

SPECIAL RESOLUTION EXPLANATORY STATEMENT  
SCARF Inc - Annual General Meeting 30 October 2019

## SPECIAL RESOLUTION

MOTION: *“That the existing constitution of Scarf Incorporated be amended as proposed and annexed to this Special Resolution. That the amended constitution applies to the operations of SCARF Incorporated from the date of its adoption by the members pending final approval by the NSW Office of Fair Trading in accordance with the provisions of the Associations Incorporation Act (NSW)”.*

To assist in identifying and understanding the need and reasoning behind the more significant changes as proposed, your attention is drawn to the amendments detailed below.

Please note that changes to formatting, clause numbering or minor wordsmithing that do not change the intent or meaning of the Constitution from the 2012 SCARF Constitution are not included in the explanatory notes to the Special Resolution.

### Amendment 1

Delete the following from Part 1 Preliminary – Clause 1 Definitions

*“refugee entrants” means permanent resident status refugee entrants (holders of Humanitarian Visa Class 200 and sub-classes).*

Question: Why is this deletion recommended?

Answers: This definition is not required under the Model Rules and serves to limit SCARF’s activities and/or support for refugee entrants to those specifically holding Humanitarian Visa Class 200 and sub-classes. Whilst this may represent a majority of SCARF’s current clients, it leaves SCARF unable to respond to future refugee entrant needs from those on different Visa classes or if the government creates a new Visa class unsupported by other service providers where SCARF could be of assistance. The deletion of this definition does not imply a change in focus for SCARF effort but does provide a more strategically flexible capacity.

### Amendment 2

Delete the following from Part 1 Clause 1 Definitions

*“the Committee” means the Management Committee of the Association which is subject to the Act, the Regulation and these rules and to any resolution passed by the Association in general meetings.*

*“financial year” means the twelve-month accounting period ended 30th June.*

Question: Why are these deletions recommended?

Answers: The Committee requires no definition as it is well described and defined at Part 3 of the Constitution consistent with the Model Rules. Furthermore, as SCARF now employs a CEO as well as other management personnel, the Committee will operate more as a board, providing governance oversight and strategic direction with responsibility for day to day management being delegated to the CEO.

The financial year is defined within the Constitution at clause 46.

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### Amendment 3

Include the following in Part 1 Clause 1 Definitions (1)

***the Regulation*** means the *Associations Incorporation Regulation*.

Question: Why is this inclusion recommended?

Answers: This is included in the Model Rules and ensures the SCARF Constitution remains consistent with the Associations Incorporation Regulation (2016) as required by the Act.

### Amendment 4

Part 1 Clause 3 - Vision Statement has been deleted.

Question: Why was the Vision statement deleted?

Answers: A Vision Statement is primarily a declaration of strategic intent with a specified time frame. As such it does not add any governance value and is subject to regular review and change as operational circumstances evolve. Including it within the Constitution would mean that any update to the Vision statement (which currently has a 2020 horizon) would require another special resolution to amend the Constitution creating unnecessary cost and complication on an ongoing basis. It is therefore best kept within SCARF's Strategic Planning documentation and process where it can evolve and be updated as required.

### Amendment 5

Clause 4 - Mission Statement has been deleted.

Question: Why was the Mission Statement deleted?

Answers: SCARF's operating environment remains fluid and further change to either vision or mission is likely as the organisation transitions from a purely voluntary, founder directed organisation to a more modern member based, not for profit social enterprise. For these reasons consistent with Amendment 4, it is best if statements of strategic intent remain outside of the constitution due to their limited horizon and focus.

### Amendment 5

Clauses 6 and 7 - Aims of the Association and Objectives of the Association have been amended as follows;

Renumbered Part 1 Clause 3 Aims and Objectives of the Association and includes what were previously the Aims from the previous Constitution. The former Objectives have been removed.

Question: Why were the Objectives (previously Clause 7) removed.

Answers: The previous Objectives were in fact a list of the programs that SCARF intended to run in support of the Association's Mission. By including this list of programs in the Constitution it can be interpreted that only those programs can be undertaken and that they must be undertaken to comply with the Constitution. To not run one or more of these programs (for whatever reason including a lack of funding) would thus require a Constitutional amendment and a special resolution at a general meeting of the association. Programs are operational activities and are highly dependent upon

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available funding and need to change in response to the evolving needs of those we serve and funding capacity at that time. Because programs are subject to regular change, they should not be part of a governance document such as the Constitution.

