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CONSTITUTION OF vets beyond borders



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Australian Business Number (ABN) 69152900519

A company limited by guarantee

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Preliminary

1 Name of the company

The name of the **company** is Vets Beyond Borders

_____ (the **company**).

2 Type of company

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

3 Limited liability of members

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

4 The guarantee

Each member must contribute an amount not more than \$25 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- 4.1.a. debts and liabilities of the **company** incurred before the member stopped being a member, or
- 4.1.b. costs of winding up.

5 Definitions

In this constitution, words and phrases have the meaning set out in clauses 72 and 74.

Charitable purposes and powers

6 Object

6.1 The object of the Company is to pursue charitable purposes only and to apply the income and property of the Company howsoever derived solely to promote those purposes. In pursuit of its object, the Company aims to:

- 6.1.1. assist communities in the provision of healthcare for animals and the control of zoonoses
 - 6.1.2. promote a caring attitude to animals and a greater understanding of animal welfare
 - 6.1.3. assist to establish and promote sustainable animal and public health programs
 - 6.1.4. provide assistance via provision of veterinary support services for Australian and international disaster response and relief, including emergency animal disease outbreaks, where and when possible.
- 6.2. To carry out or further the object described in clause 6.1, the Company may:

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- 6.2.a. assist in such educational work and consultations in Australia and overseas which will increase knowledge of the countries and communities where the Company carries out development work.
- 6.2.b. receive, administer and distribute funds provided by entities in Australia and overseas for purposes consonant with the object and aims of the Company.
- 6.2.c. subscribe to, become a member of and co-operate with or amalgamate with any other association, or organisation, whether incorporated or not, whose objects are similar to those of the Company, provided that the association shall not subscribe to or support with its funds or amalgamate with any foundation or organisation which does not prohibit the distribution of its income and property among its members
- 6.2.d. purchase, take on lease or in exchange, hire and otherwise acquire any land, buildings, easements or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or legally capable of being conveniently used in connection with, any of the objects of the Company
- 6.2.e. enter into any arrangements with any government or authority national, municipal, local or otherwise that may seem conducive to the objects of the Company and to obtain from any such government or authority any rights, privileges and concessions which the Company may consider it desirable to obtain and to carry out, exercise and comply with any such arrangement, rights, privileges and concessions
- 6.2.f. engage employees, consultants, advisers, independent contractors and any other person in order to promote and achieve the purposes of the Company
- 6.2.g. construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, building, grounds, works or conveniences which may seem calculated, directly or indirectly, to advance the interests of the Company, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof
- 6.2.h. invest and deal with the money of the Company not immediately required in such manner as may be permitted by law for the investment of funds, including trust funds
- 6.2.i. borrow or raise or secure the payment of money in such manner as the Company may consider fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the property of the Company (both present and future), and to purchase, redeem or pay off any such securities
- 6.2.j. make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments
- 6.2.k. sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company

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- 6.2.l. take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the property of the Company sold by it, or any money due to the Company from purchasers and others
- 6.2.m. accept any gift of property whether subject to any special trust or not, for any one or more of the objects of the Company, subject to the legal provisions existing at that time
- 6.2.n. take such steps by person or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the form of donations, annual subscriptions or otherwise
- 6.2.o. publish any print or electronic material that the Company may consider desirable for the promotion of its objects
- 6.2.p. pursue or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate
- 6.2.q. make donations for charitable purposes
- 6.2.r. do anything else the Board may decide will further, or is not incompatible with, the object stated above.

7 Powers

Subject to clause 8, 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, and
- b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8 Not-for-profit

- 8.1. The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 70.
- 8.2. Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
 - 8.2.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
 - 8.2.b. making a payment to a member in carrying out the **company's** charitable purposes.

