

# AMENDED CONSTITUTION OF LIFELONG LEARNING KZN

## **1. INTRODUCTION**

**1.1** Whereas from 1971, the former University of Natal offered continuing education sessions to adults of the locality.

**1.2** These educational sessions ceased at the end of 2006 with the retirement of the staff involved.

**1.3** In 2008 a group of people from the locality came together to form a voluntary association for the purpose of re-starting such a programme, initially on the Howard College campus of the University of KwaZulu-Natal, but eventually at whichever locations in KZN seem most convenient for stakeholders who wish to further their knowledge and skills through lifelong learning activities.

**1.4** The Association now wishes to adopt this amended constitution, in order to satisfy the requirements of SARS, and in order bring it up to date with the way the Association currently operates.

## **2. NAME**

**2.1** The name of the Association is Lifelong Learning KZN.

## **3. OBJECTIVES**

**3.1** The objectives of the Association shall be to offer educational events, sessions, workshops and programmes in KZN to:

**3.1.1** the general public;

**3.1.2** students registered at education institutions; and

**3.1.3** needy persons

**3.2** Such courses shall be offered:

**3.2.1** on a basis which makes them accessible to persons which require them, and which ensure broadest access to new and locally-relevant knowledge;

**3.2.2** for the personal educational and social development of those participating, and for continuing professional and educational development;

**3.2.3** utilising the knowledge resources of staff working in higher education in the province for such public education in their respective fields; and

**3.2.4** drawing on any other people with knowledge and expertise who can offer such education.

**3.3** These objectives of the association shall be carried out in a non-profit manner, and with an altruistic or philanthropic intent.

#### **4. LEGAL AND NON-PROFIT CHARACTER**

**4.1** The Association is a body corporate with its own legal identity which is separate from its individual members. The Association shall continue to exist even if the members change.

**4.2** The Association may own property, enter into contracts, and sue or be sued in its own name.

**4.3** The Association shall be a non-profit voluntary association.

**4.4** The income and property of the Association shall be used solely for the promotion of its stated objectives.

**4.5** The members and the office-bearers shall have no rights to the property or other assets of the Association solely by virtue of them being members or office bearers.

**4.6** No portion of the income or property of the Association shall be paid or distributed directly or indirectly by way of dividend, bonus or otherwise howsoever to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of the Association or Management Committee, except as:

**4.6.1** reasonable compensation in good faith for services actually rendered to the Association; or

**4.6.2** reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

**4.7** No activity of the Association will directly or indirectly promote the economic self-interest of any Management Committee member, member or employee, otherwise than by way of reasonable remuneration.

#### **5. POWERS**

**5.1** The Association, acting through its Management Committee, or at General Meeting, shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the following:

**5.1.1** To employ staff and hire professional and other services provided that the Association will not pay any remuneration, as defined in the Fourth Schedule of the Act, to any employee, office bearer or other person which

is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, and will not economically benefit any person in a manner which is not consistent with its objects;

5.1.2 To institute or defend any legal or arbitration proceedings and to settle any claims made by or against the Association;

5.1.3 To open and operate accounts with registered banks and building societies;

5.1.4 To make and vary investments and re-invest the proceeds of such investments

5.1.5 To accept donations made to the Association and retain them in the form in which they are received, or sell them and re-invest the proceeds provided that no donation may be received which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act 1962 as amended (“the Act”): Provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole object or purpose the carrying out of any public benefit activity as defined in the Act) may not impose conditions which could enable such donor or any connected person (as defined in the Act) in relation to such donor to derive some direct or indirect benefit from the application of such donation.

5.1.6 With regard to movable and immovable property and tangible and intangible assets of whatsoever nature:

5.1.6.1 to purchase or acquire property and assets;

5.1.6.2 to maintain, manage, develop, exchange, lease, sell, or in any way deal with the property and assets of the Association; and

5.1.6.3 to donate and transfer the property and assets of the Association to organisations with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.

5.1.7 To borrow and to use the property or assets of the Association as security for borrowing;

5.1.8 To guarantee the performance of contracts or obligations of any person on condition that any such person is primarily engaged in activities which further the objectives of the Association;

5.1.9 To execute any act or deed in any deeds registry, mining titles or other public office;

**5.1.10** To work in collaboration with other organisations and to amalgamate with any organisation with the same or similar objectives and the same exemptions from taxes and duties to those of the Association;

**5.1.11** To exercise all the management and executive powers that are normally vested in the Board of Directors of a Company; and

**5.1.12** To exercise all the powers and authority of the Association not only in the Republic of South Africa but in any other part of the world.

## **6. MEMBERS**

**6.1** The membership shall be those persons whose names and signatures appear in the record of members kept by the Association as stipulated in 6.2 below.