### Amendment 6

Clause 8 Non-Profit Clause has been moved to Part 5 Clause 44

Question: Why was Clause 8 moved?

Answers: Clause 8 – Non-Profit Clause is also found in the Model Rules where it is listed in Part 5. For consistency with the Model Rules the clause has been moved to Part 5 Clause 45 of the amended Constitution.

## PART 2 - MEMBERSHIP

### Amendment 7

Replace Part 2 Clause 9 MEMBERSHIP GENERALLY with Part 2 Clause 5 Membership Classes which provides for both individuals and organisations to become members of SCARF Incorporated.

Question: Why would we wish to include organisations as members?

Answer: Increasingly SCARF seeks to engage and partner with like-minded associations and attract corporate support (in principle and financially) for specific services and programs. By providing a membership category for organisations, SCARF can both facilitate these alliances as well as generate much needed revenue from membership fees that can be scaled to reflect the size of the organisation and the extent to which it seeks to engage with and support SCARF's programs and activities.

However, it should be noted that the clause is structured to protect SCARF from undue influence from such organisations with voting rights no greater than an individual member. For an organisational member voting rights are restricted to the organisation's single nominee, as recorded in the Register of Members.

The new Part 2 Clause 5 subclause (2) provides for the Committee to establish Membership Policies and procedures where various membership categories for each class of member, membership application and renewal procedures and annual fees can be set and amended from time to time.

The new Part 2 Clause 5 subclause (3) ensures that current financial members will remain as financial members following these amendments without any loss of member benefit or rights.

### Amendment 8

The old Part 2 Clause 9 subclauses (2) and (3) have been deleted.

Question: Why were these subclauses deleted?

Answers: These subclauses are found in both the model rules and the old SCARF Constitution and relate to the establishment of an association and who is entitled to be a member at the time of establishment. As SCARF has been an incorporated association since 2005 this clause no longer has any relevance and is redundant.

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### Amendment 9

Part 2 Clause 6 Admission to Membership (previously Clause 10 Nomination for Membership)

Question: Why was the Clause amended?

Answers: This Clause has been amended to align the wording with the Model Rules and modern member association practices. These changes simplify the membership process allowing those wishing to join SCARF to initiate the process and provides for online application and fee payment. This creates a more accessible process, facilitating joining as opposed to the current process which requires acquaintance with other current members which may create unintended disincentives to becoming a member.

The other amendments in this clause seek to streamline the administrative process behind becoming a member, preparing SCARF for potential implementation of a future online membership and contact management platform. In so doing, the membership form forming Appendix 1 to the 2012 SCARF Constitution is to be removed allowing for a variety of application formats and processes to be defined and regularly updated in the Membership Policies and procedures, as provided in Clause 5 subclause2.

### Amendment 10

Insert new clause - Part 2 Clause 7 Appeal against rejection of Membership

Question: Why have we included this new clause

Answers: This Clause was not present in the previous SCARF Constitution nor is it in the Model Rules. It is however common in many non-profit member-based association constitutions.

It is included to ensure SCARF's constitution provides procedural fairness and creates an opportunity for the Committee to review their initial decision whilst also providing the applicant the opportunity to provide further support for their application in response to the Committee's reasons for rejection should the Committee choose to share this with the applicant.

### Amendment 11

Amendments to Part 2 Clause 12 Fees and Subscriptions

Question: What is the significance of these amendments?

Answer: Many of the amendments are minor administrative adjustments to better allow the Committee to vary application and annual membership charges from time to time and to also allow for membership fees to be applied to Organisational memberships.

The changes to subclause (2)(b) provide for those members joining part way through a financial year to only pay for that remaining period of the financial year for which they will enjoy membership rights and or services.

## PART 3 - THE COMMITTEE

### Amendment 12

Part 3 (formerly clause 21) Composition and membership of the committee, now

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clause 18 amendment to subclause (5)

Question: What is the significance of these amendments?