9 Amending the constitution

- 9.1. Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2. The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

10. Membership and register of members

- 10.1. The members of the **company** are:
 - 10.1.a. **initial members, and**
 - 10.1.b. **any other person that the Board allows to be a member, in accordance with this constitution.**
- 10.2. The Company has categories of membership as determined by the Board from time to time which shall include, but not be limited to:
 - 10.2.a. ordinary membership for persons or classes of persons as determined by the Board
 - 10.2.b. life membership, a category awarded by the Board for outstanding service to the Company. There shall be no more than ten (10) life members of the Company at any one time.
- 10.3. In this clause, 'person' means an individual or incorporated body
- 10.4. The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
 - 10.4.a. for each current member:
 - 10.4.a.i. name
 - 10.4.a.ii. address
 - 10.4.a.iii. any alternative address nominated by the member for the service of notices, and
 - 10.4.a.iv. date the member was entered on to the register.
 - 10.4.a.v. category of membership
 - 10.4.b. for each person who stopped being a member in the last 7 years:
 - 10.4.b.i. name
 - 10.4.b.ii. address
 - 10.4.b.iii. any alternative address nominated by the member for the service of notices, and
 - 10.4.b.iv. dates the membership started and ended
 - 10.4.b.v. category of membership.
- 10.5. The **company** must give current members access to the register of members.
- 10.6. Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of all members, consistent with the Corporations Act.

11. Subscriptions

- 11.1. The Board may set the rates of an application fee (if any) and annual subscriptions (if any) for each category of membership and/or class of member, and determine increases in the application fee and annual subscriptions from time to time.
- 11.2. Subscriptions are due and payable to the Company on any such annual date as determined by the Board from time to time.

12. Who can apply to be a member

- 12.1. A 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 this clause, 'person' means an individual or incorporated body.

13. How to apply to become a member

A person (as defined in clause 12.2) may apply to become a member of the **company** by writing to the secretary in a form prescribed by the Board from time to time stating that they:

- 13.1.a. want to become a member
- 13.1.b. support the purpose(s) of the **company**, and
- 13.1.c. agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

14. Board decides whether to approve membership

- 14.1. The Board must consider an application for membership within a reasonable time after the secretary receives the application.
- 14.2. If the Board approves an application, the secretary must as soon as possible:
 - 14.2.a. enter the new member on the register of members, and
 - 14.2.b. advise the applicant that their application was approved, the date that their membership started (see clause 15), and confirm payment of the application fee (if any) plus the annual subscription.
- 14.3. If the Board rejects 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 Board may approve an application even if the application does not state the matters listed in clauses 13(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters.
- 14.5. If the payment of the application fee (if any) and the annual subscription is not received by the secretary within one month of approval of membership by the Board, then the application and the membership will lapse.
- 14.6. The Board may delegate the approval of applications for membership to the chief executive officer of the company, and when so delegated, will ratify the approval or rejection of those applications at the next meeting of the Board.

15. When a person becomes a member

Other than **initial members**, an applicant will become a member when they are entered on the register of members.

16. When a person stops being a member

- 16.1. A person shall have their membership of the Company suspended for non-payment of renewal of membership subscription within 60 days of the due date for payment of those subscriptions.
- 16.2. A person immediately stops being a member if they:
 - 16.2.a. die
 - 16.2.b. become unsound of mind or are liable to be dealt with under laws relating to mental health

- 16.2.c. become bankrupt or assign their estate or enter into a deed of arrangement for the benefit of their creditors
- 16.2.d. are wound up or otherwise dissolved or deregistered (for an incorporated member)
- 16.2.e. resign, by writing to the secretary
- 16.2.f. are expelled under clause 19, or
- 16.2.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.

