

СВІЙ ДО СВОГО



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СВІЙ ДО СВОГО Ukrainian Community Issues – No. 41, 19 June 2018



ASSOCIATION OF UKRAINIANS IN VICTORIA CURRENT CONSTITUTION

A. Current Constitution

i. Correct Constitution

On 5 May 2012, the then President of AUV, Michael Moravski provided a copy of the authenticated AUV Constitution. This copy confirmed the copy provided to me by the late Oleh Bulka (Pro bono AUV Lawyer) was the 'official' Constitution as it is:

- a. Annotated as "*amendment dated 15 September 1985 and 15 September 1986*".
- b. Sealed with the AUV Common Seal.
- c. Certified as the true copy and each page initialed.

This version of the Constitution is available as a Hyperlink on:

<http://ukrainiandirectory.org/Documents/UkiIssues/41%20AUV%20Memorandum%20and%20Articles%201985%201986%20original.pdf>

ii. ACNC and AUV Website version.

The version available on both the Australian Charities and Not for Profit Commission (ACNC) website and the AUV website are annotated only with "*amended 1985*".

It appears the copy of the Constitution as posted on both websites is not the authentic (official) current AUV Constitution.

This version of the Constitution is available as a Hyperlink on:

<http://ukrainiandirectory.org/Documents/UkiIssues/41%20AUV%20Memorandum%20and%20Articles%201985%20ACNC%20website.pdf>

iii. illegible

Both versions of these Constitution are quite difficult to read, as it appears to have been copied over and over several times, including clauses that have been highlighted and copies again making it almost illegible and discourages readability, let alone to understanding.

iv. Current Constitution – re-typed

Over the last 12 months, I have painstakingly re-typed the authenticated Constitution to reflect "*amendment dated 15 September 1985 and the 15 September 1986*" version. There may be minor typographical errors in this re-typed version and will requires to be proof read and corrected if necessary.

This version of the Constitution is available as a Hyperlink on:

<http://ukrainiandirectory.org/Documents/UkiIssues/41%20AUV%20Memorandum%20and%20Articles%201985%201986%20re-typed.pdf>

Should the Executive require a MS Word version of this document, just ask.

v. Corrections

During the course of re-typing the Constitution, a number of changes were made:

- a. The document was sectioned for clarity
- b. Section 4, Clause 15 (d) – the word “amount” was changed to “number”
- c. Section 5, Clause 17 C – the word “effluction” (no such word in the English language changed to “effluxion”.
- d. Section 7, Clause 26 C – the word “effluction” (no such word in the English language changed to “effluxion”.

vi. Constitution Interpretation

The Constitution was written in ‘plain English’, for everyone to understand its purpose, intent and meaning.

1. Legal Opinions

- a. A great deal of reliance is placed on “Legal Opinions” believing that some lawyers opinions are the ultimate decision makers. Unfortunately, lawyers have different opinions, hence reasonableness and fairness should take precedence.
- b. Any person accepting a lawyer’s legal opinions must be mindful it is only one person’s opinion and nothing more than that and cannot be construed to be Law. Most opinions come with a degree of bias depending on their client’s instructions and interpretation of facts, the lawyer’s affiliation with the client and other factors.
- c. *As a Judge in a recent case stated: “the only opinions that counts are mine and mine alone”; meaning the Judge.*
- d. We should well remember, when two persons go into court, both parties’ lawyers inevitably advise their respective clients that they are both right. Unfortunately, only one person will come out of the Court a winner, whereas the other legal opinion suffered from a lack of evidence and credibility.

2. Legal Priorities

The legal system makes it clear that any law, including the AUV Constitution, cannot be “re-engineered” nor an interpretation placed on any word, sentence, paragraph or clause. We can only read and understand the Law to the “Letter of the Law” i.e. accept only the literal meaning as read. It is only the Judiciary that can interpret words and the law in circumstances of ambiguity.

3. Where to from here?

The AUV must, without delay, authenticate the Constitution. In terms of transparency, the Executive must circulate the correct Constitution for the inspection of members.

B. Commentary

1. Accounts

Clause 9 *“True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipts or expenditure takes place and the property credits and liabilities and shall be open to the inspection of the members.”*

NOTE: *“ shall be open to the inspection of the members.”*

Commentary:

Why were members of the Executive Committee, the Treasurer and others denied access to the accounts during the 2017 AUV Administration.

2. Branches

i. General clauses in summary relating to Branch issues.