Answer: The previous subclause (5) required all committee members to vacate all offices and renominate annually at the AGM with no restrictions on how many times they can be re-elected or how many consecutive years they may hold an office bearer position. Such models create a potential governance risk through a lack of diversity in thought and leadership style and can entrench risky behaviours and practices through familiarity and limit the opportunities for creative and strategic insight and development.

#### Amendment 13

Insertion of new Part 3 clause 19 Terms of Office.

The revised subclause provides for Committee members to enjoy a two-year term of office once elected by the members. This provides for better continuity, facilitates implementation of strategic vision and allows for more planned leadership transition and succession planning.

The inclusion of subclause (2) which limits committee members to a maximum of three consecutive terms of office (or 6 consecutive years) ensures there is a process of renewal and an opportunity for new skills and insights to be brought to the committee and the organisation.

#### Amendment 14

Amendments to Part 3 Clause 25 Committee meetings and quorum

Subclause (5) has been amended increasing the number of committee members required for a quorum from 3 to 4.

Question: Why increase the quorum required for a committee meeting?

Answer: The change is recommended to be consistent with most democratic processes where a simple majority is required to transact any business or make decisions on behalf of the organisation. By requiring 4 committee members to be present that principle is ensured.

#### Amendment 15

Insert new clause 26 to allow for the use of technology at committee meetings

Question: Why has this new clause been included?

Answer: This clause is included from the model rules and through the use of appropriate technology committee members are better able to attend and participate in meetings even when away from the Illawarra.

### PART 4 – GENERAL MEETINGS

#### Amendment 16

Insert Part 4 Clause 31 new subclause (6) to allow the requisition for special general meeting to be in electronic form

Question: Why has this new subclause been included?

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Answer: This subclause is included from the model rules and better reflects current use of communication technology.

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### Amendment 17

Amendments to Part 4 Clause 33 (2) – Increasing required quorum for general meetings of the association from five to ten and for subclause (4) adjourned meetings, from three to four.

Question: Why have these increased quorum numbers been recommended?

Answer: These increases are required to ensure that general meetings have a significant number of members in attendance. The number of 10 has been chosen to ensure that the meeting includes members outside the committee. As the committee comprises 7 members the previous quorum was viewed as insufficient to ensure decisions made at a general meeting were reflective of the wishes of the broader membership not just the committee.

### Amendment 18

Amendments to Part 4 Clause 36 Making decisions

Question: What is the purpose of these amendments?

Answer: The changes to this Clause are minor to better align with the model rules around the use of technology at meetings which is cross-referenced to clause 41.

### Amendment 19

Amendments to Part 4 Clause 40 Postal Ballots and insertion of new Clause 41 to provide for the use of technology at general meetings.

Question: What is the purpose of the amendment to Clause 40?

Answer: The changes here allow for the use of electronic voting as provided in the Model Rules.

Question: Why has the new Clause 41 been inserted?

Answer: Once again this clause replicates the Model Rules and allows for the use of technology at general meetings should there be a circumstance that the committee thinks such use will benefit the members and the organisation.

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PART 5- MISCELLANEOUS

**Amendment 20**

Part 5 Clause 45 was previously Clause 8 in the 2012 SCARF Constitution

**Amendment 21**

Part 5 Clause 47 Distribution of Property on winding up of association

This was formerly Clause 52 in the 2012 SCARF Constitution and has been amended to fully align with the Model rules.

Question: What is the significance of these amendments?

Answer: The changes firstly bring the Constitution in line with the same clause in the Model Rules but also serve to further clarify what is meant by surplus property. The amended clause retains (from the 2012 Constitution) the process by which the recipient organisation is determined at general meeting by special resolution.

**Amendment 22**

Part 5 Clause 50 Inspection of books etc. In this Constitution a new subclause (3) has been included from the Model Rules whereby the Committee may refuse access to such records if they relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.

Question: What is the significance of this inclusion?

Answer: This inclusion from the Model Rules provides some privacy protection to volunteers, clients, members and employees whilst also providing some protection to the association from groups or individual members that may be intent on inappropriate data collection or competitive behaviour detrimental to the association and its clients.

THERE ARE NO FURTHER CHANGES