Dispute resolution and disciplinary procedures

17. Dispute resolution

- 17.1. The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
 - 17.1.a. one or more members
 - 17.1.b. one or more directors, or
 - 17.1.c. the **company**.
- 17.2. A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 17.3. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 17.4. If those involved in the dispute do not resolve it under clause 17.3, they must within 10 days:
 - 17.4.a. tell the Board about the dispute in writing
 - 17.4.b. agree or request that a mediator be appointed, and
 - 17.4.c. attempt in good faith to settle the dispute by mediation.
- 17.5. The mediator must:
 - 17.5.a. be chosen by agreement of those involved, or
 - 17.5.b. where those involved do not agree:
 - 17.5.b.i. for disputes between members, a person chosen by the Board, or
 - 17.5.b.ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 17.6. A mediator chosen by the Board under clause 17.5(b)(i):
 - 17.6.a. may be a member or former member of the **company**
 - 17.6.b. must not have a personal interest in the dispute, and
 - 17.6.c. must not be biased towards or against anyone involved in the dispute.
- 17.7. When conducting the mediation, the mediator must:
 - 17.7.a. allow those involved a reasonable chance to be heard
 - 17.7.b. allow those involved a reasonable chance to review any written statements
 - 17.7.c. ensure that those involved are given natural justice, and
 - 17.7.d. not make a decision on the dispute.

18. Disciplining members

- 18.1. In accordance with this clause, the Board may resolve to warn, suspend or expel a member from the **company** if the Board considers that:
 - 18.1.a. the member has breached this constitution, or
 - 18.1.b. the member's behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 18.2. At least 14 days before the Board meeting at which a resolution under clause 18.1 will be considered, the secretary must notify the member in writing:
 - 18.2.a. that the Board is considering a resolution to warn, suspend or expel the member
 - 18.2.b. that this resolution will be considered at a Board meeting and the date of that meeting
 - 18.2.c. what the member is said to have done or not done
 - 18.2.d. the nature of the resolution that has been proposed, and
 - 18.2.e. that the member may provide an explanation to the Board, and details of how to do so.
- 18.3. Before the Board passes any resolution under clause 18.1, the member must be given a chance to explain or defend themselves by:
 - 18.3.a. sending the Board a written explanation before that Board meeting, and/or
 - 18.3.b. speaking at the meeting.
- 18.4. After considering any explanation under clause 18.3, the Board may:
 - 18.4.a. take no further action
 - 18.4.b. warn the member
 - 18.4.c. suspend the member's rights as a member for a period of no more than 12 months
 - 18.4.d. expel the member
 - 18.4.e. refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause), or
 - 18.4.f. require the matter to be determined at a **general meeting**.
- 18.5. The Board 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.

General meetings of members

19. General meetings called by the Board

- 19.1. The Board may call a **general meeting**.

20. General meetings called by members

- 20.1. If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the Board must:

- 20.1.a. within 21 days of the members' request, give all members notice of a **general meeting**, and
- 20.1.b. hold the **general meeting** within 2 months of the members' request.
- 20.2. The percentage of votes that members have (in clause 20.1) is to be worked out as at midnight before the members request the meeting.
- 20.3. The members who make the request for a **general meeting** must:
 - 20.3.a. state in the request any resolution to be proposed at the meeting
 - 20.3.b. sign the request, and
 - 20.3.c. give the request to the **company**.
- 20.4. Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.
- 20.5. If the Board does not call the meeting within 21 days of being requested under clause 20.1, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 20.6. To call and hold a meeting under clause 20.5 the members must:
 - 20.6.a. as far as possible, follow the procedures for **general meetings** set out in this constitution
 - 20.6.b. call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost, and
 - 20.6.c. hold the **general meeting** within three months after the request was given to the **company**.
- 20.7. The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the Board did not call and hold the meeting.

21. Annual general meeting

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

22. Notice of general meetings

- 22.1. Notice of a **general meeting** must be given to:
 - 22.1.a. each member entitled to vote at the meeting
 - 22.1.b. each director, and
 - 22.1.c. the auditor (if any).
- 22.2. Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 22.3. Subject to clause 22.4, notice of a meeting may be provided less than 21 days before the meeting if:
 - 22.3.a. for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
 - 22.3.b. for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 22.4. Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - 22.4.a. remove a director
 - 22.4.b. appoint a director in order to replace a director who was removed, or
 - 22.4.c. remove an auditor.
- 22.5. Notice of a **general meeting** must include:
 - 22.5.a. the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - 22.5.b. the general nature of the meeting's business
 - 22.5.c. if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - 22.5.d. a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - 22.5.d.i. the proxy does not need to be a member of the **company**
 - 22.5.d.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
 - 22.5.d.iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 22.6. If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- 22.7. The accidental omission to give notice of any general meeting to an individual member or the non-receipt of such notice by any member shall not invalidate any resolution passed at any such meeting.

