

# The Street Committee Report

The Street Committee was established in June 1991 by the NRMA Council to conduct a public consultation on matters relating to the governance of the NRMA, to review the Constitution of the NRMA and to report its conclusions and recommendations to the Council. At its inception the Committee comprised Sir Laurence Street (Chairman), with John Ducker, Lynn Ralph, Jane Singleton and Ron Werner. Mr Ducker ceased to be a member of the Council in November, 1991 and from that time ceased to be a member of the Committee.

The Committee has sought the views of the members. Advertisements calling for submissions from members were placed in both metropolitan and country newspapers over a period of two weeks. Specific letters, similarly explaining the role of the Committee, enclosing the Discussion Paper titled "Ensuring NRMA Members' Voices are Heard" and seeking submissions, were forwarded to over 150 interested parties (including persons who had already expressed interest, community organisations and Members of Parliament).

Further publicity of the work of the Committee was arranged through articles in "The Open Road" (distributed to NRMA members), "Inroads" (distributed to NRMA staff), and "NRMA Today" (distributed to persons and organisations who express an interest in the operation of the organisation).

In addition, a handbill was printed titled "We'd like to hear from you". This was displayed and made available for members in all NRMA branches and country depots.

In response, a total of 63 submissions were received.

The views expressed in the submissions covered a fairly broad spectrum. The Committee was concerned however as to how representative they may be of the membership as a whole. Sixty-three responses represents three thousandths of one per cent of all members.

In order to give the Committee confidence that it was addressing those issues, if any, which are of concern to the membership as a whole, and some comfort that its views reflect those held by a broad membership base, an independent survey by Roy Morgan Research Centre Pty Limited was commissioned. This was designed to canvass in particular members' perceptions of the current NRMA electoral process.

It is relevant to record that the Association is a company limited by guarantee incorporated under the general corporations law. As such, it differs in some respects from a company having a share capital. It has no shareholders and its profits are not distributable as dividends. Its Memorandum and Articles of Association are generally similar to those used by other companies limited by guarantee. The Association is thus presently governed in the same way as other similar companies.

Any changes to the Memorandum and Articles proposed must be put to a General Meeting, and all members will ultimately have the opportunity of voting on their adoption.

The Committee has taken note of views that there should be changes to some of the provisions in the Articles of Association but also noted opposing views. It has been the object of the Committee to achieve a consensus on those changes that are desirable in the interests of the Association and its members, as well as a consensus on possible changes that are not recommended. This object has been achieved.

The following recommendations for and against individual changes are put forward with the unanimous support of the Committee. They should be seen as a totality, not as a series of individual recommendations. The willingness of Committee members to put their names to this entire package derives from a balancing of differing views on particular issues in order to achieve an overall consensus.

The Committee's deliberations have ranged widely. It has been thought preferable to confine this report to the ultimately agreed single package of recommendations for and against changes. We now proceed to state those recommendations.

## 1. Method of election — voting system

In considering possible electoral processes the Committee has been guided by the general principles that the system used for the election of Councillors should:

- be one which will best reflect the will of the members;
- be "user friendly" so as to encourage the participation of members (in this regard the Committee notes that only around 5% of members eligible to vote do, in fact, vote);
- be one in which members have confidence; and
- be obtainable for a reasonable cost.

At present, each member who votes must cast as many votes as

there are vacancies to be filled. This is, in effect, a "first-past-the-post" system.

The Committee has looked at and received submissions on a wide variety of voting systems. These include:

- those of listed public companies which conduct an election of directors at the company's Annual General Meeting, with proxy votes being counted in the event of a poll. The Corporations Law provides that each director must be put to a vote separately (Section 225). This is, in effect, a "first-past-the-post" system;
- a system known as the cumulative method, which is commonly used by American public companies. In the cumulative method, each member multiplies his/her vote by the number of vacancies to be filled, and can then either cast the total number of votes all for one candidate or distribute them amongst the candidates;
- a preferential system where the member indicates his/her preferences for candidates, and the preferences of the candidates with the least votes are successively distributed until there remain the same number of candidates as there are vacancies to be filled (broadly similar to the system used in the House of Representatives elections);
- proportional representation or one of the variations thereof. This is the system used in Senate elections.

The advantages of the present system are:

- (i) the system is simple and easily understood;
- (ii) the result is ascertained quickly and is accurate;
- (iii) the incidence of informal votes is low;
- (iv) it ensures candidates supported by the majority of voters are elected.

The inherent simplicity of the current system is particularly important as a factor which may encourage more members to vote. A system which requires preferences to be shown may, in fact, discourage voters as the preferential selection is an additional step which can be difficult, given that members generally do not have extensive information on which to form their opinion.