- Clause 2. b. *A person may be elected as Branch Member.*
- Clause 6 *Members ... right to take part in the social life of the Association...*
- Clause 11 *General Meetingsall membersnotices etc.*
- Clause 21 (b) *Establish Branches in Victoria, regulate their activities and assist them in organization;*
- Clause 25 *Executive Committee may, from time to time, establish Branches throughout the State of Victoria, wherever appropriate for the Purpose of organisation.*
- Clause 32 *Members of Branches may participate personally in Annual and Special General Meetings.*
- Clause 61 *Persons serving as members of the Executive Committee or Commission of Auditors of the Association of Ukrainians in Victorialiabilities,*

Centralya (Essendon)

- a. There is definitely no provision under the Constitution for group of Members under the umbrella of “Centralya”.
- b. It is clear that the “Centralya” is not a Branch or any other entity under the Constitution.
- c. It is clear that the “Centralya” members are not the AUV’s governing body.

3. Membership

i. General clauses in summary relating to Membership issues.

Clause 2 (Objectives)

“The said AUV..... resident in the State of Victoria” (Being specific “Primary Place of Residence”)

Clause 3 (a) (Objectives)

“To represent the Ukrainian Community interest of Ukrainians on Victorian soil.”;

Clause 2. *Membership of AUV shall consist of Ordinary Members, Branch Members,*

Clause 2a. Ordinary Members

“A person his spouse may be elected as an Ordinary Member of the Association”

Clause 2b. Branch Members

A person who resides in or near the localities in which branches of AUV. are established, may be elected as Branch Members by Sub-Executive Committees of branches,

Branch Members shall have the same rights, privileges and obligations as Ordinary Members.

Clause 3a. *Every candidate for Ordinary Membership or Branch Membership shall be proposed by one and seconded by another Ordinary Member, Branch Member to both of whom the candidate shall be personally well known.*

NOTE: As the new Ukrainian arrivals are not “personally well know”, how do they become members of AUV.

Clause 3c. *Election of Ordinary Members and confirmation of Branch Members shall be made by a majority of the Executive Committee.*

The Executive Committee may reject any nomination for Ordinary Membership or any application for confirmation of Branch Membership, without assigning any reason for such rejection.

Clause 7c. *Termination of Membership.*

Clause 8a.i. *Suspend a Member from membership of AUV, for a specified period*

ii. Ordinary and Branch Membership issues

- a. It is clear that there is to be no distinction between Ordinary and Branch Membership.
- b. As a past President stated “In all honesty, I am not sure why the original Constitution had two (2) classes of membership”.

Opinion

- d. It appears that upon initial application for membership, once accepted, the applicant becomes an Ordinary Member not allocated to a Branch.
- e. An elected Ordinary Member retains such membership until they are elected as Branch Members.

Centralya (Essendon)

- f. It appears that the membership of the group of members known as “Centralya” are Ordinary Members who have not been allocated a Branch.
- g. There is definitely no provision under the Constitution for group of Members under the umbrella of “Centralya”.
- h. It is clear that the “Centralya”, is not a Branch or any other entity under the Constitution.

It begs the Question, what authority do approximately 400 “Centralya” ordinary members have to make or influence decisions on behalf of some 800 AUV Member state-wide or the organisation itself?

4. Voting Majority

Just a reminder as to the level of voting required to pass a resolution on various issues within the Constitution.

Clause 1 (c) may elect such person as an Honorary Life Member by a simple majority of those present at the meeting and entitled to vote.

Clause 8 d iii Suspension and Expel a member - Shall by resolution, passed by a simple majority, and determined whether to confirm or to revoke the resolution

Clause 14 All resolutions (other than special or extra ordinary resolutions) at General Meetings shall be taken by a primary majority of votes of members subject to exemptions provided in special paragraphs of

this constitution. Should a deadlock occur, the Chairman of the Meeting shall have a casting vote.

- Clause 37 The decision of liquidation of the A.U.V. may be taken by a General Meeting of the A.U.V. convened specifically for that purpose. Such a decision must be taken by a majority of two-thirds votes of members present at the General Meeting
- Clause 41 Amendment to Constitution - decide by vote of not less than two-thirds majority whether such motion shall be carried. Thereupon the Executive Committee shall be empowered to appoint an Investigating Committee to consist of not less than five (5) members.
- Clause 43 Amendment to Constitution - with the concurrence of the Investigating Committee be passed at a General Meeting by not less than a three-fourths majority.
- Clause 49 Amendment to Constitution - decide by vote of not less than two-thirds majority whether such motion shall be carried.
- Clause 62 (a) etc. a Benefactor of the Association upon such person by a simple majority of those present at the meeting and entitled to vote.
- Clause 65 Dissolution of a Branch two-thirds votes of Branch Members present at a General Meeting of the Branch convened specifically for that purpose.

