



**Constitution of  
The Royal Society for the Prevention of  
Cruelty to Animals, Western Australia Ltd  
(Version 1.0)**

A company limited by guarantee

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Australian Company Number (ACN: 626 609 587)  
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## Table of contents

### Preliminary

- 1 Name of the company
- 2 Type of company
- 3 Limited liability of members
- 4 The guarantee
- 5 Definitions

### Charitable purposes and powers

- 6 Object
- 7 Activities
- 8 Powers
- 9 Not-for-profit
- 10 Amending the constitution

### Membership

- 11 Membership and register of members
- 12 Who can be a member
- 13 How to apply to become a member
- 14 Directors decide whether to approve membership
- 15 When a person becomes a member
- 16 When a person stops being a member
- 17 Conduct of members
- 18 Disciplining members
- 19 Annual subscriptions
- 20 Unfinancial members

### General meetings of members

- 21 General meetings called by directors
- 22 General meetings called by members
- 23 Annual general meeting
- 24 Notice of general meetings
- 25 Quorum at general meetings
- 26 Auditor's right to attend meetings
- 27 Using technology to hold meetings
- 28 Chairperson for general meetings
- 29 Role of the chairperson
- 30 Adjournment of meetings

### Members' resolutions and statements

- 31 Members' resolutions and statements
- 32 Company must give notice of proposed resolution or distribute statement

### Voting at general meetings

- 33 How many votes a member has
- 34 Challenge to member's right to vote
- 35 How voting is carried out
- 36 When and how a vote in writing must be held
- 37 Appointment of proxy
- 38 Voting by proxy

### Directors

- 39 Number of directors
- 40 Election and appointment of directors
- 41 Election of chairperson and deputy chairperson
- 42 Term of office
- 43 When a director stops being a director

### Powers of directors

- 44 Powers of directors
- 45 Delegation of directors' powers
- 46 Payments to directors
- 47 Execution of documents

### Duties of directors

- 48 Duties of directors
- 49 Conflicts of interest

### Directors' meetings

- 50 When the directors meet
- 51 Calling directors' meetings
- 52 Chairperson for directors meetings
- 53 Quorum at directors' meetings
- 54 Using technology to hold directors' meetings
- 55 Passing directors' resolutions
- 56 Circular resolutions of directors

### Secretary

- 57 Appointment and role of secretary

### Minutes and records

- 58 Minutes and records
- 59 Financial and related records

### Policies-laws

- 60 Policies and procedures

### Notice

- 61 What is notice
- 62 Notice to the company
- 63 Notice to members
- 64 When notice is accepted as given

### Financial year

- 65 Company's financial year

### Indemnity, insurance and access

- 66 Indemnity
- 67 Insurance
- 68 Directors' access to documents

### Winding up

- 69 Surplus assets not to be distributed to members

- 70 Distribution of surplus assets

### Definitions and interpretation

- 71 Definitions in this constitution
- 72 Reading this constitution with the Corporations Act
- 73 Interpretation

## Preliminary

### 1. Name of the company

- 1.1 The name of the **company** is *The Royal Society for the Prevention of Cruelty to Animals, Western Australia Ltd* (the **company**).

### 2. Type of company

- 2.1 The **company** is a not-for-profit public **company** limited by guarantee which is established to be, and continue as, a charity.

### 3. Limited liability of members

- 3.1 The liability of **members** is limited to the amount of the guarantee in clause 4.

### 4. The guarantee

- 4.1 Each **member** must contribute an amount of not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while they are a **member**, or within 12 months after they cease being a **member**, and this contribution is required to pay for:
- (a) debts and liabilities of the **company** incurred before the **member** ceased being a **member**, or
  - (b) the costs of winding up.

### 5. Definitions

- 5.1 In this constitution, words and phrases have the meaning set out in clauses 71 and 73.

## Charitable purposes and powers

### 6. Object

- 6.1 The object of the **company** shall be to:
- (a) promote animal welfare and kindness to animals
  - (b) prevent or suppress cruelty to animals
  - (c) do all such lawful acts as the **company** may consider conducive or incidental to the attainment of these purposes.