23. Quorum at general meetings

- 23.1. For a **general meeting** to be held, at least five (5) financial members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 23.2. Unless otherwise determined by a resolution or assented to at the meeting, no member shall be entitled to be present, or to vote at any general meeting, or to nominate for, or to be a candidate for, or to vote for election of directors, whilst any money shall be due and remain unpaid by that member to the Company.

- 23.3. No business may be conducted at a **general meeting** if a quorum is not present.
- 23.4. If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
 - 23.4.a. if the date is not specified – the same day in the next week
 - 23.4.b. if the time is not specified – the same time, and
 - 23.4.c. if the place is not specified – the same place or places.
- 23.5. If no quorum is present at the resumed meeting within 15 minutes after the starting time set for that meeting, the meeting is cancelled.

24. Auditor's right to attend meetings

- 24.1. 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 the capacity of auditor.
- 24.2. 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.

25. Representatives of incorporated members

- 25.1. An incorporated member may appoint as a representative:
 - 25.1.a. one individual to represent the member at meetings and to sign circular resolutions under clause 31, and
 - 25.1.b. the same individual or another individual for the purpose of being appointed or elected as a director.
- 25.2. The appointment of a representative by a member must:
 - 25.2.a. be in writing
 - 25.2.b. include the name of the representative
 - 25.2.c. be signed on behalf of the member, and
 - 25.2.d. be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 25.3. A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 25.4. The appointment may be standing (ongoing).

26. Using technology to hold meetings

- 26.1. 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.
- 26.2. Anyone using this technology is taken to be present in person at the meeting.

27. Chairperson for general meetings

- 27.1. The **elected chairperson** of the company, or in his or her absence, the deputy chairperson of the company is entitled to chair **general meetings**.
- 27.2. The members present and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
 - 27.2.a. the **elected chairperson** is not present within 15 minutes after the starting time set for the meeting, or

- 27.2.b. the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting, and
- 27.2.c. the elected deputy chairperson is not present within 15 minutes after the starting time set for the meeting.

28. Role of the chairperson

- 28.1. 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)).
- 28.2. The chairperson does not have a casting vote.

29. Adjournment of meetings

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

Members' resolutions and statements

30. Members' resolutions and statements

- 30.1. Members with at least 5% of the votes that may be cast on a resolution may give:
 - 30.1.a. written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - 30.1.b. a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 30.2. A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 30.3. A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 30.4. 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.
- 30.5. The percentage of votes that members have (as described in clause 30.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 30.6. If the **company** has been given notice of a members' resolution under clause 30.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 30.7. This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

31. Company must give notice of proposed resolution or distribute statement

- 31.1. If the **company** has been given a notice or request under clause 30:
 - 31.1.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

- 31.1.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.
- 31.2. The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- 31.2.a. it is more than 1,000 words long
 - 31.2.b. the Board consider it may be defamatory
 - 31.2.c. clause 31.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
 - 31.2.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.

32. Circular resolutions of members

- 32.1. Subject to clause 32.3, the Board may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 32.2. The Board must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 32.3. Circular resolutions cannot be used:
- 32.3.a. for a resolution to remove an auditor, appoint a director or remove a director
 - 32.3.b. for passing a **special resolution**, or
 - 32.3.c. where the **Corporations Act** or this constitution requires a meeting to be held.
- 32.4. A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 32.5 or clause 32.6.
- 32.5. Members may sign:
- 32.5.a. a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - 32.5.b. separate copies of that document, as long as the wording is the same in each copy.
- 32.6. The **company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