Section 2, Clause 3 B (n)

“To sell, let, mortgage dispose of or turn to account all or any of the property or assets of the A.U.V. as may be through expedient with a view to the promotion of its subjects;”

There is no provision in the Constitution for members to vote on this issue.

5. Elections

i. General clauses in summary relating to Election issues.

Proxies *The Constitution makes no provision for Proxy Voting.*

Commentary

I personally have a strong objection to Proxy Voting for the following reasons:

- a. Classic example of Proxy Vote Stacking was illustrated during the sale and liquidation of the Karparty Credit Union when the vote was taken, the Chairman declared that he had more Proxy Votes in a box under his table than the members voting. Unfortunately, I received many calls from NSW, especially from an elderly person stating they were lied to when signing over their Proxy Vote.
- b. A proxy voter never hears the argument for or against a Motion or in the case of voting on filling an Executive position, and they certainly will not observe or hear in support of a candidate.

I do believe that the only time a Proxy Vote should be applicable is when:

- i. a member is voting in the absence of the spouse; and
- ii. a member who resides in a remote location. e.g. Wodonga, Mildura and such like.

Clause 4 *All members shall have the right to exercise active and passive rights of election. Members may take a personal part in General Meetings, subject to exemptions provided in paragraph referred to Branches.*

NOTE: There are NO exemptions in paragraph referred to Branches”

Clause 11. *The Executive Committee shall convene an Annual Meeting once every year giving notice and proposed agenda to **all members** not less than four (4) weeks prior to the date of the Annual Meeting. Etc.*

NOTE: This clause states “all members”, it does NOT differentiate between Ordinary and Branch Members. It includes the 800 or so members state-wide.

Clause 32 *Members of Branches may participate personally in Annual and Special General Meetings. Whenever their presence at a General Meeting is not possible, they may send two (2) representatives from each Branch.*

Clause 33 states: *Representatives from Branches shall each have one (1) vote.*

NOTE:

The notion that Branches only have the right to only have two members participate and vote at any General Meeting, is grossly flawed. This, by default has become - the norm!

The term “representative” does not mean a Branch Representative.

The term “representative” means “A person chosen to speak and act on behalf of others in deliberative body”. The Branch may nominate as their ‘representative’ a Lawyer, Accountant or any other person to speak, vote and or act in their stead.

Furthermore, the notion that only the 400 “Centralya” members have the right to nominate for any vacant position on the Executive Committee, Audit Committee or President is also grossly flawed.

In an email dated 30 Oct 2017, to the Executive Committee, from a long standing well respected member of the Association said:

“The AUV is one organisation – (Central - Branches) - Not Central and or Branches.....”

“.....but, I would suggest that this is not in line with what the author of the Constitution had in mind.”

“In terms of being an Executive Member, every member of AUV (Central or Branch) has the right to nominate.”

CONCLUSION:

It is clear, for many years, AUV Branch members have been discriminated against by selfish individuals.

6. Elections Procedures

i. General clauses in summary relating to Election Procedures issues.

Clause 15 c. *Election of the Executive Committee, Commission of Auditors, the President and Chairman of these bodies being elected by separate voting;*

Clause 17 *The Executive Committee of the AUV shall consist of the President, 14 members and 6 deputy members.*

Clause 17A. *The President and Members of the Executive Committee, as well as Deputy Members shall be elected for a period of two years.*

Clause 17 B iii *A retiring member of the Executive Committee shall be eligible for re-election.*

Clause 18 *At its first meeting, **the Executive Committee shall elect a Presidium** (Presidential Commission) consisting of 7 members of the Executive Committee, which shall include the President, First Vice-President, Second Vice-President, Secretary, Treasurer, Cultural Officer and Organizing Officer. At the same time, the Executive Committee shall allot various duties to its other members.*

NOTE: The election of the Presidium is **NOT** the prerogative of the President.

Clause 20 **The Presidium** (Presidential Commission) of the Executive Committee shall deal with **urgent current matters** and shall report them to the next Executive Committee Meeting.

