



# Constitution of Animal Welfare League NSW

Australian Company Number (ACN) **000 533 086**

Australian Business Number (ABN) **88 000 533 086**

A company limited by guarantee

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## Preliminary

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### 1. Name of the Company

The name of the Company is Animal Welfare League NSW (the **Company**).

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### 2. Type of company

The Company is a not-for-profit public company limited by guarantee.

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### 3. Limited liability of members

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

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### 4. The guarantee

Each member must contribute an amount not more than \$5 (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:

- (a) debts and liabilities of the Company incurred before the member stopped being a member; or
- (b) costs of winding up.

## Definitions and Interpretation

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### 5. Definitions

In this constitution:

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

**Adoption Date** means the date on which this constitution is adopted as the constitution of the Company.

**Animal Welfare Group** means The Royal Society for Prevention of Cruelty to Animals, New South Wales, Animal Liberation Organisation, Animals Australia, Animal Justice Party, any other body or entity specified by the directors from time to time and any other body or entity specified in clause 50(c)(vii).

**Annual Fee** means the annual fee as set out in clause 19.

**Application Fee** means the application fee as set out in clause 19.

**Branch** means a branch established under clause 78.

**Branch Manual** means the manual currently entitled "Branch Standard Operating Procedures" that governs the operation of Branches, published by the Company as amended by the directors from time to time.

**Business Day** means a day on which banks are open for business in Sydney, New South Wales excluding a Saturday, Sunday or public holiday in that city.

**Chief Executive Officer** means the person appointed from time to time by the directors to be the Company's chief executive officer.

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**Close of Nominations** means the date and time by which nominations for election as a director must be received as determined in accordance with clause 50(e).

**Companion Animal** means a pet or animal including, but not limited to, a dog and a cat, which is kept for the mutual welfare and benefit of the animal and its carer.

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

**Concession Member** means a person whose name is entered in the register of members as a Concession Member.

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

**Elected Chairperson** means a person elected by the directors to be the chairperson under clause 51(a).

**Elected Vice-Chairperson** means a person elected by the directors to be a vice-chairperson under clause 51(b)(i).

**General Meeting** means a meeting of members and includes the annual general meeting, under clause 27(a).

**General Member** means a person whose name is entered in the register of members as a General Member.

**Income Tax Assessment Act** means the *Income Tax Assessment Act 1997* (Cth).

**Inspector** means an inspector within the meaning of section 24D(1) of the POCTAA.

**Junior Member** means a person under the age of 16 whose name is entered in the register of members as a Junior Member.

**Life Member** means a person whose name is entered in the register of members as a Life Member.

**Member Present** means, in connection with a General Meeting, a member present in person, or by proxy or attorney at the venue or venues for the meeting.

**Membership Group** means a group of members specified or determined in accordance with clause 15.

**POCTAA** means the *Prevention of Cruelty to Animals Act 1979* (NSW).

**Postal Vote** means a vote on a resolution validly cast in accordance with clause 48.1.

**Postal Vote Notice** means a notice validly given in accordance with clause 48.3.

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

**Special Resolution** means a resolution:

- (a) of which notice has been given under clause 28(e)(iii); and
- (b) 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.

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## 6. Interpretation

- (a) The words '**including**', '**for example**', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression.
- (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).

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## 7. Reading this constitution with the Corporations Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the Company.
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act (other than the provisions of the Corporations Act that because of section 111L of that Act do not apply to a Registered Charity) override any clauses in this constitution which are inconsistent with those Acts.
- (c) If the Company is not a Registered Charity (even if it is a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- (d) Unless the contrary intention appears, 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 in this constitution as in that Act.