### 7. Activities

- 7.1 Without limiting the activities to which the **company** may apply its resources, activities may include the application of resources to:
- (a) ensure the enforcement of laws protecting animals from cruelty and promoting animal welfare
  - (b) take whatever steps are necessary to educate the community with regard to the humane treatment of animals
  - (c) sustain an informed public opinion regarding animal welfare
  - (d) disperse information on the care, protection and treatment of animals
  - (e) procure the passage of such amending or new legislation and policy as is necessary for the protection of animals
  - (f) conduct, manage, operate or encourage clinics, hospitals, homes or shelters for the care, treatment, maintenance and protection of animals, and
  - (g) develop and maintain productive relationships with key stakeholders for the benefit of animal welfare.

### 8. Powers

- 8.1 Subject to clause 9, the **company** has the following powers, which may only be used to carry out its purposes set out in clause 6:
- (a) the powers of an individual
  - (b) all the powers of a **company** limited by guarantee under the *Corporations Act 2001* (the **Corporations Act**); and

- (c) such additional powers as may be lawfully conferred upon the **company** or its employees for the purposes of the enforcement of laws dealing with:
  - (i) the prevention of cruelty to animals
  - (ii) animal welfare
  - (iii) animal management, and
  - (iv) other laws consistent with the purposes of the **company**.

## 9. Not-for-profit

- 9.1 The **company** must not distribute any income or assets directly or indirectly to its **members**, except as provided in clauses 9.2 and 70.
- 9.2 Clause 9.1 does not stop the **company** from doing the following, provided they are done in good faith:
  - (a) paying a **member** for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
  - (b) making a payment to a **member** in carrying out the **company's** charitable purposes.

## 10. Amending the constitution

- 10.1 Subject to clause 10.2, this constitution may be amended by passing a **special resolution**.
- 10.2 The **members** must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

## Membership

### 11. Membership and register of members

- 11.1 The **members** of the **company** are:
  - (a) **initial members**, and
  - (b) any other person that the directors allow to be a **member**, in accordance with this constitution.
- 11.2 The directors may decide to create eligibility criteria and categories of membership with the same or differing rights or privileges.
- 11.3 The rights and obligations of a **member** are personal and are not transferable.
- 11.4 **Members** are entitled to full rights and privileges of the **company** as determined by this constitution. This includes the right to attend meetings of the **company**, to vote at **general meetings** of the **company** and to stand for and hold office.
- 11.5 The **company** will maintain a register of **members**. The register of **members** must be kept by the secretary and must contain:
  - (a) for each current **member**:
    - (i) name
    - (ii) address
    - (iii) any alternative address nominated by the **member** for the service of notices, and
    - (iv) date the **member** was entered on to the register
  - (b) for each person who stopped being a **member** in the last seven years:
    - (i) name
    - (ii) address
    - (iii) any alternative address nominated by the **member** for the service of notices, and
    - (iv) dates the membership commenced and ceased.
- 11.6 The **company** must give current **members** access to the register of **members**. Information that is accessed from the register of **members** must only be used in a manner relevant to the interests or rights of **members**.

## 12. Who can be a member

- 12.1 Subject to clause 12.2, any person who supports the purposes of the **company** is eligible to apply to be a **member** of the **company** under clause 13.
- 12.2 In considering any application for membership from any person the directors shall not approve that application if:
- (a) within ten years prior to the date of application, the applicant has been convicted of an offence for cruelty to an animal in any jurisdiction, or
  - (b) the applicant has not attained the age of 18 years.
- 12.3 For the purposes of clause 12.2 a conviction shall not include, and the directors must not take into account, any conviction which has been discharged or otherwise relieved of the effect by law, whether by the making of a spent conviction order or otherwise.
- 12.4 In this clause, 'person' means a natural person only.

## 13. How to apply to become a member

- 13.1 The directors may prescribe the form of the application for membership and the procedures applicable to applications.
- 13.2 An application to become a **member** of the **company** must:
- (a) be addressed to the secretary
  - (b) be in writing signed by the applicant
  - (c) if the directors have prescribed the form of the application for membership, be in that prescribed form, and
  - (d) state that the applicant:
    - (i) wishes to become a **member**
    - (ii) supports the purposes of the **company**, and
    - (iii) agrees to comply with the **company's** constitution, including paying the guarantee under clause 4, if required.

