

	<p>SARWA (The South African Rights of Way Association)</p> <p><b>OUR CONSTITUTION</b></p>	Document No.	S_QM_01
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# Constitution of The South African Rights of Way Association (SARWA)

as approved at the

inaugural meeting

on

April 21, 1998

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# SOUTH AFRICAN RIGHTS OF WAY ASSOCIATION

## CONSTITUTION

### **1 NAME:**

The Association shall be called the **South African Rights of Way Association** (hereinafter referred to as "SARWA").

### **2 OBJECTIVES AND POWERS:**

#### **2.1 The objects of SARWA are:**

- 2.1.1** to promote the common interests of its members toward individual development, improved service to employers and the public and improvement in the body of knowledge related to the professional tasks of its members.
- 2.1.2** to utilise its funds solely for investment or for its objectives and not to distribute any of its profits or gains to any person.
- 2.1.3** to direct its activities wholly or mainly to the furtherance of its sole or principal objects.
- 2.1.4** to admit to membership of SARWA persons who qualify for membership in terms of this constitution, to encourage all such persons to join SARWA and to unite all suitable members principally engaged in right of way work into a single body.
- 2.1.5** to encourage and promote the study of any matters related directly or indirectly to the subject of rights of way, to provide facilities for the acquisition of practical and theoretical knowledge of rights of way.
- 2.1.6** To provide and encourage training to members and prospective members, and to provide and encourage continued practical training (C.P.T) for its members, acknowledging the need for all its members to obtain such C.P.T on an ongoing basis in the interest of the advancement of standards.
- 2.1.7** to take steps, initiate, promote, support, and procure the adoption of such legislation relating to rights of way as may be necessary.

- 2.1.8 to establish insofar as practicable a uniform approach of valuing rights of way.
- 2.1.9 to provide a forum for exchange of views, to preserve and maintain its integrity and status and that of its members, to deal with all matters affecting the professional interest of its members, and generally to promote the interests of SARWA and its Members.
- 2.1.10 to promote friendly and good relations between Members, to provide for the amicable settlement or adjustment of professional disputes among Members and to regulate the professional conduct of Members.
- 2.1.11 to establish a code of professional conduct and ethics for Members and to take disciplinary action against defaulting members.
- 2.1.12 to print, publish and circulate among Members and other interested persons, papers, books, periodicals, circulars, and other literature dealing with property valuations and related matters.
- 2.1.13 to maintain and uphold and achieve the objectives of SARWA; and
- 2.1.14 to represent the collective views of its members to related bodies, public authorities and to other interested organizations and persons.
- 2.2 The powers of SARWA are any activities necessary to achieve SARWA's objectives, including but not limited to the following: -
  - 2.2.1 to acquire any property, rights, or privileges, necessary or convenient for the objects of SARWA, to sell, improve, manage, develop, lease, or rent immovable property, dispose of, give to exchange, turn to account, abandon, or otherwise deal with all or any part of the property or rights of SARWA, whether movable or immovable, both present and future.
  - 2.2.2 to borrow, lend or raise money for the objects and commitments of SARWA with or without security, and if secured by any means, including mortgage of SARWA's

property or by way of overdraft from its bankers.

- 2.2.3 to invest, lend and deal with the monies of SARWA in such manners and upon such terms and conditions and whether against security or otherwise as the Executive may determine.
- 2.2.4 to maintain a membership roll.
- 2.2.5 to institute, defend, compound, or abandon any action in a competent Court of Law, to submit or agree to the submission of any matter to arbitration.
- 2.2.6 to promote legislation for the implementation and furtherance of all or any of its objects.
- 2.2.7 to charge and receive registration fees, annual subscriptions, members entrance fees, and other forms of levy as determined by SARWA from time to time as well as all other revenues of SARWA.
- 2.2.8 to open and operate an account or accounts, with any registered financial institutions and to draw and accept endorsed bills, cheques, promissory notes, bank drafts, cheques, and all other negotiable instruments.
- 2.2.9 to invest monies of SARWA not immediately required for any of its objects or commitments in such a manner as may from time to time be determined, provided that the income or profits of any investments or any other source shall be applied to the furtherance of the objects of SARWA and not to the payment of any dividend of its members.
- 2.2.10 to acquire, purchase, lease or rent furniture, office fittings, office equipment, stationery, and any other moveable property reasonably necessary for the furtherance of SARWA's objects and to dispose of same by way of sale or otherwise, where necessary.
- 2.2.11 to investigate complaints of unprofessional conduct and dishonorable practices by

members and to take disciplinary action against members and/or refer disciplinary matter to a statutory body.

