

## Proposed amendments to VBA Articles of Association for the 2018 Annual General Meeting

### Election of the Secretary

The VBA structure is a company, and as such the VBA is required to comply with the Corporations Act (2001). It has come to the attention of the VBA Council that the articles in their current form do not comply with Section 204D of the Corporations Act (2001) which states that the Secretary shall be appointed by the directors so the election of a Secretary by the members at the AGM is not a valid action.

The council has consulted with Professor Emeritus Michael Bryan BA PhD, BCL MA who has provided informal legal advice to the VBA Council from time to time. Prof Bryan has suggested council consider the following points in drafting amendments:

1. It is usual (and almost invariable in the case of public corporations) for the secretary *not* to be a board member but instead to be accountable to the Board. But I have asked around various corporate lawyers and ASIC friends, and have been informed that that it is not uncommon for a secretary of a private company to be a board member.
2. He suggests we may like to consider: "The Council shall appoint a financial member, including councillors but excluding the Officers, as Secretary of the Company." This permits appointment of a Secretary without prior election as a councillor, and would increase flexibility of appointments.

The VBA Council has considered the above and consequently is recommending to the members that the alterations to the Articles of Association should allow flexibility with the appointment of company secretary and have agreed to propose amendments to the articles in line with option 2 above.

This will mean an alteration to Clause 31 as set out below and these changes will be proposed to the members at the 2018 AGM as a **Special Resolution**:

Clause 31 currently states:

*The Council shall consist of the President, two Vice-Presidents, the Secretary, the Treasurer, four Ordinary Councillors and four Special Councillors. Ordinary Councillors must be financial members of the Company. Special Councillors must be financial members of an affiliated club in that zone of Victoria, as prescribed in the regulations, in which they have nominated for election. No employee or other person holding an office of profit under the Company shall be eligible for election to the Council. The duties of members of the Council shall be determined from time to time by the Council.*

Clause 31 proposed wording:

*The Council shall consist of the President, two Vice-Presidents, the Treasurer, **not more than five Ordinary Councillors and not more than four Special Councillors.** Special Councillors must be financial members of an affiliated club in that zone of Victoria, as prescribed in the regulations, in which they have nominated for election. No employee or other person holding an office of profit under the Company shall be eligible for election to the Council. The duties of members of the Council shall be determined from time to time by the Council. **The Council shall appoint a financial member, including councillors but excluding the Officers, as Secretary of the Company.***

To support the above, an accompanying change to the notes in the articles of association will be required. This will mean an additional Special Resolution as outlined below to amend clause h):

Clause h) currently states

- h) **“Officer” means President, Vice-President, Secretary** and Treasurer of the Victorian Bridge Association elected in accordance with article 33 and includes the meaning assigned to “Director” by section 5(1) of the Act.

Clause h) will change to:

- h) **“Officer” means President, Vice-President and** Treasurer of the Victorian Bridge Association elected in accordance with article 33 and includes the meaning assigned to “Director” by section 5(1) of the Act.

#### EXPLANATORY NOTES:

1. This permits appointment of a Secretary without prior election as a councillor. This will also permit the existing secretary to continue in the interim between the AGM and the first council meeting.

2. Please note that s204C of the *Corporations Act* requires the Council to obtain the written consent of the Secretary to act in that capacity before the appointment is made. The written consent must be retained. This section does not necessitate any change to the VBA Articles of Association but administrative arrangements should be put in place for obtaining and storing the Secretary’s consent to act. Consequently, a draft regulation has been prepared which is detailed on the next page. This regulation will be adopted by council following the 2018 AGM. For completeness, the responsibilities of the secretary have also been outlined in the regulation.

3. Both these changes will be moved by Special Resolution and formally circulated with the Meeting Notice and Agenda. This document is an informational document to ensure members are aware of the changes to election of office bearers which the VBA is legally required to make to amend its Articles of Association.

Enquiries regarding the above amendments may be directed to the VBA secretary: [secretary@vba.asn.au](mailto:secretary@vba.asn.au)

Kim Frazer

VBA Secretary

## **VBA Appointment of Company Secretary Regulations**

1. The VBA Council is responsible for appointing a financial member to act as Company Secretary
2. This appointment shall be made at the first meeting following the Annual General Meeting, and shall be the first order of business of that meeting.
3. The person being nominated as secretary must provide written consent that they are willing to act in this capacity prior to the meeting. This consent will be kept with the ASIC files.
4. Until such time as the appointment is made and ratified by council, the position of secretary will continue to be filled by the existing incumbent.
5. If the current secretary refuses to continue for any reason, or is unavailable, the new secretary can perform secretarial duties provided that he/she has given written consent to act in that capacity, and that the appointment of the new secretary is ratified at the next council meeting.
6. The basic responsibilities of the secretary are outlined below:
  - Agenda and Minutes of all Council meetings
  - Agenda and Minutes of the Annual General Meeting
  - Company correspondence:
    - Correspondence with ASIC
    - Correspondence with the ABF
    - Correspondence with the VBA Foundation Trustees
    - Correspondence with Affiliated Clubs
  - Documentation of VBA Policies and Regulations