The complexity of the counting and difficulty in re-counting of the proportional representation system weigh against this method.

## Recommendation

*No recommendation for change.*

## 2. Proxy voting

The Committee examined the option of providing members with the facility of voting for Councillors by way of proxy, in addition to a direct postal ballot. If such an option were introduced, the proxy could be directed or not at the option of the member.

An attraction of proxy voting is that it enables a member to cast a vote (either of confidence or not) in the current Council without personally deciding which of many candidates would be best suited to be Councillors. In instances where members feel they have insufficient information themselves to make a decision on an individual basis, but they have confidence in either the Chair or another person, proxy voting gives the member an additional course of action.

A difficulty in introducing such a system is that it involves procedural complications when combined with the existing postal ballot system.

The Committee is of the view that, there being no strong expressions of interest from the members in the introduction of optional proxy voting, and as every member already has full access to a convenient method of voting through the postal ballot, no change should be recommended.

## Recommendation

*No recommendation for change.*

## 3. Power of attorney

The Committee noted that the present Articles of Association do not provide for a member to appoint an attorney or agent to vote on his or her behalf.

There have been no strong expressions of interest from members on this topic. The Committee is of the view that there are practical problems inherent in the Returning Officer being required to sight the powers of attorney in order to validate the vote. Once again the current postal ballot adequately serves the requirements of members. The Committee considers that there is no need to provide for voting by attorney or agent.

## Recommendation

*No recommendation for change.*

## 4. The conduct of the NRMA ballot

Under the present Articles it is the Council who appoints the Returning Officer to conduct the Elections. It has been customary for

Council to appoint a person from the Association's auditors to act as Returning Officer. Recently concerns have been expressed in relation to this practice and the Committee has considered alternatives.

It has been suggested that, if the State Electoral Commissioner were to conduct the ballot, he would give it demonstrable independence. The Committee notes that, in order for the Electoral Commissioner to conduct the ballot, it would be necessary for there to be a change in legislation. It is possible that general legislation might be brought forward enabling companies limited by guarantee and similar bodies to appoint the Electoral Commissioner to conduct a ballot if such a body so chose. There would, of course, be a charge for such services of the Electoral Commissioner.

Irrespective of this prospect of enabling legislation being passed, the Committee is of the view that it would not be desirable for it to be mandatory that the Electoral Commissioner be used for all Council Elections. Rather, the Council should continue to have the option of appointing as Returning Officer an appropriate person; for example, a person from a firm skilled in acting in this capacity, or (if the legislation be changed) the State Electoral Commissioner.

#### **Recommendation**

*No recommendation for change.*

### **5. Ballot papers for elections allow members to identify which of the candidates are retiring Councillors standing for re-election**

It is universal company practice to indicate to those voting who are the retiring directors. The basis for voting is generally on the past record of the company and, as the names of directors may not be familiar, the asterisk or equivalent provides the voter with information. It follows that the asterisk could have a negative effect on voting or a positive impact. There is no accurate data on the way the asterisk impinges on the outcome.

The difficulty with the asterisk is that there is a perception that the retiring Councillors receive an unfair advantage by way of the asterisk.

The asterisk as an identification can be replaced by the following recommendation.

#### **Recommendation**

*The Committee recommends that the use of the asterisk on ballot papers to indicate candidates who are retiring Councillors be discontinued.*

*The Committee is of the view that Council should adopt Rules on the conduct of the election. These Rules should make provision for:*

- *Information should be provided by way of an "NRMA Record" of the candidates, stating —*
  - *which candidates are not currently Councillors;*
  - *which candidates are Councillors standing for re-election;*
  - *whether a candidate has been appointed to fill a casual vacancy and when such appointment was made;*
  - *offices held from time to time in the NRMA.*
- *Each candidate should be invited to furnish "biographical notes" and "statement of candidate" which will be published unedited within quotation marks with a note to the effect that the information was provided by the candidates. Such information will be published subject to the proviso that scandalous or defamatory matter will not be published.*
- *A limit of 150 words is recommended, with no sublimits applying (i.e., candidates being free to allocate wording, within overall limits, as desired by each candidate); excess beyond the 150-word limit will simply be excised from the end of the published information.*
- *Information on the make-up of the balance of the Council should be published separately, in similar terms to the information provided in the Annual Report.*
- *The ballot paper should be located near to the candidate information. The ballot paper should be within The Open Road, tear-off if possible, and words to the effect "Election Issue" should appear on the cover or as a wrap.*

### **6. Board rotation**

The Articles of Association provide for the retirement each year of one third of the Council (or as near thereto as possible). Annual elections are held (unless the number of candidates nominating does not exceed the number of vacancies created by the retiring Councillors). This system of "one-third annual rotation" is that commonly used by companies.