33. How many votes a member has

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:
 - 35.1.a. a show of hands
 - 35.1.b. a vote in writing, or
 - 35.1.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:
 - 36.1.a. at least five **members present**
 - 36.1.b. **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
 - 36.1.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:
 - 36.3.a. for the election of a chairperson under clause 27.2, or
 - 36.3.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:
 - 37.3.a. speak at the meeting
 - 37.3.b. vote in a vote in writing (but only to the extent allowed by the appointment),
and
 - 37.3.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:
 - 37.4.a. the member's name and address

- 37.4.b. the **company's** name
- 37.4.c. the proxy's name or the name of the office held by the proxy, and
- 37.4.d. the meeting(s) 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 22.5(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:
 - 37.8.a. dies
 - 37.8.b. is mentally incapacitated
 - 37.8.c. revokes the proxy's appointment, or
 - 37.8.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. When a vote in writing is held, a proxy:
 - 38.1.a. does not need to vote, unless the proxy appointment specifies the way they must vote
 - 38.1.b. if the way they must vote is specified on the proxy form, must vote that way, and
 - 38.1.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

The **company** must have at least four and no more than nine directors.

40. Election and appointment of directors

- 40.1. Apart from directors appointed under clause 40.5, the members may elect a director by a resolution passed in a **general meeting**.
- 40.2. Each of the directors must be appointed by a separate resolution, unless:
 - 40.2.a. the members present have first passed a resolution that the appointments may be voted on together, and
 - 40.2.b. no votes were cast against that resolution.
- 40.3. A person is eligible for election as a director of the **company** if they:
 - 40.3.a. are a financial member of the **company**, or a representative of a financial member of the **company** (appointed under clause 25)
 - 40.3.b. are nominated in writing by two financial members or representatives of financial members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),

- 40.3.c. owe no monies to the Company,
 - 40.3.d. give the **company** their signed consent to act as a director of the **company**,
and
 - 40.3.e. are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 40.4. The Board may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- 40.4.a. is a financial member of the **company**, or a representative of a financial member of the **company** (appointed under clause 25)
 - 40.4.b. gives the **company** their signed consent to act as a director of the **company**,
 - 40.4.c. owes no monies to the Company, and
 - 40.4.d. is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 40.5. If the number of directors is reduced to fewer than four 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 four (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 Board must elect a director as the company's elected chairperson.
- 41.2. The Board may elect a director as the company's elected deputy chairperson.

42. Term of office

- 42.1. At each annual **general meeting** any director appointed by the Board to fill a casual vacancy or as an additional director must retire.
- 42.2. Other than a director appointed under clause 40.5, 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.
- 42.3. Each director must retire at least once every three years.
- 42.4. A director who retires under clause 42.1 may nominate for election or re-election.
- 42.5. A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected
 - 42.5.a. by a **special resolution**, or
 - 42.5.b. by nomination in accordance with clause 40 after a period of 12 months has elapsed.

43. When a director stops being a director

- A director stops being a director if they:
- 43.1.a. give written notice of resignation as a director to the **company**
 - 43.1.b. die
 - 43.1.c. are removed as a director by a resolution of the members
 - 43.1.d. stop being a member of the **company**
 - 43.1.e. are a representative of a member, and that member stops being a member

- 43.1.f. are a representative of a member, and the member notifies the **company** that the representative is no longer a representative
- 43.1.g. are absent for three (3) consecutive Board' meetings without approval from the Board, or
- 43.1.h. become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of the Board

44. Powers of the Board

- 44.1. The Board is responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 44.2. The Board 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. The Board must decide on the responsible financial management of the **company** including:
 - 44.3.a. any suitable written delegations of power under clause 45, and
 - 44.3.b. how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 44.4. The Board cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

45. Delegation of Board powers

- 45.1. The Board may delegate any of its powers and functions, except the power to so delegate or a duty imposed by law, to a committee, a director, an employee of the **company** (such as a 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 as a director.
- 46.2. The **company** may
 - 46.2.a. reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**, or
 - 46.2.b. pay a director for work they do for the **company**, other than as a director, if the Board is satisfied the Director possesses the relevant skills and qualifications, the work is approved by the Board prior to being done and the amount is no more than a reasonable fee for the work done.
- 46.3. Any payment made under clause 46.2 must be approved by the Board.
- 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

The **company** may execute a document without using a common seal if the document is signed by:

- 47.1.a. two directors of the **company**, or
- 47.1.b. a director and the secretary.