## Charitable purposes and powers

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## 8. Objects

The Company's objects are to pursue the following charitable purposes:

- (a) to promote the welfare of Companion Animals and support the humane treatment of all animals;
- (b) to make provision for neglected, abandoned and unwanted Companion Animals;
- (c) to educate the public in the care, handling and training of Companion Animals;
- (d) to endeavour to prevent cruelty to, and neglect of, animals;
- (e) to relieve distress and aid injured and sick animals;
- (f) to promote sterilisation of Companion Animals;
- (g) to encourage the use of veterinary services;
- (h) to employ Inspectors to exercise law enforcement powers under the POCTAA;
- (i) to take or cause to be taken any legal action in relation to the exercise of the powers or functions of an Inspector under the POCTAA;
- (j) to make public by any appropriate means the objects of the Company;
- (k) to raise and administer funding to enable the Company to achieve its objectives;
- (l) to encourage the making of gifts and testamentary dispositions to the Company to enable the Company to achieve its objects;
- (m) to make charitable donations which are aligned to the objects of the Company; and

- (n) to do all such other acts as are incidental or conducive to the attainment of the above objects.

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## **9. Powers**

Subject to clause 10, the Company has the following powers, which may only be used to carry out its purpose(s) set out in clause 8:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

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## **10. Not-for-profit**

- (a) The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 10(b) and 89.
- (b) Clause 10(a) does not stop the Company from doing the following things, provided they are done in good faith:
  - (i) 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
  - (ii) making a payment to a member in carrying out the Company's charitable purpose(s).

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## **11. Amending the constitution**

- (a) Subject to clauses 11(b), 11(c) and 11(d), the members may amend this constitution by passing a Special Resolution.
- (b) The members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.
- (c) Clause 54(h) must not be altered whether by addition, deletion, insertion or otherwise without the unanimous resolution of the members in General Meeting.
- (d) Clause 11(c) and this clause 11(d) shall not be altered whether by addition, deletion, insertion or otherwise without the unanimous resolution of the members in General Meeting.

## **Members**

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## **12. Membership and register of members**

- (a) The members of the Company are:
  - (i) the members as at the Adoption Date; and
  - (ii) any other individual that the directors allow to be a member in accordance with this constitution.
- (b) The Company must establish and maintain a register of members. The register of members must contain:
  - (i) for each current member:



- A. name;
  - B. address;
  - C. any alternative address nominated by the member for the service of notices; and
  - D. date the member was entered on to the register.
- (ii) for each person who stopped being a member in the last 7 years:
- A. name;
  - B. address;
  - C. any alternative address nominated by the member for the service of notices; and
  - D. dates the membership started and ended.
- (c) The Company must give current members access to the register of members in accordance with section 173 of the Corporation Act.
- (d) Information that is accessed from the register of members must not be used or disclosed except as permitted under section 177 of the Corporations Act.

### **13. Who can be a member**

An individual who supports the purposes of the Company is eligible to apply to be a member of the Company under clause 14.

### **14. How to apply to become a member and to renew membership**

- (a) An individual may apply to become a member of the Company by completing and giving to the Company the Company's official membership application form available through the registered office or as published on the Company's website from time to time. Unless otherwise determined by the directors, the membership application form must include a statement by the applicant that they
- (i) want to become a member;
  - (ii) support the purpose(s) of the Company;
  - (iii) agree to comply with the Company's constitution, including paying the guarantee under clause 4 if required; and
  - (iv) agree to comply with the Company's Code of Conduct and Dispute Resolution and Complaint Procedure and any other policies determined by the directors from time to time.
- and the membership application form must:
- (v) specify the Membership Group the applicant wishes to apply for; and
  - (vi) be accompanied by the Application Fee for that Membership Group.
- (b) An application for the renewal of the membership of members in all Membership Groups other than a Life Member must be made by the member completing and giving to the Company the Company's official membership renewal form available

through the registered office or as published on the Company's website from time to time.