**6.2** The Management Committee may admit members from time to time, subject to due compliance with any conditions of membership (including payment of any membership fees) which the Management Committee may stipulate from time to time, and in accordance with the following criteria:

**6.2.1** persons who have registered as fee-paying students for any of the education offered by the voluntary association during the previous 12 months; or

**6.2.2** persons who have been contracted deliver such education during the previous twelve months; or

**6.2.3** persons who have assisted the programme in any way in the last 12 months and who have been invited to become members by the Management Committee;

**6.2.4** AND, attend the annual general meeting, or for each of the above categories, those who opt into the status of membership by signifying their intention to do so within six weeks before a general meeting.

**6.3** The Management Committee may suspend or terminate the membership of any member provided that:

**6.3.1** At least (14) fourteen days prior written notice is given to all members of the Management Committee of the intention to terminate a membership; and

**6.3.2** At least (14) fourteen days prior written notice is given to the member concerned. The notice shall invite the member to make written or verbal representations to the meeting as the member may consider appropriate.

**6.4** The decision of the Management Committee to admit an applicant to membership, or to suspend or terminate a membership shall lapse unless

confirmed by a resolution of two thirds of the members of the Association present at the next General Meeting.

**6.5** Neither the Management Committee nor the Association shall be required to give reasons for their decisions with respect to membership.

## **7. STRUCTURE OF THE ASSOCIATION: powers of The Management Committee**

**7.1** The affairs of the Association shall be controlled and managed by the Management Committee. Subject to the terms of this constitution and to the resolutions of members in General Meeting, the Management Committee may exercise all the powers of the Association.

**7.2** In General Meeting, the Association may review, approve or amend any decision taken by the Management Committee but no such resolution of the Association shall invalidate any prior action taken by the Management Committee in accordance with the provisions of this Constitution.

## **8. Election of the management committee**

**8.1** The members of the first Management Committee shall be elected at the General Meeting at which this Constitution is adopted, and shall hold office until the first Annual General Meeting held after their appointment. At such first Annual General Meeting and at every subsequent Annual General Meeting held thereafter, not less than one third of the Management Committee members shall resign by rotation. The members to resign shall be those who have been in office the longest since their last appointment. As between members of equal seniority, the members to resign, in the absence of agreement between them, shall be determined by ballot.

**8.2** Resigning Management Committee members shall be eligible for reelection or co-option.

**8.3** Management Committee members shall be members of the Association.

## **9. Composition of the management committee**

**9.1** The Management Committee shall comprise at least 5 but not more than 11 members provided that at least 3 of the board members shall be persons who are not connected persons (as defined in the Act) in relation to each other. No single person shall directly or indirectly control the decision-making powers of the Association. The membership of the Management Committee shall comprise:

**9.1.1** the Chairperson;

- 9.1.2 the Vice-Chairperson;
- 9.1.3 the Treasurer;
- 9.1.4 the Secretary;
- 9.1.5 at least one (1) other person.

9.2 The Management Committee may co-opt up to 6 additional non-voting members as it may consider appropriate from time to time. The co-opted members shall serve for such period as the Management Committee considers appropriate.

## 10. Management Committee Member Vacating Office

10.1 The office of a Management Committee member shall be vacated if a member:

- 10.1.1 resigns; or
- 10.1.2 becomes unfit and/or incapable of acting as such; or
- 10.1.3 would be disqualified, in terms of the Companies Act or equivalent legislation in force from time to time, from acting as a Director of a Company; or
- 10.1.4 is removed by the Management Committee, by resolution adopted by at least three-quarters (3/4) of its members in office from time to time, The Management Committee shall not be obliged to furnish reasons for its decision/s regarding removal except to the member removed and to the members of the Association in General Meeting.

10.2 Should a position on the Management Committee fall vacant, the Management Committee, by resolution adopted by at least two-thirds (2/3) of its members, may (and if the vacancy reduces the number of members to fewer than five [5], shall) co-opt a member/s to fill the vacancy/ies. The office of any person so co-opted as member of the Management Committee shall lapse unless confirmed by resolution of members at the next General Meeting.

## 11. Procedure at Management Committee Meetings

11.1 The Management Committee shall conduct its meetings and regulate its proceedings as it finds convenient, provided that:

11.2 The Chairperson, or in his or her absence, the Vice- Chairperson, shall chair all meetings of the Management Committee which he or she attends. In the absence of the Chairperson and the Vice-Chairperson, the remaining members of the Management Committee shall elect a chairperson from those attending.

11.3 The Chairperson shall convene a meeting of the Management Committee, quarterly and at the written request of any two (2) members of the Management Committee and may convene such a meeting at any other time.