Duties of directors

48. Duties of directors

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:

- 48.1.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**
- 48.1.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
- 48.1.c. not to misuse their position as a director
- 48.1.d. not to misuse information they gain in their role as a director
- 48.1.e. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 49
- 48.1.f. to ensure that the financial affairs of the **company** are managed responsibly, and
- 48.1.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 the Board (or that is proposed in a circular resolution):
 - 49.1.a. to the other directors, or
 - 49.1.b. if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 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 the Board (or that is proposed in a circular resolution) must not, except as provided under clauses 49.4:
 - 49.3.a. be present at the meeting while the matter is being discussed, or
 - 49.3.b. vote on the matter.
- 49.4. A director may still be present and vote if:
 - 49.4.a. their interest arises because they are a member of the **company**, and the other members have the same interest

- 49.4.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 68)
- 49.4.c. their interest relates to a payment by the **company** under clause 67 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
- 49.4.d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- 49.4.e. the directors who do not have a material personal interest in the matter pass a resolution that:
 - 49.4.e.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
 - 49.4.e.ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

Board meetings

50. When the Board meets

The Board may decide how often, where and when it meets.

51. Calling Board meetings

- 51.1. A director may call a Board meeting by giving reasonable notice to all of 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 Board meetings

- 52.1. The **elected chairperson**, or in his or her absence, the **elected deputy chairperson** is entitled to chair Board meetings.
- 52.2. The directors at a Board meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
 - 52.2.a. not present within 15 minutes after the starting time set for the meeting, or
 - 52.2.b. present but does not want to act as chairperson of the meeting, and
 - 52.2.c. the elected deputy chairperson is not present or if present does not want to act as chairperson of the meeting.

53. Quorum at Board meetings

- 53.1. Unless the Board determine otherwise, the quorum for a Board meeting is four (4) directors.
- 53.2. A quorum must be present for the whole Board meeting.

54. Using technology to hold Board meetings

- 54.1. The Board may hold its 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 Board resolutions

A Board 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 the Board

56.1. The Board may pass a circular resolution without a Board 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 clause 56.4.

56.3. Each director may sign:

56.3.a. a single document setting out the resolution and containing a statement that they agree to the resolution, or

56.3.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 and the directors 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 clause 56.4.

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 Board (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the Board.

57.3. The Board must decide the terms and conditions under which the secretary is appointed, including any remuneration.

57.4. The role of the secretary includes:

57.4.a. maintaining a register of the **company's** members, and

57.4.b. maintaining the minutes and other records of **general meetings** (including notices of meetings), Board meetings and circular resolutions.

Chief Executive Officer

58. Appointment of Chief Executive officer

58.1. The Board may from time to time appoint a Chief Executive Officer (the CEO) for such periods and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case and may revoke any such appointment subject to the provisions of the law.

- 58.2. The CEO shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration as the Board may determine.
- 58.3. The Board employs the CEO and may delegate to the CEO such of its powers and authorities as it deems fit from time to time including the delegation to employ staff and may vary or revoke those powers.
- 58.4. The CEO may not be a Director and shall not be entitled to cast a vote at any meeting of the Board.

Minutes and records

59. Minutes and records

- 59.1. The **company** must, within one month, make and keep the following records:
 - 59.1.a. minutes of proceedings and resolutions of **general meetings**
 - 59.1.b. minutes of circular resolutions of members
 - 59.1.c. a copy of a notice of each **general meeting**, and
 - 59.1.d. a copy of a members' statement distributed to members under clause 31.
- 59.2. The **company** must, within one month, make and keep the following records:
 - 59.2.a. minutes of proceedings and resolutions of Board meetings (including meetings of any committees), and
 - 59.2.b. minutes of circular resolutions of the Board.
- 59.3. To allow members to inspect the **company's** records:
 - 59.3.a. the **company** must give a member access to the records set out in clause 59.1, and
 - 59.3.b. the Board may authorise a member to inspect other records of the **company**, including records referred to in clause 59.2 and clause 60.1.
- 59.4. The Board must ensure that minutes of a **general meeting** or a Board meeting are signed within a reasonable time after the meeting by:
 - 59.4.a. the chairperson of the meeting, or
 - 59.4.b. the chairperson of the next meeting.
- 59.5. The Board must ensure that minutes of the passing of a circular resolution (of members or the Board) are signed by a director within a reasonable time after the resolution is passed.