Regular and frequent elections give members opportunities to express their opinions, although the Association and, hence, ultimately the members, must bear the cost. In broad terms, the election conducted in 1991 cost approximately \$650,000 (making no allowance for NRMA management and staff time), or about 36 cents per member. While this is obviously a large expense, the cost per member may be considered not to be unreasonable.

A reduction in the frequency of elections could be achieved by increasing the number of retiring Councillors. If the one-third rotation ratio were maintained, but elections were only held every two years, each individual Councillor would be elected for a six-year term.

An alternative would be to increase the one-third ratio to one half, i.e., 50 per cent of the Councillors would retire every two years, making individual terms of four years. A counter consideration to this alternative is that the one-third rotation allows for a degree of continuity in the work of the Council.

The Committee would prefer that elections be held every two years. However, in view of the consequential effects this would have on the provisions relating to the filling of casual vacancies, the Committee believes that one-third rotation of the Council and annual elections should continue.

The Committee has recommended in the next section an amendment to the provisions relating to the filling of casual vacancies. An effect of this change is that, if a casual vacancy were filled, the appointee would stand at the next election. The appointee would then be part of the "one third" of Council to retire. In that event, it may be that there are a greater number of Councillors who have been in office for an equal length of time than are required to retire (to make up the balance of the "one third"). Consequently to retain the one-third proportion of Councillors to retire at each election, one or more of the longest serving group may not be required to retire. The determination of the Councillor(s) not required to retire will be by lot.

In those years where a casual vacancy arises and is not filled, less than one third of the Council must retire, with the consequence that at least one person not being a sitting Councillor will be elected.

#### **Recommendation**

*That one third of the Council retire each year in order to stand for re-election, such one third to include any casual appointees.*

### **7. Casual vacancies**

Articles 84 and 85 provide as follows:

- (84.) "The Council may at any time and from time to time appoint any ordinary member of the Association as a Councillor to fill a casual vacancy . . ."
- (85.) " . . . any Councillor appointed under the preceding Article shall, for the purpose of determining the time at which he or she or any other Councillor is to retire, be deemed to have become a Councillor on the day of which the Councillor in whose place he or she was appointed was last elected . . ."

It is thus possible that, if a casual vacancy arose shortly after the departing Councillor had been re-elected, the appointee would become a Councillor for a number of years before submitting himself or herself to the members at an election.

The provisions commonly found in the Articles of both public listed companies and in Table A of the Corporations Law provide that Directors of a Board may fill a casual vacancy mid-term, but that appointee must come before the members for election at the next following election (i.e., within 12 months), and in that election the fact that that appointee was appointed to fill a casual vacancy during the year must be adverted to.

Under the Association Articles it is not incumbent upon the Council to fill a casual vacancy; the Council has a free discretion. Recently concerns have been expressed in relation to the past practice in the filling of casual vacancies.

The Committee has sought to formulate a recommendation which balances the ongoing effective governance of the organisation and the democratic processes by which members exercise their choice.

#### **Recommendation**

*That the Articles be amended to provide that the Council may appoint any ordinary member as a councillor to fill a casual vacancy providing:*

- (a) *that this power only be exercised in exceptional circumstances and where it is demonstrably essential in the preservation of the best interests of the NRMA that the casual vacancy be filled;*
- (b) *the appointee must stand at the next election (i.e., term of office must expire at the next AGM); and*
- (c) *if the appointee wishes to stand at the next election it must be pointed out to members that this person is a casual appointee, and has not previously been elected by members.*

### **8. The practice of awarding a vote to the first-named person on a membership**

Article 17 provides that, where two or more persons are named on a single membership and are entitled to one vote, only the first-named person may cast the vote.

The terms of this Article are the same as those found in Table A of the Corporations Law and are common in public listed compa-

nics. As many people, by habit, state "Mr" before "Mrs", "Ms" or "Miss", the unintended result is that it is the male person who is entitled to vote.

Attempts have been made to overcome this unintended consequence of habit by indicating on the original membership application form that only the first-named can vote, in order that the applicant's mind is at least directed to the issue before completing the form.

Further, it must be noted that persons may at any time request the order in which their names appear on the membership register to be reversed (provided they each agree to this course).

The Committee proposes that either the first-named or second-named person (or subsequently named person) may cast the vote, provided that only one vote is cast. It is contemplated that, where more than one vote per membership is in fact cast, the first vote counted would be the valid vote.

The Committee understands that the practical consequences of such a change with respect to the computer information systems and electoral procedures would not be a major obstacle, but this will need to be confirmed. If difficulties are perceived to exist these could be overcome by providing that, in the event of more than one person named on the register casting a vote, the vote of the person first named on the membership register will prevail.