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## **15. Membership Groups**

- (a) The members shall consist of the following groups:
  - (i) General Members;
  - (ii) Life Members;
  - (iii) Concession Members;
  - (iv) Junior Members; and
  - (v) such other groups as the directors may from time to time determine.
- (b) As from the Adoption Date:
  - (i) the persons who were ordinary members of the Company immediately prior to the Adoption Date shall automatically become General Members; and
  - (ii) the persons who were Life Members, Concession Members and Junior Members immediately prior to the Adoption Date shall automatically continue as Life Members, Concession Members and Junior Members respectively.
- (c) General Members, Life Members and Concession Members have the same rights, including the right to attend, speak and vote at a General Meeting, and obligations except in relation to the amount of the Application Fee and Annual Fee (if any) payable by them.
- (d) Junior Members are entitled to receive notice of, and to attend, a General Meeting but are not entitled to speak or vote at a General Meeting.
- (e) The directors may determine the requirements for admission as a member in a particular Membership Group and, subject to clauses 15(c) and 15(d), the rights and privileges of members in each Membership Group.

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## **16. Directors decide whether to approve membership**

- (a) The directors must consider an application for membership within a reasonable time after the application is received.
- (b) If the directors approve an application for membership, the Company must as soon as possible:
  - (i) enter the new member on the register of members; and
  - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 17).
- (c) If the directors reject an application for membership, the Company 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. Any Application Fee paid by the applicant at the time of their application for membership must be returned to the applicant.

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**17. When a person becomes a member**

- (a) An applicant will become a member only when the directors have determined to admit the applicant, the applicant has paid the applicable Application Fee and the name of the applicant is entered on the register of members.
- (b) The rights of a member are not transferable.

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**18. Annual Fee**

The Annual Fee becomes due and payable in advance on 1 July every year. Each member other than a Life Member must pay the Annual Fee.

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**19. Amount of Application Fee and Annual Fee**

Until the Company decides otherwise by ordinary resolution, the Application Fee payable by applicants for membership in each Membership Group and the Annual Fee payable by members in each Membership Group other than Life Members is such amount as is determined by the directors from time to time.

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**20. Failure to pay Annual Fee**

- (a) Despite anything in this constitution, if a member's Annual Fee is more than three months in arrears, the member's membership privileges are cancelled without any effect on the member's liabilities.
- (b) The directors may reinstate a member's membership privileges upon payment of all the member's arrears.

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**21. Money owing on termination**

Any money owing by a member to the Company at the time the member ceases to be a member remains owing and becomes payable immediately upon the member ceasing to be a member.

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**22. When a person stops being a member**

A person immediately stops being a member if:

- (a) they die;
- (b) they resign, by writing to the Company; or
- (c) they are expelled under clause 24.

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**Dispute resolution and disciplinary procedures**

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**23. Dispute resolution**

Disputes between a member or director and:

- (i) one or more members;
- (ii) one or more directors; or
- (iii) the Company,

including, but not limited to, disputes in relation to the fundraising activities of the Company must be dealt with in accordance with the Company's Dispute Resolution Procedure approved by the directors as in force at the time of the dispute.

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## **24. Disciplining members**

- (a) The directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:
  - (i) the member has breached this constitution; or
  - (ii) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- (b) Before the directors pass any resolution under clause 24(a) they must follow the Company's Disciplinary Procedure approved by the directors as in force at the time the directors are considering passing any such resolution.

## **General Meetings of members**

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### **25. General Meetings called by directors**

- (a) The directors may call a General Meeting.
- (b) 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 directors must:
  - (i) within 21 days of the members' request, give all members notice of a General Meeting; and
  - (ii) hold the General Meeting within 2 months of the members' request.
- (c) The percentage of votes that members have (in clause 25(b)) is to be worked out as at midnight before the members request the meeting.
- (d) The members who make the request for a General Meeting must:
  - (i) state in the request any resolution to be proposed at the meeting;
  - (ii) sign the request; and
  - (iii) give the request to the Company.
- (e) 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.