60. Financial and related records

- 60.1. The **company** must make and keep written financial records that:
 - 60.1.a. correctly record and explain its transactions and financial position and performance, and
 - 60.1.b. enable true and fair financial statements to be prepared and to be audited.
- 60.2. The **company** must also keep written records that correctly record its operations.
- 60.3. The **company** must retain its records for at least 7 years.
- 60.4. The Board must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

61. By-laws

- 61.1. The Board may pass a resolution to make by-laws to give effect to this constitution.
- 61.2. Members and directors must comply with by-laws as if they were part of this constitution.

Notice

62. What is notice

- 62.1. Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 63 to 65, unless specified otherwise.
- 62.2. Clauses 63 to 65 do not apply to a notice of proxy under clause 37.6.

63. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- 63.1.a. delivering it to the **company's** registered office
- 63.1.b. posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- 63.1.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, or
- 63.1.d. sending it to the fax number notified by the **company** to the members as the **company's** fax number.

64. Notice to members

- 64.1. Written notice or any communication under this constitution may be given to a member:
 - 64.1.a. in person
 - 64.1.b. by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
 - 64.1.c. sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
 - 64.1.d. sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
 - 64.1.e. 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 address).
- 64.2. If the **company** does not have an address for the member, the **company** is not required to give notice in person.

65. When notice is taken to be given

A notice:

- 65.1.a. delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered
- 65.1.b. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- 65.1.c. sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- 65.1.d. given under clause 64.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

66. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the Board passes a resolution to change the financial year.

Indemnity, insurance and access

67. Indemnity

- 67.1. 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**.
- 67.2. In this clause, 'officer' means a director, secretary, senior manager or employee and includes an officer after they have ceased to hold that office.
- 67.3. In this clause, 'to the relevant extent' means:
 - 67.3.a. to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - 67.3.b. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 67.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

68. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the Board considers 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**.

69. Directors' access to documents

- 69.1. A director has a right of access to the financial records of the **company** at all reasonable times.
- 69.2. If the Board agrees, the **company** must give a director or former director access to:
 - 69.2.a. certain documents, including documents provided for or available to the Board, and
 - 69.2.b. any other documents referred to in those documents.

Winding up

70. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 71.1.

71. Distribution of surplus assets

- 71.1. Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 71.4) that remain after the company is wound up must be distributed to one or more charities:
- 71.1.a. with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6
 - 71.1.b. which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and
 - 71.1.c. that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).
- 71.2. 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.
- 71.3. If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 71.1(a), (b) and (c), as decided by the Board.
- 71.4. For the purpose of this clause:
- 71.4.a. 'gift funds' means:
 - 71.4.a.i. gifts of money or property for the principal purpose of the **company**
 - 71.4.a.ii. contributions made in relation to a fund-raising event held for the principal purpose of the company, and
 - 71.4.a.iii. money received by the company because of such gifts and contributions.
 - 71.4.b. 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

Definitions and interpretation

72. Definitions

In this constitution:

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

Board means the directors

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

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

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

general meeting means a meeting of members and includes the annual **general meeting**, under clause 21.1

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 present means, in connection with a **general meeting**, a **member present** in person, by representative 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:

- i. of which notice has been given under clause 22.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and

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.

73. Reading this constitution with the Corporations Act

- 73.1. The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 73.2. 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.
- 73.3. 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.
- 73.4. 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.

74. Interpretation

In this constitution:

- 74.1.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
- 74.1.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).