may not be of a chronic or episodic nature; and*
- *which results in substantially reduced capacity of the person for communication, social interaction, learning or mobility and a need for continuing support services.*

And specifically includes the disability of being Deafblind.

A Statement of Governing Principles has been included

The old constitution did not contain any statement of the governing principles as a guide to the Senses Foundation as a provider of services to people with disabilities, and to make us fundamentally different from “not for profit” organisations like tennis clubs etc. The new constitution has the following governing principles.

Senses Foundation believes that each person with a disability is unique and a person of value and is entitled to the same rights and privileges as other Australian citizens. Senses Foundation is committed to ensuring that all clients have the opportunity to develop and maintain skills and the opportunity to participate in activities that enable them to achieve valued roles in the community. They may have needs for additional support and education to enable them to fully exercise those rights and responsibilities. Senses Foundation agrees with the principles and objectives of the Disability Services Act 1986.

Senses Foundation acknowledges the right of each person with a disability to be a valued member of the community and will encourage its clients to be active participants in their community, to access community facilities and contribute to community life.

Senses Foundation is committed to ensuring all clients retain maximum control over their own lives by having primary involvement in, and influence over, decisions that affect them.

Senses Foundation is committed to ensuring all clients receive services that are designed and delivered around their individual circumstances, needs and preferences by employees who are properly trained and supervised.

Senses Foundation Inc

Senses Foundation is committed to excellence, to continuous improvement, to the use of contemporary practises and to innovation in its governance and management of the organisation as a whole and in the provision of services to its clients.

The Objects have been changed

The objects (that is, the focus of the Senses Foundation and its overall purposes for existing) in the old constitution focused entirely on people who were blind, deafblind or multi sensory impaired. The objects of the new constitution include all people with disabilities as follows.

The Objects for which Senses Foundation is established are to:-

Pursue charitable purposes only and apply its income solely to promoting those purposes.

Enable people with disabilities to meet their needs and aspirations and to achieve and maintain a valued quality of life as part of an accepting community and society.

Provide or arranges a range of services and other facilities and opportunities and support and enhance the requirements of people with disabilities.

Collect, collate and disseminate information to further and better promote the Objects.

Undertake and foster research so as to improve the services and facilities provided by Senses Foundation to people with disabilities.

Advocate within the community to encourage an inclusive, and accepting community and society for people with disabilities.

Develop, construct and otherwise maintain appropriate facilities for people with disabilities and the staff and volunteers who are employed by Senses Foundation.

Generates income to support the Objects.

The property and income of Senses Foundation must be applied solely towards the promotion of the Objects and no part of that property or income may be paid or otherwise distributed directly or indirectly, to members, except in good faith in promotion of these objects.

Two new Powers of the Board have been added

The old constitution failed to contain the powers necessary to carry out certain functions which a modern organisation needs to undertake. These are as follows.

To enter into any arrangements with any government, municipal, local or other authority or any other society or body that may seem conducive to the objects of Senses Foundation or any of them and to obtain from any such government or

Senses Foundation Inc

authority or society or body any rights, privileges or concessions and to carry out exercise and comply with any such rights, privileges or concessions:

To invest any moneys of Senses Foundation not immediately required on any security authorised by law for the investment and generally manage, invest and expend all moneys and property belonging to Senses Foundation as considered necessary or convenient for any of the objects of Senses Foundation.

The ability to expel Members has been included

The old constitution did not contain a procedure which we could lawfully expel a Member who was acting in an injurious or prejudicial manner towards Senses Foundation. While this has never occurred in the past, it is necessary for the Board to be able to protect Senses Foundation should this occur in the future.

The Board may by resolution passed in favour reprimand, suspend or expel a member for:

- *Failing to comply with the Constitution or regulations; or*
- *Conduct injurious or prejudicial to the interest of the Senses Foundation.*

Membership has been limited to individuals over 18 years of age

The old constitution was silent on any age limit for members. As a member may be elected to the Board and be responsible for governing the functions of the organisation, it was felt appropriate for a member to be at least 18 years of age.

Board terms have been limited to three consecutive (three year) terms

The old constitution was silent on how many terms a Member would be able to sit on the Board. It is felt appropriate from a corporate governance perspective and to otherwise ensure the board is rejuvenated as often as possible that there be a limitation on the number of consecutive terms a Board Member could remain on the Board. Thus the total amount of time a Board member may serve consecutively has been limited to nine years.

Senses Foundation Inc

The Duties of Board Members have been defined

The duties of the Board were not fully defined in the old constitution. The new constitution is consistent with the principles of good governance and now has the following duties of the Board defined.

