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23 February 2016

The Canberra Montessori Society
35 Mulley Street
Holder ACT 2611

Attention: Catherine Prosser

By email: board.chair@cms.act.edu.au

Dear Catherine

Amendment of Canberra Montessori Society Constitution

We refer to your recent instructions to provide the Canberra Montessori Society (“**the CMS**”) with advice on the proposed amendments to the CMS Constitution (“**the Constitution**”).

The CMS may make an alteration to the Constitution through a special resolution pursuant to section 18 of the Constitution and in accordance with the *Associations Incorporation Act 1991* (“**the Act**”).

Pursuant to section 18 of the Constitution, any amendment to the Constitution must be made during a Special General Meeting (**SGM**). Section 18 requires that *no less* than ten (10) members of the CMS must be notified by notice in writing and delivered to the Chair, who then requests that the Board to convene an SGM to be held for the purposes of amending the Constitution. The notice should clearly describe the specific proposed amendments to the Constitution.

Note that *no matter* other than the proposed changes to the Constitution should be considered in the SGM.

Prior to special resolution

Pursuant to section 12 of the Constitution, the CMS secretary must comply with the notice period requirement. Specifically, the CMS Secretary must give a minimum twenty-one (21) day notice period prior to the date fixed for the holding of the general meeting.

The notice must:

- a. Give a clear outline of the nature of the business proposed, that is, it should include the proposed amendments to the Constitution; and
- b. State the place, date, time and the intention to propose a resolution as a special resolution.

The secretary must publish the above mentioned notice on the website for the Canberra Montessori School, and provide the notice by way of one or more of the following:

- a. In writing delivered to the member at a classroom at the Canberra Montessori School for collection by the member; or
- b. Delivered by email to the member's last known email address; or
- c. Posted by pre-paid post to the last known address of each member.

The SGM

Pursuant to section 18 of the Constitution, in order for amendments to be permitted, a majority of at least two thirds of the member votes must approve the proposed changes.

Each member vote may be given in person or via vote by proxy, subject to the voting by proxy guidelines set out in section 14 (iv) of the Constitution. Note that a member of the CMS is as defined under section 5 of the Constitution.

It should also be noted that the Constitution may be altered only in accordance with section 33 (1)(b) of the Act, and the amendments must comply with section 32 of the Act.

Alteration of the Constitution

Provided that a resolution is reached and agreed to by a two thirds majority, pursuant to section 33 (2) of the Act, the CSM must lodge a notice to the Registrar-General setting out the particulars of the amendments to the Constitution and must include a declaration by at least two (2) of the members of the committee of the association.

Your amendments to the Constitution

Your proposed amendments at section 7 of the Constitution seek to provide remuneration to board-members. We recommend the following amendment:

- iii. The Association may provide remuneration by way of salary, fees or allowances to Board members. The sum of any salary, fee or allowance provided to a Board member must be passed by resolution at the annual general meeting or at a special general meeting.

This amendment in its current form may be permitted under the Act, however, we recommend that you include the following:

*if at any material time the Registrar General considers that payment to a board-member constitutes a pecuniary gain for a member, the board-members will vote to amend the constitution and otherwise not remunerate board-members.

In respect to the election of Board members at section 17A, we recommend that the following be included:

- iv. A nomination for election to the Board shall not be accepted unless it is delivered to the Chair of the Board two weeks prior to the commencement of the annual general meeting.
- v. In the event that the Chair of the Board does not receive enough nominations for all of the available positions on the Board in accordance with section 17A iv above, nominations may be received from the floor of the annual general meeting.
- vi. Any person nominated in accordance with 17A v above shall be subject to the operation of section 17A vii below.
- vii. Each nomination for election of Board member must be passed by resolution by Association members voting yay or nay.*
- viii. Board member positions can remain *vacant positions* and nominations are subject to the voting requirements set out in section 17A vii.
- ix. If there are no successful nominations, the Board may, at its discretion, call for a second round of voting at the annual general meeting.
- x. If a second round of voting is called, the Board may, either approve a nominee that does not meet the requirements of section 17A vii, or keep the position vacant in accordance with section 17A viii.

**successful nominations require that the nominated person receives 50% of the 'yay' vote plus one additional vote*

In respect to the position of 'Chair' at section 21, we recommend that the following be included:

- iii. Offices of Chair and Deputy chair will be determined by resolution passed at the first general meeting after the annual general meeting.
- iv. If during the term of office, the office of Chair becomes vacant, the Board shall call for a general meeting within 2 weeks of the vacancy, and by resolution, appoint a new chair from amongst the members.

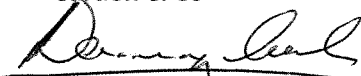
In respect to the voting rights of the Chair at the annual general meeting and notice of the same, we would be grateful if you could provide us with further information so that we can draft amendments to the Constitution to reflect the members' wishes in this regard.

If required, please contact the writer directly to discuss the above.

We thank you for instructions in this matter and enclose our tax invoice for kind payment.

Yours faithfully

Carden & Co



Darren Carden