**11.4** The quorum necessary for the transaction of any business by the Management Committee shall be two-thirds (2/3) of the Management Committee members serving at any given time.

**11.5** At meetings of the Management Committee each member shall have one (1) vote.

**11.6** Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

**11.7** Proper minutes shall be kept of the proceedings of the Management Committee, and a record of the persons present at each meeting. The minutes shall be signed by the member who chairs the meeting, and shall be available at all times for inspection or copying by any member of the Management Committee, and on two (2) days' notice to the Secretary or his or her deputy, by any member of the Association.

**11.8** A resolution signed by all members of the Management Committee shall be as valid as if passed at a duly convened meeting of the Management Committee.

**11.9** Meetings may be held by members of the Management Committee simultaneously in more than one place, provided that the persons involved are linked by telephone, video, teleconference or other facilities such as enable them to communicate and participate in the business of the meeting, as if actually present together at the same time and place.

**11.10** The Management Committee may delegate any of its powers to any of its members, or to a special purpose committee. The member, committee, employee or agent to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Management Committee from time to time.

**11.11** If the operations of Lifelong Learning KZN extend to other campus locations and towns in KZN, the Management Committee may delegate its powers to a locally elected Committee that shall conform to any regulations and procedures that may be stipulated by the Management Committee from time to time. Such arrangements shall be agreed in writing and signed by the office bearers of the Management Committee and of the locally elected committee and shall include clarity about the division of financial and legal responsibilities.

**11.12** The Management Committee may appoint a Chief Executive and other officers and employees as it may consider necessary from time to time upon such terms and conditions as it may consider appropriate.

## **12. Annual General Meeting**

**12.1 Annual General Meetings of the Association shall be held within a period of three (3) months of the end of each academic year.**

**12.2 Annual General Meetings shall be convened by the Chairperson on not less than fourteen (14) days prior written notice to all members entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting.**

**12.3 The business of an Annual General Meeting shall include:**

**12.3.1 the presentation and adoption of the Annual Report of the Chairperson;**

**12.3.2 the consideration of the Annual Financial Statements or provisional Annual Financial Statements;**

**12.3.3 the election of members to serve on the Management Committee for the following year;**

**12.3.4 the appointment of accounting officer or auditors ; and**

**12.3.5 other matters as may be considered appropriate.**

### **13. Other General Meetings**

**13.1 Other General Meetings of the Association shall be convened at any time by the Chairperson or at the written request of:**

**13.1.1 the Management Committee;**

**13.1.2 the lesser of one quarter (1/4) or 10 of the members of the Association.**

**13.1.3 Any General Meeting other than the Annual General Meeting shall be convened on not less than fourteen (14) days written notice to all members. The notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting: provided that: should the Chairperson, having been requested to give such notice, fail to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and to convene the meeting.**

### **14. Meeting procedures**

**14.1 A quorum constituting a Meeting of the Association shall be one tenth (1/10) of the members either present or having sent in proxy votes**

**14.2 Should any Meeting have been properly convened but no quorum be present, the meeting shall stand adjourned to another date, which shall be within seven (7) days thereafter. The notice reflecting such adjournment shall be given to the persons and in the manner provided for in this Constitution. At such**

reconvened Meeting, the members then present or represented shall be deemed to constitute a quorum.

**14.3** At all Meetings, a resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot shall be held only if demanded by the Chairperson or not less than one third (1/3) of the persons voting in person or by proxy. The result of the vote shall be the resolution of the meeting.

**14.4** Each member present or represented at such meeting shall be entitled to one (1) vote.

**14.5** Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

**14.6** Proxy votes shall be either in writing and signed on paper or by email and clearly coming from the member's regular email address

**14.7** Proper minutes shall be kept of the proceedings of all Meetings, and a record of the persons present at each meeting. The minutes shall be signed by the chairperson of the meeting, and shall be available for inspection or copying by any member on two (2) days notice to the Secretary or his or her deputy.

**14.8** Subject to the provisions of Clause 14.1 above, a duly convened Meeting of the Association, at which a quorum is present, is competent to carry out all the objectives and to exercise all the powers of the Association as set out in this Constitution.

## **15. Notices**

**15.1** Notice of all meetings provided for in this Constitution, shall be delivered personally, or sent by email or sms no fewer than 14 days before the date of the meeting, utilizing the same most recent contact details that are registered on the Association's database.

**15.2** The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.

**15.3** Notices shall be deemed to have been received 1 day after posting by email or sms.

## **16. FINANCIAL MATTERS**

**16.1** The Management Committee shall open a bank account in the name of the Association with a registered Bank. The Management Committee shall ensure that all monies received by the Association are deposited in the abovementioned bank account as soon as possible after receipt.