Clause 8 f iii the members present shall **vote by secret ballot** on the question whether the resolution should be confirmed or revoked.

ii. Election Procedures Myth

a. Chairman unfamiliar

The Chairman, at the 2016 AGM said that “the AGM faced the unfamiliar situation of having before it a list of proposed members of the AUV Executive, but no nomination of a President accompanying that list, and a nomination from the floor of a President, but with no list of proposed members of an Executive accompanying that nomination.”

He said that “the purpose of adjourning the AGM for three months was to enable the Nominations Committee to complete its task of identifying a candidate for President, and to allow time for other candidates for President and/or members (or lists of members) of the Executive to come forward to the Nominations Committee or prepare for nomination from the floor of the adjourned AGM.”

‘Myth Breaker’ 1

- The election should have been conducted in the priority order set out in [Clause 15c of the Constitution](#), that is:
 - i. The Executive Committee shall be elected first.
 - ii. The Commission of Audit shall be elected next.
 - iii. Then the President shall be elected.
- In a democracy, the candidate for President is not required to have NOR should have a list of proposed Executive Committee members as members are to be elected, in accordance with [Clause 15c of the Constitution](#).
- If there is a single candidate, that candidate is elected unopposed, a vote is not required, in accordance with Common Law.
- If an AGM is adjourned to another day, [No new material or nominations are permitted to be introduced](#), in accordance with Common Law.
- ‘Legal opinion’ to “disallow a Member from being nominated to a position”, is the joke of the century.
 - i. The 2017 AGM Chairman stated that a ‘legal opinion’ was obtained that membership of the Association can disallow a Member from being nominated for any position at an election. This is discriminatory, illegal and undemocratic rather controlling, biased and autocratic behaviour and contrary to the AUV Constitution.
 - ii. The Chairman, a ‘Lawyer’ himself, immediately distanced himself from the ‘legal opinion’ by emphatically stating, words to the effect, “*It was not me*”. This confirms that the so called legal opinion is emphatically wrong. The Chairman should have clarified this and no ‘weight’ should have applied to that legal opinion.
 - iii. **A legal opinion is NOT LAW and cannot be acted upon in any legal situation outside the Judicial (Courts) system.**

'Myth Breaker' 2

1. There is no provision in the Constitution that eliminates a Member from nominating for any position at an election.
2. There is no provision in Common Law that eliminates a Member from nominating for any position at an election.
3. If a 'Legal opinion' is tabled, it is required to be read to the membership and the Lawyer making such a opinion identified.
4. Remember, this is just an opinion and Not the Law.
5. Any "legal Opinion" must be attached to the AGM Minutes of Meeting as an Appendix.
6. No "legal opinion" was Tabled, as such, is only hearsay without any 'weight' in decision-making, accordingly the legal opinion and the Motion has no validity.

The President is sheer desperation to maintain full control of the Executive invented charges against myself. He was supported by a well lubricated lynch mob of "Yes Men/Women" in judgement of an issue that ONLY the Judiciary has powers to rule on.

7. Communication

Section 2, Clause 3 (c)

"To diffuse amongst its members information on matters affecting their lives and interests and to print, publish, issue and circulate such papers, periodicals, books, circulars and other literary undertakings as may seem conducive to any of these objects;"

Since becoming a member all those years ago and confirmed by longer standing members, we stand corrected, there have never been any form of communication by the Executive Committee to the membership of current issues or any future planning that they may have in the pipeline.

Current issues of:

- a. Over the last two year, a doom and gloom financial picture of the AUV's has been portrayed with statement like "we are going broke", "AUV is sinking into receivership", "we are becoming insolvent", "we need to move and sell the Domivka". These doom and gloom comments are still floating around in the Executive Committee which has led to member dissatisfaction and uncertainty leading to speculation.

It is time that the Executive informed the membership the precise financial position AUV are in and more importantly what the Executive's plans are to resolve this issue.

- b. On the 27 April 2018, the Executive organised a "Community Event" (members excluded) to discuss the "Future of the Ukrainian Community in Victoria"; this was followed up with another event, with selected participants, on 27 May 2018 which was facilitated by an independent person. It was clearly stated by the President that the facilitator will provide a report which will be published on the AUV website and made available to members. To date no such report has been circulated to members.

It is strongly recommended that the Executive be more transparent towards its members.



Michael Karaszewycz

Editor Ukrainian International Directory