Board Members and former Board Members must not knowingly or recklessly make improper use of their position, or information acquired by virtue of their position so as to gain, directly or indirectly, any financial benefit or material advantage for themselves or any other person or to cause a detriment to the Senses Foundation.

Board Members of Senses Foundation must;

- *act honestly and in good faith*
- *exercise reasonable care and diligence*
- *ensure confidential information (non-public information) received or acquired by a Board Member in the course of the exercise of their duties remains the property of Senses Foundation and is not disclosed to other persons not holding a Board Member's position within Senses Foundation*
- *comply with Senses Foundation's code of conduct and*
- *participate in training programs and performance reviews and police clearances as required by the President.*

Some "Other Powers of the Board" have been included

The old constitution was silent on additional powers that are necessary for the effective day to day operations and functions of a modern organisation. The new constitution now sets out these additional powers as follows.

To enter into any contracts on behalf of Senses Foundation;

To authorise the Common Seal of Senses Foundation to be affixed to any document;

To appoint sub-committees for any purpose whatsoever within the limitations of the objects of the organisation and subject to such conditions as the Board shall impose. (All or any of the Board's powers may be delegated to any such sub-committee.) Each sub-committee should preferably have a Board Member as a member thereof and the Chief Executive Officer shall attend all sub committee meetings as an ex officio member. The President shall be an ex officio member of all committees.

To revoke at its pleasure any appointment made and dissolve at the Board's discretion, any sub-committee formed;

To make, repeal or alter by-laws as to the management of Senses Foundation and the affairs therefore and as to the conduct of the business of the Board or any sub-committee or as to the matters or things within the powers or under the control of the Board;

Senses Foundation Inc

To open and operate on accounts at any bank or financial institution and authorise the signature and endorsement of cheques, or to delegate this authority to persons specified by the Board.

The frequency of Board Meetings has been increased from 3 per financial year to 5

It was felt that the role of the Board could not be effectively undertaken with less than five meetings a year and therefore this has been changed in the new constitution.

Email Voting by Board Members has been included

The management of Senses Foundation now requires the Board to adopt efficient and modern methods of meeting and determining matters. As a result, the consideration and voting on resolutions outside regular and traditional Board meetings is often required. The new constitution allows for this to occur as follows.

Voting by Board Members by email shall be allowed provided that the Chief Executive Officer shall:

- *send an email to each Board Member detailing the resolution;*
- *maintain a record of all Board resolutions received by email; and*
- *ensure that the resolution is noted at the subsequent Board meeting along with the proposer and seconder.*

The quorum for Board Meetings has been changed from 5 to 4 Board Members

A group of four Board Members is considered as the minimum number thought to be able to effectively undertake the business of the Board on those occasions when not all Board Members are able to be present.

The requirement to have an Audit and Compliance Sub Committee has been removed

Under the principles of good corporate governance, the oversight of the organisation's audit and compliance functions are primary roles of the Board and are undertaken within the full Board, not at a sub committee level. In any event, if the Board wishes to form a sub committee it may still do so under the terms of the new constitution.

The Chief Executive Officer has been included in the attendees of all Board Meetings (without voting rights) unless otherwise directed by the Board

Good corporate governance requires that the person charged by the Board to manage the organisation be present at Board meetings unless directed otherwise by the Board.

Senses Foundation Inc

The declaration of any pecuniary interest by Board Members has been included

Good governance required that any conflict of interest is declared at a Board meeting and that the Board Member with the conflict of interest may not participate in related decisions.

Any Board Member who has any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation of, the Board shall, as soon as he becomes aware of his interest, disclose the nature and extent of his interest to the Board.

Sub-rule 13.8(1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact that the Board Member is a member of a class of person for whose benefit Senses Foundation has been established.

Where a Board Member discloses a pecuniary interest in a contract or proposed contract in accordance with this rule, or his interest is not such as need be disclosed under this rule:

- *the Board Member may participate in any Board discussions associated with any such contract or proposed contract, but shall not vote on any matters which relate to the interest:*
- *the contract is not liable to be avoided by Senses Foundation on any ground arising from the fiduciary relationship between the Board Member and Senses Foundation; and*
- *the Board Member is not liable to account for profits derived from the contract.*

The Board shall cause every disclosure made under this rule by a Board Member to be recorded in the minutes of the Board Meeting at which it is made.

Reference to the appointment of a Patron has been included

Senses Foundation has always had a patron and it was felt appropriate that this significant person be appropriately identified within the new constitution.

**Debbie Karasinski
Chief Executive Officer
October 2010**