## 14. Directors decide whether to approve membership

- 14.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 14.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new **member** on the register of **members**, and
  - (b) write to the applicant to tell them that their application is approved and the date that their membership commenced (see clause 15).
- 14.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 14.4 For the avoidance of doubt, the directors may approve an application, even if the application does not state the matters listed in clause 13.2(d). In that case, by applying to be a **member**, the applicant agrees to those three matters.

## 15. When a person becomes a member

- 15.1 Other than **initial members**, an applicant will become a **member** when he/she is entered on the register of **members**.

## 16. When a person stops being a member

- 16.1 A person immediately stops being a **member** if they:
- (a) die
  - (b) resign, by writing to the secretary
  - (c) become unfinancial and cease to be a **member** under clause 20.3
  - (d) are expelled under clause 18
  - (e) are not aligned with, or actively work against, the **company's** policy positions
  - (f) are convicted of an offence for cruelty to an animal in any jurisdiction, or
  - (g) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a **member**.

## 17. Conduct of members

- 17.1 The **directors** may regulate the conduct of the **members** and to that end may:
- (a) make by-laws and issue codes of conduct for the continuation of sound practice, the prevention of illegal and dishonourable practices and prohibiting whatever acts in that regard they think fit, and
  - (b) investigate the conduct of any **member** and provide sanctions for those **members** who wilfully refuse or neglect to comply with the rules of any such by-law or code of conduct.

## 18. Disciplining members

- 18.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a **member** from the **company** if they consider that:
- (a) the **member** has breached this constitution
  - (b) the **member** has breached any by-laws or codes of conduct established in accordance with clause 17.1(a), or
  - (c) in their absolute discretion, it is not in the interests of the **company** for the person to remain a **member**.
- 18.2 At least 14 days before the directors' meeting at which a resolution under clause 18.1 will be considered, the secretary must notify the **member** in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the **member**
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
  - (c) what the **member** is said to have done or not done
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the **member** may provide an explanation to the directors and details of how to do so.
- 18.3 Before the directors pass any resolution under clause 18.1, the **member** must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
  - (b) speaking at the meeting.
- 18.4 After considering any explanation under clause 18.3, the directors may:
- (a) take no further action
  - (b) warn the **member**
  - (c) suspend the **member's** rights as a **member** for a period of no more than 12 months
  - (d) expel the **member**
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, that person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a **general meeting**.
- 18.5 The directors cannot fine a **member**.
- 18.6 The secretary must give written notice to the **member** of the decision under clause 18.4 as soon as possible.
- 18.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 18.8 There will be no liability for any loss or injury suffered by the **member** as a result of any decision made in good faith under this clause.
- 18.9 Expelled **members** are not entitled to any refund of membership fees.

## 19. Annual subscriptions

- 19.1 There will be no application fee for membership.
- 19.2 The directors may determine the amount of all fees, subscriptions, dues and levies due to the **company**, including annual membership subscriptions where relevant, for each membership category from time to time.
- 19.3 Each **member** must pay to the **company** the amount of all fees, subscriptions, dues and levies due to the **company**, including annual membership subscriptions, no later than 30 days after receipt of an invoice from the **company**, who will issue a tax invoice where relevant.

- 19.4 A **member** cannot exercise any rights as a **member** until all amounts due have been paid to the **company**.
- 19.5 Unless the directors resolve otherwise, a **member** must pay all fees, subscriptions, dues and levies in full for a membership year.
- 19.6 If a **member** resigns or their membership is terminated or suspended, then:
- (a) if the **member** has paid all fees, subscriptions, dues and levies in full, the **member** is not entitled to a refund of any payment for the period following termination, resignation or suspension, or
  - (b) if the **member** has not paid all fees, subscriptions, dues and levies in full, the **member** remains liable for payment to the **company** of any monies outstanding.
- 20. Unfinancial members**
- 20.1 Any **member** whose subscription is not paid within two months of the due date shall be deemed 'unfinancial' and the **member's** entitlement to vote or any of the rights and privileges of membership will be suspended.
- 20.2 Subject to clause 20.3, a person who is in default under this rule may, if the directors think fit and upon payment of all arrears, have his/her rights and privileges reinstated during that current financial year.
- 20.3 If a **member** whose entitlement to vote and rights and privileges are suspended pursuant to clause 20.1 has not paid the subscription within three months of the due date, the person ceases to be a **member**.