**16.2** All cheques, promissory notes and other documents requiring signature on behalf of the Association shall be signed or authorized by two (2) of the Management Committee members.

**16.3** The Association's financial year end shall be Dec 31<sup>st</sup>.

**16.4** The Management Committee shall ensure that the Association keeps proper records and books of account which fairly reflect the affairs of the Association provided that the records and books of account are preserved for a period of 5 years. The Management Committee shall ensure that the Association prepares an annual narrative report describing the Association's activities and an Annual Financial Statement for each financial year.

**16.5** Statements shall conform with generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.

**16.6** Within two (2) months after drawing up the Annual Financial Statements, the Management Committee shall ensure that:

**16.6.1** the Association either arranges for an independent accounting officer appointed by the Management Committee to certify that the annual financial statements are consistent with the financial records of the Association and that its accounting policies are appropriate and have been appropriately applied in the preparation of its financial statements; OR

**16.6.2** the books of account and financial statements are audited and certified in the customary manner by an independent practising chartered accountant.

**16.7** If Annual Financial Statements have not been certified or audited in terms of 16.6 in time for them to be presented at the relevant Annual General Meeting, provisional Annual Financial Statements shall be presented and discussed. The Annual Financial Statements shall be certified or audited in terms of 16.6 by no later than 2 months after the Annual General Meeting, and shall thereafter be made available to any members on request.

**16.8** A copy of the annual narrative report shall be made available to all members electronically as soon as possible after the Annual General Meeting

**16.9** The Association shall comply with such reporting requirements as may be determined by the Commissioner for the South African Revenue Service from time to time under section 30(3)(e) of the Act.

**16.10** The Association shall be prohibited from using its resources directly or indirectly to support, advance or oppose any political party.

**17. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION**

**17.1** The terms of this Constitution may be amended, the name of the Association may be changed and the Association may be dissolved by resolution of sixty six per cent (66%) of those participating in a General Meeting, either in person or by proxy voting: provided that proper notice of the meeting is given not less than twenty-eight (28) days prior to the date of the Meeting and such notice states the nature of the resolution to be proposed.

**17.2** Any amendments to this constitution:

**17.2.1** shall, if the association is exempted from payment of normal tax or authorised to issue receipts under s18A of the Act, be sent for their records to the Commissioner for the South African Revenue Services or his authorised representative;

**17.2.2** shall, if the association is registered as a non-profit organisation, be sent to the Directorate of Non-Profit Organisations.

**17.3** Upon the dissolution of the Association, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organization/s which the Management Committee (and failing which any division of the High Court) considers appropriate and which has objectives the same or similar to the objectives of the Association; and should the Association become an approved public benefit organization/s:

**17.3.1** which is/are similar public benefit organization/s approved in terms of section 30 of the Income Tax Act, or

**17.3.2** which is/are institution/s, board or body exempt from tax under the provisions of section 10(1)(cA), which has as its sole or principal object the carrying on of any public benefit activity, or

**17.3.3** which is/are any department of state or administration in the national or provincial or local sphere of government of the Republic contemplated in section 10(1) (a) or (b).

**17.3.4** AND, *if* the association is registered as a NonProfit Organisation, which is/are themselves registered as NonProfit Organisations.

## **18. INDEMNITY**

**18.1** Subject to the provisions of any relevant statute, members of the Management Committee and other office bearers shall be indemnified by the Association for all acts done by them in good faith on its behalf. It shall be the duty of the Association to pay all costs and expenses which any such person incurs or becomes liable for as a result of any contract entered into, or act done by

him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the Association.

**18.2** Subject to the provisions of any relevant statute, no member of the Management Committee and or other office bearer of the Association shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Association, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

## **19. DISPUTES**

**19.1** In the event of a serious disagreement between the members of the Management Committee and/or the Association regarding the interpretation of this constitution then any two (2) Management Committee members or any five (5) members of the Association shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Management Committee.

**19.2** The Management Committee shall consider such declaration within two (2) weeks of receiving it. Should the Management Committee not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.

**19.3** Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Management Committee must agree on a suitable mediator and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.

**19.4** In the absence of agreement regarding a mediator or should mediation not resolve the dispute, the dispute shall be referred to arbitration. The arbitrator shall be such suitably qualified person/s as the person(s) declaring the dispute and the Management Committee may mutually agree. Alternatively, each of the parties shall be entitled to nominate one arbitrator, who shall act jointly with a third person to be nominated jointly by the respective nominees of the parties; on the basis that a majority decision of the appointed arbitrators shall be final and binding.

**19.5** The arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.

**19.6** The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.

**19.7** The person(s) declaring the dispute and the Management Committee, beforehand, may agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which parties shall be liable for the costs.

**19.8** The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.