2.2.12 The income and profit of SARWA from whatever source so derived, shall be applied solely towards the promotion of the objects of SARWA as set forth in this Constitution and no portion thereof shall be paid directly or indirectly by way of dividend or bonus or otherwise, or by way of profit to its Members, provided nothing herein shall prevent the payment for actual services rendered to SARWA or remuneration to any officers or its servants or any other member.

2.2.13 To form a partnership with the International Rights of Way Association and to compile bylaws required for such a partnership, and then to use this partnership solely for the benefit of the SARWA members education, networking, ethics, international and national accreditation.

### **3 CORPORATE STATUS:**

SARWA shall:

3.1 be a body corporate.

3.2 not be carried on for the purpose of gain.

3.3 have perpetual succession notwithstanding any change in the number or identity of its members from time to time.

3.4 The committee, board or management or similar governing body accepting fiduciary responsibility for the Association must consist of at least three persons, who are not connected persons in relation to each other.

3.5 No single person may directly or indirectly control the decision-making powers relating to the association.

3.6 The Association may not directly or indirectly distribute any of its funds or assets to any person other than while furthering its objectives.

- 3.7 Substantially the whole of the funds must be utilised for the sole or principal object for which the Association has been established.
- 3.8 No member may directly or indirectly have any personal or private interest in the Association.
- 3.9 Substantially the whole of the activities of the Association must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group.
- 3.10 The Association may not have a share or other interest in any business, profession or occupation which is carried on by its members.
- 3.11 No remuneration will be paid to any employee, office bearer, member, or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 3.12 On dissolution or liquidation of the Association the remaining assets after satisfaction of its liabilities must be transferred to another entity with similar objectives in terms of Sections 10(1)(d)(iii) or (iv) of the Act, or a public benefit organization in terms of Section 30 of the Act, or any department of state or administration in the national or provincial or local sphere or government of the Republic, contemplating in Section 10(1)(a) or (b) of the Act which is required to use the assets solely for the purposes of carrying on one or more public benefit activities, or an institution, board or body approved in terms of Section 10(1)(cA)(i) of the Act.
- 3.13 Any amendments to the Constitution must be submitted to the Commissioner of the South African Revenue Services within 30 days from the date of amendment.
- 3.14 The Association will not knowingly become a party to and does not and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Act, or a transaction,

operation or scheme as contemplated in Section 103(5) of the Act.

#### **4 CLASSES OF MEMBERS AND QUALIFICATION FOR MEMBERSHIP**

##### **4.1 Qualifications.**

An applicant for membership must be of good character and reputation, and concerned with the acquisition, leasing, or disposition of real property. Such activities must have some definite relationship to right of way work by public, quasi-public, or private organizations.

##### **4.2 Membership.**

Except as hereinafter provided, an applicant for membership who is principally engaged in right of way work shall become a member upon securing a majority vote of a quorum of the SARWA executive board. An applicant engaged in such activities, although not principally so, shall become a member upon election to membership by a two-thirds vote of a quorum of the executive board.

##### **4.3. Classification.**

SARWA has the following classes of membership:

###### **4.3.1 Active.**

Active members shall be those persons who are elected to active membership by SARWA and who are actively engaged in right-of-way work or a related profession and/or who are active in the service of SARWA, and/or are interested in the affairs of either the right-of-way profession or of SARWA.

###### **4.3.2 Retired.**

A retired member shall be any person who has reached the age of retirement, who has retired from regular right-of-way professional activities while being an active member of SARWA, which application must be filed with SARWA and approved, pursuant to unanimous vote, by the executive board. Retired members shall have the right to vote and to hold office. Retired member status may continue in effect

so long as the retired member earns less than the sum determined from time to time by the executive committee per annum from right-of-way activities for any year succeeding the year of election to retired status. In the event the retired member earns more than the sum determined by the executive committee per annum from right-of-way activities, such retired member must disclose that fact to SARWA executive board and, further, such member must comply with the SARWA's current rules relative to reinstatement to active membership.

#### **4.3.3 Honorary**

Honorary members shall be those persons of prominence who are not otherwise members of SARWA and are not eligible to become members, but who are involved in activities compatible with the qualifications of other classes of members and who are elected to honorary membership by SARWA. Honorary members shall not have the right to vote or to hold office.

#### **4.3.4 Allied/Patron.**

Allied/Patron members shall be individuals engaged in activities related to the right-of-way Profession, who have a community of intent requiring information concerning right-of-way and sympathy with the objectives of the Association, but who are not eligible for other active or retired membership categories. Allied/Patron members shall not have the right to vote or hold office.