## General meetings of members

### 21. General meetings called by directors

- 21.1 The directors may call a **general meeting**.
- 21.2 If **members** with at least 10% of the votes make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the **members'** request, give all **members** notice of a **general meeting**, and
  - (b) hold the **general meeting** within two months of the **members'** request.
- 21.3 The percentage of votes that **members** have (in clause 21.2) is to be calculated as at midnight before the **members** request the meeting.
- 21.4 The **members** who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) submit the request to the **company**.
- 21.5 Separate copies of a document setting out the request may be signed by the **members** if the wording of the request is the same in each copy.

### 22. General meetings called by members

- 22.1 If the directors do not call the meeting within 21 days of being requested under clause 21.2, the **members** who made the request may call and arrange to hold a **general meeting**.
- 22.2 To call and hold a meeting under clause 22.1 the **members** must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
  - (b) call the meeting using the list of **members** on the **company's** register of **members**, which the **company** must provide to the **members** making the request at no cost, and
  - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 22.3 The **company** must pay the **members** who request the **general meeting** any reasonable expenses they incur, should the directors not call and hold the meeting.

## 23. Annual general meeting

- 23.1 A **general meeting** (called the annual **general meeting**) must be held:
- (a) within 18 months after registration of the **company**, and
  - (b) thereafter, at least once in every calendar year.
- 23.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **company's** activities
  - (b) a review of the **company's** finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment of the auditor, if any.
- 23.3 Before or at the annual **general meeting**, the directors must give information to the **members** on the **company's** activities and finances during the period since the last annual **general meeting**.
- 23.4 The chairperson of the annual **general meeting** must give **members** a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

## 24. Notice of general meetings

- 24.1 Notice of a **general meeting** must be given to:
- (a) each **member** entitled to vote
  - (b) each director, and
  - (c) the auditor, if any.
- 24.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting by way of electronic communications or other means.
- 24.3 Subject to clause 24.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the **members** entitled to attend and vote at the annual **general meeting** agree beforehand, or
  - (b) for any other **general meeting**, **members** with at least 90% of the votes that may be cast at the meeting agree beforehand.
- 24.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.
- 24.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting
  - (b) the general nature of the meeting's business
  - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution, and
  - (d) a statement that **members** have the right to appoint proxies and that, if a **member** appoints a proxy:
    - (i) the proxy does not need to be a **member** of the **company**
    - (ii) the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - (iii) the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 24.6 If a **general meeting** is adjourned for one month or more, the **members** must be given new notice of the resumed meeting.

## 25. Quorum at general meetings

- 25.1 For a **general meeting** to be held, the lesser of at least 10 **members** or at least 5% of **members** (a quorum) must be present (in person or by proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once, even if that person is a proxy of more than one **member**.
- 25.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 25.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the meeting is adjourned to a date, time and place specified by the chairperson. If the chairperson does not specify as such, the meeting is adjourned to:
- (a) if the date is not specified - the same day in the following week
  - (b) if the time is not specified - the same time, and
  - (c) if the place is not specified - the same place.
- 25.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 26. Auditor's right to attend meetings

- 26.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the **members** on any part of the business of the meeting that concerns the auditor in his/her capacity.
- 26.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a **member** of the **company** is entitled to receive.

## 27. Using technology to hold meetings

- 27.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the **members** as a whole a reasonable opportunity to participate, including to hear and be heard.
- 27.2 Anyone using this technology is taken to be present in person at the meeting.