The Committee's attention has been drawn to an associated area of concern regarding the lack of awareness among members of their rights with respect to Concessional Membership. This entitles a two-person household owning two cars to divide a joint membership into two separate memberships, each with full voting rights, without payment of a second entrance fee. The Committee is of the view that steps should be taken to remedy this lack of awareness.

#### Recommendation

*Where two or more persons are named on a single membership and are only entitled to one vote, the Articles should provide that any one of the persons named on the membership may cast the vote.*

*That Council take immediate action to inform members by more effective means of their rights in respect of Concessional Membership.*

### 9. Creation of class of staff member

At present, staff members are honorary members of the Association. Honorary Members are not entitled to vote and have other limitations on their rights.

The Committee considers it desirable that members of the staff of the organisation should be afforded the opportunity of taking an active interest in its affairs by enjoying full membership rights, subject to ineligibility to hold office as a Councillor at the same time as being a staff member.

In order to achieve this it will be necessary for the Council to create a new class of membership. It would also be necessary to remove from Article 3 the present limitation precluding the members of newly created classes from voting or nominating a motor vehicle for road service.

#### Recommendation

*That the Council create a class of members entitled "staff members", defining staff members as persons in the regular employment of the organisation.*

*This class of members shall be exempt from a joining fee and annual membership fee and shall have full membership rights provided that no person may serve as a Councillor concurrently with being in the regular employment of the organisation.*

*Article 3 should be amended by deleting the words "provided that any such other class, or members of it, shall not have any right to vote or be elected as a Councillor or nominate a motor vehicle for road service."*

### 10. The Articles of Association should specify the retirement age of Councillors

The Articles of Association do not specify a retirement age for Councillors.

The Corporations Law (Section 228) provides that, a director of a public company who has attained 72 years must retire at each subsequent Annual General Meeting and, if standing for re-election, the members must be advised of the director's age. In the case of a company limited by guarantee the director must be re-elected by at least three quarters of the members who vote in the ballot.

The Association must comply with the Corporations Law irrespective of provisions in its Articles. The Committee recommends the maintenance of the status quo as it cannot see the necessity for any special provisions in this regard.

Moreover, the Committee is aware of the current community perception that age should not be regarded as a discriminatory factor.

#### Recommendation

*No recommendation for change.*

### 11. External directors of subsidiary companies

The Committee noted the Council's policy on Directors' appointments, being as follows:

(a) all Councillors should be encouraged and given the opportunity to be involved in some area of the NRMA;

(b) the Council has the responsibility to ensure that Boards include necessary expertise;

(c) appointments to Boards should be made in the best interests of the NRMA consistent with providing an opportunity for each Councillor to be involved.

Historically there have been times when a subsidiary company has had an "external" Director (i.e. non-Councillor) appointed, especially where certain expertise was considered desirable by the Council or by another body such as the Insurance and Superannuation Commission.

#### Recommendation

*No recommendation for change.*

### 12. Board of Management

The Committee noted that the current Articles provide that only Councillors shall be members of the Board of Management.

In order to achieve consistency with the Boards of the subsidiary companies within the Organisation, and consistent with modern company practice, the Committee recommends that membership of the Board of Management be opened up.

#### Recommendation

*Articles be amended to provide:*

(a) *Council shall appoint the members of the Board of Management;*

(b) *the members of the Board of Management may include executive members, provided that a majority of members will at all times be Councillors;*

(c) *the maximum number of members of the Board of Management be increased from 7 (under the current Articles) to 10.*

### 13. The nomenclature of "Councillors"

The "Councillor" of the NRMA is the equivalent at law of the "Director" on a board of a listed public company. Historically, the position of a director of a company limited by guarantee was honorary, and the common nomenclature for such a position was "Councillor" as opposed to "Director" in order to make this distinction.

In the view of the Committee, that historical position is no longer relevant and most people would not draw such a distinction.

#### Recommendation

*On the basis of modern common usage of language and in order to convey an accurate meaning, the Committee recommends the adoption of the title "Director" and "Board of Directors" in lieu of "Councillor" and "Council".*

### 14. Directors' fees should be paid to NRMA Councillors for their work as a Councillor

Under the Memorandum of Association Councillors are precluded from receiving remuneration from the Association.

The Committee regards this as inappropriate today, especially in view of the fact that a Councillor has all the duties and potential liabilities of a Director at law, and the role of the Councillor involves significant responsibility and commitment of time.

#### Recommendation

*That the Memorandum and Articles be amended to provide for the payment of Councillors, the amount of such payment to be approved by members at a General Meeting, and payments as determined by Council for service on Committees established by Council.*

For the Committee

(Sir) Laurence Street  
Chairman