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### **26. General Meetings called by members**

- (a) If the directors do not call the meeting within 21 days of being requested under clause 25(b), 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- (b) To call and hold a meeting under clause 26(a) the members must:
  - (i) as far as possible, follow the procedures for General Meetings set out in this constitution;

- (ii) 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
  - (iii) hold the General Meeting within three months after the request was given to the Company.
- (c) The Company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

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## **27. Annual General Meeting**

- (a) A General Meeting, called the annual general meeting, must be held at least once in every calendar year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
  - (i) a review of the Company's activities;
  - (ii) a review of the Company's finances;
  - (iii) any auditor's report;
  - (iv) the election of directors; and
  - (v) the appointment of auditors, if any.
- (c) 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.
- (d) 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.

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## **28. Notice of General Meetings**

- (a) Notice of a General Meeting must be given to:
  - (i) each member entitled to vote at the meeting;
  - (ii) each director; and
  - (iii) the auditor (if any).
- (b) Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- (c) Subject to clause 28(d), notice of a meeting may be provided less than 21 days before the meeting if:
  - (i) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
  - (ii) for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

- (d) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - (i) remove a director;
  - (ii) appoint a director in order to replace a director who was removed; or
  - (iii) remove an auditor.
- (e) Notice of a General Meeting must include:
  - (i) 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);
  - (ii) the general nature of the meeting's business;
  - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
  - (iv) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - A. the proxy may be, but does not need to be, a member of the Company;
    - B. 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
    - C. the proxy form (and the original or a certified copy of the power of attorney or other authority (if any) under which it is signed) must be delivered to the Company at least 48 hours before the meeting.
- (f) If a General Meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- (g) A person's attendance at a General Meeting waives objection to a defective notice of the meeting, unless the person objects at the beginning of the meeting.
- (h) Subject to the Corporations Act, anything done at a General Meeting is not invalid because a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.

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## **29. Postponement or cancellation**

- (a) The directors may postpone or cancel a General Meeting by giving written notice to each person entitled to be given notice of the meeting.
- (b) Clause 29(a) does not apply to a General Meeting called in accordance with clause 25(b) or 26(a), unless the members who called the meeting consent to the cancellation or postponement of the meeting.

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## **30. Quorum at General Meetings**

- (a) For a General Meeting to be held, at least 10 members entitled to vote at a General Meeting (a quorum) must be present (in person or by proxy or attorney) 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 or attorney of more than one member).

- (b) No business may be conducted at a General Meeting if a quorum is not present.
- (c) 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 or, in the case of a General Meeting called in accordance with clause 25(b) or 26(a), is cancelled. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
  - (i) if the date is not specified – the same day in the next week;
  - (ii) if the time is not specified – the same time; and
  - (iii) if the place is not specified – the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

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### **31. Auditor's right to attend meetings**

- (a) 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.
- (b) 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.

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### **32. Using technology to hold meetings**

- (a) 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.
- (b) Anyone using this technology is taken to be present in person at the meeting.

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### **33. Chairperson for General Meetings**

- (a) The Elected Chairperson is entitled to chair General Meetings.
- (b) If,
  - (i) there is no Elected Chairperson; or
  - (ii) the Elected Chairperson is not present within 15 minutes after the starting time for the meeting; or
  - (iii) the Elected Chairperson is not willing to act as chairperson of the meeting,an Elected Vice-Chairperson who is present and willing to act is entitled to chair the meeting.
- (c) If there are two Elected Vice-Chairpersons who become entitled to chair a meeting under clause 33(b), they may, among themselves, agree who is to be the chairperson of the meeting. If they are unable to agree, the Elected Vice-Chairperson who is to be the chairperson of the meeting must be decided by drawing lots.

- (d) If,
  - (i) there is no Elected Chairperson or Elected Vice-Chairperson; or
  - (ii) neither the Elected Chairperson nor any Elected Vice-Chairperson is present within 15 minutes after the time for the meeting or willing to act as chairperson of the meeting,

the directors present may choose a director who is present and willing to act to be the chairperson of the meeting.