## 28. Chairperson for general meetings

- 28.1 The **elected chairperson** is entitled to chair **general meetings**.
- 28.2 If the **elected chairperson** is not present within 15 minutes after the time appointed for the **general meeting**, or if he/she is unwilling or unable to act as chair for the whole or any part of that **general meeting**, the **elected deputy chairperson** will chair the **general meeting**.
- 28.3 If the **elected deputy chairperson** is not present within 15 minutes after the time appointed for the **general meeting**, or if he/she is unwilling or unable to act as chair for the whole or any part of that **general meeting**, the directors may elect a director present to chair that **general meeting**.
- 28.4 If no director is elected or if all the directors present decline to take the chair for the whole or any part of that **general meeting**, the **members present** and entitled to vote at a **general meeting** (whether in person or by proxy) may elect a **member present** (in person) to chair the whole or any part of that **general meeting**.
- 28.5 If the **members** do not so elect a chairperson for the meeting, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

## 29. Role of the chairperson

- 29.1 The chairperson is responsible for the conduct of the **general meeting** and for this purpose must give **members** a reasonable opportunity to make comments and ask questions, including to the auditor (if any).
- 29.2 The chairperson does not have a casting vote.

### 30. Adjournment of meetings

- 30.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 30.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Members' resolutions and statements

### 31. Members' resolutions and statements

- 31.1 **Members** with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the **company** of a resolution they propose to move at a **general meeting (members' resolution)**, and/or
  - (b) a written request to the **company** that the **company** gives all its **members** a statement relating to the proposed resolution or any other matter that may properly be considered at a **general meeting (members' statement)**.
- 31.2 A notice of a **members' resolution** must set out the wording of the proposed resolution and be signed by the **members** proposing the resolution.
- 31.3 A request to distribute a **members' statement** must set out the statement to be distributed and be signed by the **members** making the request.
- 31.4 Separate copies of a document setting out the notice or request may be signed by **members** if the wording is the same in each copy.
- 31.5 The percentage of votes that **members** have (as described in clause 31.1) is to be calculated as at midnight before the request/notice is given to the **company**.
- 31.6 If the **company** has been given notice of a **members' resolution** under clause 31.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 31.7 This clause does not limit any other right that a **member** has to propose a resolution at a **general meeting**.

### 32. Company must give notice of proposed resolution or distribute statement

- 32.1 If the **company** has been given a notice or request under clause 31:
  - (a) in time to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, it must do so at the **company's** cost, or
  - (b) too late to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, then the **members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving **members** notice of the proposed **members' resolution** or a copy of the **members' statement**. However, at a **general meeting**, the **members** may pass a resolution that the **company** will pay these expenses.
- 32.2 The **company** does not need to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** if:
  - (a) it is more than 1,000 words long
  - (b) the directors consider it may be defamatory
  - (c) clause 32.1(b) applies and the **members** who proposed the resolution or made the request have not paid the **company** sufficient money to cover the cost of sending the notice of the proposed **members' resolution/members' statement** to **members**, or
  - (d) in the case of a proposed **members' resolution**, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **members**.

## Voting at general meetings

### 33. How many votes a member has

- 33.1 Each **member** has one vote.

### **34. Challenge to member's right to vote**

- 34.1 A **member** or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 34.2 If a challenge is made under clause 34.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### **35. How voting is carried out**

- 35.1 Voting must be conducted and decided by:
  - (a) a show of hands
  - (b) a vote in writing, or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 35.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 35.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 35.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **36. When and how a vote in writing must be held**

- 36.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (a) at least five **members present**
  - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (calculated as at midnight before the vote in writing is demanded), or
  - (c) the chairperson.
- 36.2 A vote in writing must be taken when and how the chairperson directs, unless clause 36.3 applies.
- 36.3 A vote in writing must be held immediately if it is demanded under clause 36.1 for either:
  - (a) the election of a chairperson under clause 28.4 , or
  - (b) to decide whether to adjourn the meeting.
- 36.4 A demand for a vote in writing may be withdrawn.