#### **4.3.5 Student.**

Student members shall be students enrolled in an undergraduate or graduate degree, diploma, or certificate program at an institution of higher education with a specialization or major in real estate or one of the industry disciplines associated with the right-of-way profession, but who are not eligible for other active or retired membership categories. Student members shall not have the right to vote or hold office.

#### **4.4. Admonishment, Reprimand, Suspension and Expulsion for Cause.**

- 4.4.1 Failure of a member to conduct himself or herself in such a manner as to reflect honesty and integrity on both himself or herself and SARWA and to at all times be



bound by the Code of Ethics, the Rules of Professional Conduct, and the Aims and Purposes of SARWA shall constitute justification for his or her admonishment, reprimand, suspension or expulsion from membership and the administration of disciplinary action in accordance with the Rules established by the Executive Committee.

4.4.2 Grounds for expulsion of a member shall include but not be limited to the following:

4.4.2.1 Conviction of a serious crime for which the member has been sentenced for a jail period without the option of a fine.

4.4.2.2 Found to be guilty of any act discreditable to or inimical to the best interest of SARWA.

4.4.2.3 Proper showing that the members application for membership, at the time that membership was granted was falsified, or that he or she knowingly failed to give complete, and information in said application, which information, had it been submitted, would have resulted in denial of his or her application for membership in SARWA.

4.4.2.4 Found to have been dishonest or to have lied and knowingly misrepresented or withheld information during his or her right of way professional activities.

4.4.3 Less serious infractions may be grounds for admonishment or reprimand. Admonishment is an expression of disapproval of conduct and constitutes a warning concerning a specific act, such as an error or omission. Reprimand is a severe expression of disapproval and criticism and constitutes a serious warning. It may include conditions for continuation of membership and notice of its issuance may be published.

#### 4.5 **Membership Termination.**

Membership in the Association may be terminated

4.5.1 by death.

4.5.2 by withdrawal or resignation; or

4.5.3 by expulsion.

Upon termination of membership, an individual shall simultaneously forfeit all interest in any funds or other assets of the SARWA.

## **5 ADMISSION OF MEMBERS:**

5.1 The admission of any applicant to membership shall be in the discretion of the executive committee.

## **6 SUBSCRIPTIONS:**

The subscription of all members shall be determined at the Annual General Meeting from time to time and is payable each year on or before June 30th.

## **7 CESSATION OF MEMBERSHIP:**

7.1 A member shall cease to be a member of SARWA:

7.1.1 if such member's resignation is submitted in writing to the secretary of SARWA; or

7.1.2 if such member's membership is cancelled by the Executive Committee in terms of this constitution.

7.2 If any member ceases to be a member in terms of sub-clause 7.1.1 above, the member shall remain liable for any subscription or balance thereof that may be outstanding at the date on which the member's membership so ceases.

## **8 GENERAL MEETINGS:**

8.1 A general meeting shall mean an annual general or a special general meeting.

8.2 The annual general meeting shall be held within two (2) months after the end of each financial year of SARWA.

8.3 The business of the annual general meeting shall be:

- 8.3.1 to confirm the minutes of the previous annual general meeting.
- 8.3.2 to receive and consider the Executive Committee's report and the accounts and balance sheet of SARWA, for the preceding financial year of SARWA:
- 8.3.3 to elect the members of the Executive Committee.
- 8.3.4 to determine the subscriptions for the next financial year.
- 8.3.5 to consider any resolution/s of which notice has been given in terms of clause 8.7.
- 8.3.6 to consider any other business.
- 8.4 The executive committee may at any time convene a special general meeting and shall, on the requisition of not less than ten (10) members, convene a special general meeting.
- 8.5 Any notice convening a special general meeting shall specify the object for which the meeting is called and state that no business other than the business specified in that notice shall be transacted at that meeting.
- 8.6 All notices convening a general meeting shall specify the time and place of the meeting and shall be posted to the members at least 14 days before the date of the meeting.
- 8.7 Notice of any resolution to be proposed at an annual general meeting or a special general meeting, other than ordinary business, must be lodged with the secretary at least twenty-one (21) days before the day fixed for that meeting; otherwise, it may not be proposed.
- 8.8 The chairperson of each general meeting shall be:

- 8.8.1 the President of the Executive Committee; or
- 8.8.2 if the President of the executive committee has not been elected, or having been elected is not present, the vice-President of the executive committee; or
- 8.8.3 failing 8.8.1 and 8.8.2 above, any member of the executive committee elected at the meeting; or
- 8.8.4 if no such committee member is present, any member of SARWA elected at the meeting.
- 8.9 the chairperson of any general meeting may with the consent of the meeting adjourn the meeting from time to time, but no business shall be transacted at the adjourned meeting other than the business left unfinished from the meeting at which the adjournment took place.
- 8.10 At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands.
- 8.11 A declaration by the chairperson that a resolution has, on a show of hands, been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of SARWA, shall be conclusive evidence thereof, without proof of the number of or proportion of the votes recorded in favour of or against that resolution.
- 8.12 On a show of hands, each member shall be entitled to one vote, provided that no such member shall be entitled to vote at any general meeting if such member is in arrear with any subscription and that only full members are entitled to vote on matters pertaining to the constitution or matters arising therefrom.
- 8.13 Members may vote in person only, and no proxies or other form of representation shall be permitted.

- 8.14 A quorum at a general meeting shall be 25% of the paid-up active members.
- 8.15 If within thirty (30) minutes from time at which any general meeting is scheduled, a quorum is not present, then those members present shall be a quorum for that meeting.

## **9 EXECUTIVE COMMITTEE:**

- 9.1 SARWA shall have an executive committee, which shall consist of:
- 9.1.1 a President.
  - 9.1.2 a Vice President.
  - 9.1.3 an Honorary Treasurer.
  - 9.1.4 an Honorary Secretary, and
  - 9.1.5 eight additional members.
- 9.2 The executive committee members shall be elected at an annual general meeting and must be Active Members for a continuous period of three years.
- 9.3 The term of office of the President and Vice President shall be one year and shall cease at the end of the first annual general meeting following the annual general meeting on which the President or Vice President was elected. The term of office of a member of the executive committee shall be two years and shall cease at the end of the second annual general meeting following the annual general meeting on which such member was elected. In respect of the first executive committee, the terms of office of the Vice Chairperson, the Honorary Secretary and two of the additional members shall cease at the end of the first annual general meeting of SARWA and thereafter at the end of the second annual general meeting following the general meeting on which such member was elected.
- 9.4 Any retiring committee member shall be eligible for re-election.

## **10 MANAGEMENT OF SARWA:**

10.1 The management of the business, and the control of SARWA, shall be vested in the executive committee, who in addition to all the powers expressly conferred upon them under any other provisions of this constitution may exercise all such powers and do all such acts as may be exercised by SARWA.

10.2 The executive committee may from time to time:

10.2.1 Co-opt members to serve on the executive committee to fill any vacancies or to expand the executive committee as it may deem fit.

10.2.2 establish such subcommittees as they deem fit and determine the functions and activities of such committees.

10.2.3 confer upon any one or more of their members all or any of the powers exercisable by the executive committee, and upon such terms and conditions and with such restrictions as the executive committee deems fit, and either collaterally with or to the exclusion of their powers.

10.2.4 make, and from time to time vary or add to, regulations governing the conduct of meetings of SARWA.

10.2.5 subject to the approval of the members at a general meeting, determine the dress, colors, and badges of the members of SARWA as well as the conditions upon which such colors may be worn.

## **11 PROCEEDINGS OF THE EXECUTIVE COMMITTEE:**

11.1 The executive committee may meet, adjourn, and otherwise regulate their meetings as they deem fit.

11.2 The executive committee may determine what notice is to be given of their meetings and the means of giving that notice.

- 11.3 It shall not be necessary to give notice of a meeting of the executive committee to any member thereof who is absent from the Republic of South Africa.
- 11.4 If for any reason a President of the executive committee is not elected, or if at any executive committee meeting the President is not present, then the Vice-President shall be the chairperson of the meeting; otherwise, the committee members present may choose one of their number to be chairperson of the meeting.
- 11.5 Unless otherwise determined by the executive committee, 5 members present at the commencement of and throughout a meeting of the executive committee shall constitute a quorum.
- 11.6 Any question arising at a meeting of the executive committee shall be decided by most votes, and in the case of an equality of votes the chairperson shall be entitled to a second or casting vote.
- 11.7 Any casual vacancy occurring on the executive committee may be filled by the executive committee.
- 11.8 A resolution in writing, which is signed by all the members of the executive committee who are present at the same time and who are not less than a quorum for a meeting of the executive committee and inserted in the record book of the proceedings of the executive committee, shall be as valid and effective as if it had been passed at a meeting of the executive committee.
- 11.9 Any such resolution may consist of several documents of the same form, each of which is signed by one or more members of the executive committee, and shall be deemed (unless the contrary appears from that resolution) to have been passed on the date on which it was signed by the last member of the executive committee entitled to sign it.
- 11.10 The executive committee shall cause a record to be made in a minute book provided for that purpose of all resolutions passed at meetings of the executive

committee and ensure that all such resolutions be inserted in that minute book.