- (e) If,
  - (i) the directors do not choose a chairperson of the meeting under clause 33(d); or
  - (ii) no director is present and willing to act,

the Members Present and entitled to vote at a General Meeting may choose a member present in person to be the chairperson of the meeting.

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### **34. Role of the chairperson**

- (a) 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)).
- (b) The chairperson does not have a casting vote.

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### **35. Adjournment of meetings**

- (a) If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it by an ordinary resolution.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

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### **36. Meetings of a Membership Group**

- (a) A meeting of a Membership Group (not being a General Meeting) may be held in the same manner as a General Meeting, except that the requirements of clauses 36(b) and 36(c) apply.
- (b) A quorum is 2 persons of the Membership Group present and entitled to vote unless there is only one member in that group, in which case the quorum will be that person.
- (c) Any person of the Membership Group present and entitled to vote may demand a vote in writing.

## **Members' resolutions and statements**

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### **37. Members' resolutions and statements**

- (a) Members with at least 5% of the votes that may be cast on a resolution may give:
  - (i) written notice to the Company of a resolution they propose to move at a General Meeting (members' resolution); and/or



- (ii) 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).
- (b) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- (c) A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- (d) 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.
- (e) The percentage of votes that members have (as described in clause 37(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a members' resolution under clause 37(a)(i), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- (g) This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

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

- (a) If the Company has been given a notice or request under clause 37:
  - (i) 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
  - (ii) 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.
- (b) The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
  - (i) it is more than 1,000 words long;
  - (ii) the directors consider it may be defamatory;
  - (iii) clause 38(a)(ii) 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
  - (iv) 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.

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## **39. Circular resolutions of members**

- (a) Subject to clause 39(c), the directors may put a resolution to the members to pass a resolution without a General Meeting being held (a circular resolution).
- (b) The directors 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.
- (c) Circular resolutions cannot be used:
  - (i) for a resolution to remove an auditor, appoint a director or remove a director;
  - (ii) for passing a Special Resolution; or
  - (iii) where the Corporations Act or this constitution requires a meeting to be held.
- (d) 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 39(e) or clause 39(f).
- (e) Members may sign:
  - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (f) 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**

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### **40. How many votes a member has**

Subject to clause 44, each member has one vote.

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

- (a) A member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- (b) If a challenge is made under clause 41(a), the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

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

- (a) Voting must be conducted and decided by:
  - (i) a show of hands;
  - (ii) a vote in writing; or
  - (iii) another method chosen by the chairperson that is fair and reasonable in the circumstances.

- (b) Before a vote on a resolution is taken, the chairperson must state whether any valid proxy forms or Postal Notices in respect of that resolution have been received and, if so,
  - (i) in the case of the proxy forms, the total number of votes able to be cast by all proxies on the resolution and the total number of votes in respect of which the proxy appointments specified that:
    - A. the proxy is to vote for the resolution;
    - B. the proxy is to vote against the resolution;
    - C. the proxy is to abstain on the resolution (if applicable); and
    - D. the proxy may vote at the proxy's discretion; and
  - (ii) in the case of the Postal Notices, the total number of votes cast by the Postal Vote Notices on the resolution and the total number of votes cast by the Postal Vote Notices:
    - A. for the resolution;
    - B. against the resolution; and
    - C. abstaining on the resolution.
- (c) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- (d) 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.

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

- (a) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (i) at least five Members Present entitled to vote on the resolution;
  - (ii) 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
  - (iii) the chairperson.
- (b) A vote in writing must be taken when and how the chairperson directs, unless clause 43(c) applies.
- (c) A vote in writing must be held immediately if it is demanded under clause 43(a):
  - (i) for the election of a chairperson under clause 33(e); or
  - (ii) to decide whether to adjourn the meeting.
- (d) A demand for a vote in writing may be withdrawn.
- (e) A demand for a vote in writing does not prevent the continuance of the General Meeting or prevent the General Meeting from dealing with other business.