### **37. Appointment of proxy**

- 37.1 A **member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 37.2 A proxy does not need to be a **member**.
- 37.3 A proxy appointed to attend and vote for a **member** has the same rights as the **member** to:
  - (a) speak at the meeting
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under clause 36.1.
- 37.4 An appointment of proxy (proxy form) must be signed by the **member** appointing the proxy and must contain:
  - (a) the **member's** name and address
  - (b) the **company's** name
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meetings at which the appointment may be used.
- 37.5 A proxy appointment may be standing (ongoing).
- 37.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 24.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 37.7 A proxy does not have the authority to speak and vote for a **member** at a meeting while the **member** is at the meeting.

- 37.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **member**:
- (a) dies
  - (b) is mentally incapacitated
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 37.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 38. Voting by proxy**
- 38.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a **member** appointed as a proxy from voting as a **member** on a show of hands).
- 38.2 When a vote in writing is held:
- (a) a proxy does not need to vote, unless the proxy appointment specifies the way they must vote
  - (b) a proxy must vote in the way specified on the proxy form, and
  - (c) if the proxy is also a **member** or holds more than one proxy, may cast the votes held in different ways.

## Directors

### 39. Number of directors

- 39.1 The **company** must have at least seven and no more than 12 directors.

### 40. Election and appointment of directors

- 40.1 The initial directors are those who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.
- 40.2 Apart from the initial directors and subject to this constitution, the **company** may appoint a director by a resolution passed in a **general meeting**.
- 40.3 Subject to this constitution, the directors may appoint a natural person as a director, as an additional director, or to fill a casual vacancy if that person:
- (a) gives the **company** their signed consent to act as a director of the **company**
  - (b) gives the **company** a signed **compliance undertaking**, and
  - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 40.4 The appointment of a person as a director will take effect on the later of the date of appointment and the date on which the **company** receives the signed consent.
- 40.5 The directors may determine procedures for election or other methods of appointment of directors from time to time.
- 40.6 If the number of directors is reduced to fewer than seven or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to seven (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

### 41. Election of chairperson and deputy chairperson

- 41.1 The directors must elect a director as each of:
- (a) the **company's elected chairperson**, and
  - (b) the **company's elected deputy chairperson**

### 42. Term of office

- 42.1 At each annual **general meeting**:
- (a) any director appointed by the directors in accordance with clause 40.3, to fill a casual vacancy or as an additional director, must retire, and
  - (b) at least one-third of the remaining directors must retire.

- 42.2 The directors who must retire at each annual **general meeting** under clause 42.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director to retire will be decided by lot, unless they agree otherwise.
- 42.3 Other than a director appointed under clause 40.3, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 42.4 Each director must retire at least once every three years.
- 42.5 A director who retires under clause 42.1 may nominate for election or re-election, subject to clause 42.6.
- 42.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution**.

### 43. When a director stops being a director

- 43.1 A director stops being a director if they:
- (a) give written notice of resignation as a director to the **company**
  - (b) die
  - (c) are removed as a director by a resolution of the **members**
  - (d) are absent for three consecutive directors' meetings without approval from the directors
  - (e) in the opinion of the directors (excluding the director in question) bring the **company** into disrepute
  - (f) do not sign a **compliance undertaking** within 30 days (or such other period as the directors may prescribe) after the directors first adopt a directors' code of conduct
  - (g) breach their **compliance undertaking**
  - (h) act contrary to this constitution or any regulation or policy determined by the directors, or
  - (i) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

## Powers of directors

### 44. Powers of directors

- 44.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 44.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by **members**.
- 44.3 Without limiting any other powers, the directors have the power to, from time to time, adopt or vary a directors' code of conduct.
- 44.4 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 45, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments and cheques must be authorised and signed or otherwise approved.
- 44.5 The directors cannot remove a director or auditor. They may only be removed by a **members' resolution** at a **general meeting**.

### 45. Delegation of directors' powers

- 45.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as the chief executive officer) or any other person, as they consider appropriate.
- 45.2 The delegation must be recorded in the **company's** minute book.

#### 46. Payments to directors

- 46.1 The **company** must not pay fees to a director for acting in that capacity.
- 46.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for expenses properly incurred by them in relation to the affairs of the **company**.
- 46.3 Any payment made under clause 46.2 must be approved by the directors.
- 46.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

#### 47. Execution of documents

- 47.1 The **company** may execute a document without using a common seal if the document is signed by:
- (a) two directors of the **company**, or
  - (b) a director and the secretary.