11.11 Any such record or any extract there from shall be *prima facie* evidence of the matters stated therein if it is signed:

11.11.1 in the case of a meeting, by the chairperson of that meeting or by any person present at that meeting who is authorized by the executive committee to sign in place of the President of the executive committee:

11.11.2 in the case of a resolution passed in terms of 11.8 above, the President of the executive committee or by any other member of the executive committee who is authorized by the executive committee to sign in place of the President.

## **12 VACATION OF OFFICE:**

An elected committee member vacates the office if the member ceases to be a member of SARWA or resigns the office by notice in writing to the secretary of SARWA or is absent from two (2) consecutive meetings without good reason and without having first advised the secretary of the inability to attend.

## **13 FINANCIAL MATTERS:**

13.1 The financial year of SARWA shall be from the 1st day of March to the last day of February the following year.

13.2 All monies received on behalf of SARWA shall be deposited in an account at a bank opened in the name of SARWA at a branch in the Republic of South Africa and all expenses other than that of a petty cash nature shall be paid from that account.

13.3 The executive committee shall cause proper financial statements to be kept, showing all the income and expenditure of SARWA and all its assets and liabilities.

13.4 The financial statements of SARWA may be audited by an accountant who may be appointed for that purpose by the executive committee.



- 13.5 Appropriate financial statements shall be prepared at the end of each financial year of SARWA and circulated among the members of the executive committee.
- 13.6 Any member of SARWA may obtain a copy of those financial statements upon written request to the secretary of SARWA and payment of such fee as the executive committee may determine from time to time.
- 13.7 Subject to 13.6 above, the executive committee shall not be obliged to furnish a copy of any of SARWA's financial statements to any member other than a summary of the financial statements which should accompany the notice convening the Annual General Meeting.

**14 SIGNATORIES:**

All legal documents (including all cheques and other negotiable instruments) which are required to be signed on behalf of SARWA shall be signed by any two members of the executive committee, one of whom must be the President or Vice-President or the treasurer of SARWA or anyone appointed for this purpose by the chairperson.

**15 INDEMNITY:**

Every member or officer or servant of SARWA shall be indemnified by SARWA against all costs, losses and expenses which the member may incur or become liable for by reason of any act or thing done by such member, officer, or member as such in the discharge of their duties, unless the loss in question is caused by their own negligence, default, breach of duty or breach of trust.

**16 NOTICES:**

- 16.1 Every member shall ensure that the member's address and any change thereof is recorded with the secretary of SARWA.
- 16.2 Any notice or other communication whatever addressed by SARWA to any member at the address recorded in respect of that member under 16.1 above, shall be deemed to be received by that member within (48) hours after being posted.

16.3 The accidental omission to give notice of any meeting to any person or persons entitled to be present thereat shall not invalidate any of the proceedings at that meeting.

**17 AMENDMENTS TO THIS CONSTITUTION:**

No amendments to this constitution shall be of any effect unless the resolution proposing that amendment is passed by a majority of not less than two-thirds of the full members who are present and entitled to vote at a general meeting.

**18 DISSOLUTION OF SARWA**

18.1 SARWA shall dissolve if all the members present at an annual general meeting or special general meeting vote in favour of a resolution calling for the dissolution thereof if notice in terms of 8.7 has been given.

18.2 Upon its winding up or liquidation, its assets remaining after satisfaction of its liabilities shall be given or transferred in terms of 3.12.

Revised on 8 April 2010 by virtue of an approved resolution, that was passed by a unanimous vote of the fully paid-up members of SARWA, during the Annual General Meeting of 5 March 2010.

Revised on 1 September 2011 by virtue of an approved resolution, that was passed by a unanimous vote of the fully paid-up members of SARWA, during the Special General Meeting of 1 September 2011 with the inclusion of a new clause 2.2.13

Revised on 6 September 2013 by virtue of an approved resolution, that was passed by a unanimous vote of the fully paid-up members of SARWA, during the Special General Meeting of 6 September 2013 with the inclusion of new clauses 3.4 to 3.14 and the amendment of clause 18.2

Revised on 14 March 2019 by virtue of an approved resolution, that was passed by a unanimous vote of the fully paid-up members of SARWA, during the Annual General Meeting of 14 March 2019 with the adding of the

words “for a continuous period of three years” at the end of clause 9.2

Reviewed on 3 September 2021 by virtue of an approved resolution, that was passed by a unanimous vote of the fully paid-up members of SARWA, during a Special General Meeting of 3 September 2021 with no changes.