### Duties of directors

#### 48. Duties of directors

- 48.1 The directors must comply with their duties as directors under legislation and common law (judge-made law) and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
  - (b) to act in good faith in the best interests of the **company** and to further the charitable purposes of the **company** set out in clause 6
  - (c) not to misuse their position as a director
  - (d) not to misuse information they gain in their role as a director
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 49
  - (f) to ensure that the financial affairs of the **company** are managed responsibly, and
  - (g) not to allow the **company** to operate while it is insolvent.

#### 49. Conflicts of interest

- 49.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) to:
- (a) the other directors, or
  - (b) to the **members** at the next **general meeting**, or at an earlier time if reasonable to do so, if all of the directors have the same conflict of interest.
- 49.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 49.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 49.4:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 49.4 A director may still be present and vote if:
- (a) their interest arises because they are a **member** of the **company** and the other **members** have the same interest
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 67)

- (c) their interest relates to a payment by the **company** under clause 66 (indemnity) or any contract relating to an indemnity that is allowed under the **Corporations Act**
- (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter, or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
  - (ii) indicates that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

### 50. When the directors meet

50.1 The directors may decide how often, where and when they meet.

### 51. Calling directors' meetings

51.1 A director may call a directors' meeting by giving reasonable notice to all the other directors.

51.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 52. Chairperson for directors' meetings

52.1 The **elected chairperson** is entitled to chair directors' meetings.

52.2 The **elected deputy chairperson** will chair any directors' meetings if the **elected chairperson**:

- (a) is not present within 15 minutes after the starting time set for the meeting, or
- (b) is present but does not want to act as chairperson of the meeting.

52.3 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected deputy chairperson**:

- (a) is not present within 15 minutes after the starting time set for the meeting, or
- (b) is present but does not want to act as chairperson of the meeting.

### 53. Quorum at directors' meetings

53.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a 50% plus one director.

53.2 A quorum must be present for the whole directors' meeting.

### 54. Using technology to hold directors' meetings

54.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

54.2 The directors' agreement may be a standing (ongoing) one.

54.3 A director may only withdraw their consent within a reasonable period before the meeting.

### 55. Passing directors' resolutions

55.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### 56. Circular resolutions of directors

56.1 The directors may pass a circular resolution without a directors' meeting being held.

56.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 56.3 or 56.4.

- 56.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 56.4 The **company** may send a circular resolution by email to the directors, who may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 56.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 56.3 or 56.4.
- 56.6 A director may apply for leave of absence in relation to voting on a circular resolution, if necessary, in which case that director is not required to sign or otherwise agree to the resolution in the manner set out in clause 56.3 or 56.4 in order to satisfy the requirement in clause 56.5.

## Secretary

### 57. Appointment and role of secretary

- 57.1 The **company** must have at least one secretary, who may also be a director.
- 57.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 57.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 57.4 The role of the secretary includes:
- (a) maintaining a register of the **company's members**, and
  - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

## Minutes and records

### 58. Minutes and records

- 58.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
  - (b) minutes of circular resolutions of **members**
  - (c) notice of each **general meeting**, and
  - (d) **members' statements** distributed to **members** under clause 31.
- 58.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 58.3 To allow **members** to inspect the **company's** records:
- (a) the **company** must give a **member** access to the records set out in clause 58.1, and
  - (b) the directors may authorise a **member** to inspect other records of the **company**, including records referred to in clause 58.2 and 59.1.
- 58.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 58.5 The directors must ensure that minutes of the passing of a circular resolution (of **members** or directors) are signed by a director within a reasonable time after the resolution is passed.

## 59. Financial and related records

- 59.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 59.2 The **company** must also keep written records that correctly record its operations.
- 59.3 The **company** must retain its records for at least seven years.
- 59.4 The directors must take reasonable steps to ensure the **company's** records are kept safe.

## Policies

### 60. Policies and procedures

- 60.1 The directors may pass a resolution to make policies and procedures to give effect to this constitution.
- 60.2 **Members** and directors must comply with policies and procedures as if they were part of this constitution.

## Notice

### 61. What is notice

- 61.1 Anything written to or from the **company** under any clause in this constitution is deemed written notice and is subject to clauses 62 to 64, unless specified otherwise.
- 61.2 Clauses 62 to 64 do not apply to a notice of proxy under clause 37.6.

### 62. Notice to the company

- 62.1 Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by either:
- (a) delivering it to the **company's** registered office
  - (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided, or
  - (c) sending it to an email address or other electronic address notified by the **company** to the **members** as the **company's** email address or other electronic address.

### 63. Notice to members

- 63.1 Written notice or any communication under this constitution may be given to a **member** either:
- (a) in person
  - (b) by posting it to (or leaving it at) the address of the **member** per the register of **members** or an alternative address nominated by the **member** for service of notices
  - (c) sending it to the email or other electronic address nominated by the **member** as an alternative address for service of notices, or
  - (d) if agreed to by the **member**, by notifying the **member** at an email or other electronic address nominated by the **member**, that the notice is available at a specified place or address (including an electronic website address maintained by the **company**).
- 63.2 If the **company** does not have an address for the **member**, the **company** is not required to give notice in person.

### 64. When notice is accepted as given

- 64.1 A notice:
- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered
  - (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs

- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 63.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

### 65. Company's financial year

- 65.1 The **company's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### 66. Indemnity

- 66.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 66.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 66.3 In this clause, 'to the relevant extent' means:
  - (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not indemnified by another person (including an insurer under an insurance policy).
- 66.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

### 67. Insurance

- 67.1 To the extent permitted by law (including the **Corporations Act**) and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

### 68. Directors' access to documents

- 68.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 68.2 If the directors agree, the **company** must give a director or former director access to:
  - (a) certain documents, including documents provided for or available to the directors, and
  - (b) any other documents referred to in those documents.

## Winding up

### 69. Surplus assets not to be distributed to members

- 69.1 If the **company** is wound up, any **surplus assets** must not be distributed to a **member** or a former **member** of the **company**, unless they are a charity described in clause 70.1.

### 70. Distribution of surplus assets

- 70.1 Subject to the **Corporations Act** and any other applicable Act or court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities:
  - (a) with charitable purposes similar to, or inclusive of, the purposes in clause 6, and
  - (b) which also prohibit the distribution of any **surplus assets** to its **members** to at least the same extent as the **company**.

- 70.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution of members** at or before the time of winding up. If the **members** do not make this decision, the **company** may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 71. Definitions in this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

**ACNC Governance Standards** means the governance standards published by the Australian Charities and Not-for-profits Commission Act from time to time

**Company** means the **company** referred to in clause 1

**Compliance undertaking** means a written undertaking in a form specified by the directors, by which a candidate for election as a director agrees (should that candidate become a director) to comply (or a director agrees to comply) at all times with the directors' code of conduct, **ACNC Governance Standards**, this constitution and any other policies and procedures determined by the directors or the **company** from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth)

**Elected chairperson** means a person elected by the directors to be the **company's** chairperson under clause 41

**Elected deputy chairperson** means a person elected by the directors to be the **company's** deputy chairperson under clause 41

**General meeting** means a meeting of **members** and includes the annual **general meeting**, under clause 23.1

**Initial member** means a person who is named in the application for registration of the **company**, with their consent, as a proposed **member** of the **company**

**Member** means any **member** referred to as such in clause 11 of this constitution

**Member present** means, in connection with a **general meeting**, a **member present** in person or by proxy at the venue or venues for the meeting

**Registered charity** means a charity that is registered under the **ACNC Act**

**Special resolution** means a resolution of which notice has been given under clause 24.5(c) that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution

**Surplus assets** means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up

### 72. Reading this constitution with the Corporations Act

72.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.

72.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

- 72.3 If the **company** is not a **registered charity** (even if it remains a charity) the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 72.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

**73. Interpretation**

73.1 In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act, such as regulations.

**END**