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## 44. Voting restrictions

If:

- (a) the Corporations Act requires that a member does not vote on a resolution, or that votes cast by a member be disregarded in order for the resolution to operate as intended, which must be outlined in the notice of the meeting for that relevant General Meeting; or
- (b) a member's Annual Fee is more than 3 months in arrears; or
- (c) the Membership Group of a member specifically excludes voting rights,

that member has no right to vote on that resolution and the Company must not count any votes purported to be cast by that member.

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## 45. Appointment of proxy

- (a) A member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- (b) A proxy does not need to be a member.
- (c) A proxy appointed to attend and vote for a member has the same rights as the member to:
  - (i) speak at the meeting;
  - (ii) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (iii) join in to demand a vote in writing under clause 43(a).
- (d) An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
  - (i) the member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the meeting(s) at which the appointment may be used.
- (e) If a proxy form is signed by a member but does not name the proxy appointed by the member or names the member who signed the proxy form as their proxy, the Elected Chairperson is taken to be appointed as proxy for the member at the meeting unless the proxy form provides otherwise.
- (f) A proxy appointment may be standing (ongoing).
- (g) Proxy forms (whether in hard-copy or electronic form) (and the original or a certified copy of the power of attorney or other authority (if any) under which they are signed), must be received by the Company at the address stated in the notice under clause 28(e)(iv) or at the Company's registered address at least 48 hours before a meeting.
- (h) A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

- (i) 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:
  - (i) dies;
  - (ii) is mentally incapacitated;
  - (iii) revokes the proxy's appointment.
- (j) A proxy appointment may specify the way the proxy must vote on a particular resolution.

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## 46. Voting by proxy

- (a) 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).
- (b) When a vote in writing is held, a proxy:
  - (i) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (ii) if the way they must vote is specified on the proxy form, must vote that way; and
  - (iii) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.
- (c) If:
  - (i) a proxy form specifies the way the proxy must vote on a particular resolution; and
  - (ii) the proxy is not the chairperson of the General Meeting; and
  - (iii) a vote in writing is held on the resolution; and
  - (iv) either of the following apply:
    - A. if a record of attendance is made for the General Meeting - the proxy is not recorded as attending;
    - B. the proxy does not vote on the resolution;

the chairperson of the General Meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purpose of voting on the resolution at that meeting.

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## 47. Multiple proxy appointments

A later proxy appointment revokes an earlier proxy appointment if both appointments could not be validly exercised at the meeting.

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## **48. Postal Voting**

### **48.1 Casting a Postal Vote**

A member may cast a vote on a resolution at a General Meeting by Postal Vote if:

- (a) the member gives the Company a written Postal Vote Notice in accordance with clause 48.3 setting out how the member wishes to vote on that resolution;
- (b) at the time the resolution is put to members, the Postal Vote Notice has not been revoked under this constitution; and
- (c) at the time the resolution is put to members, the member is entitled to cast a vote on that resolution.

### **48.2 Nature of a Postal Vote**

A Postal Vote, subject to this clause 48.1, is a vote on a vote in writing, and is not to be counted on a show of hands.

### **48.3 Postal Vote Notice**

A Postal Vote Notice is validly given if it is:

- (a) in the form attached to the notice of meeting and includes:
  - (i) the member's name and address; and
  - (ii) a sufficient indication whether the member wishes to vote for or against one or more of the resolutions to be put before the meeting;
- (b) dated (except that, if it is not dated, it is for the purposes of this constitution taken to have been dated the date of its receipt by the Company);
- (c) signed or acknowledged by the member (or by its attorney) in a manner satisfactory to the directors; and
- (d) received by the Company at its registered office or a fax number at that office (or another address (including an electronic address) or fax number specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, at least 48 hours before the resumption of the meeting.

### **48.4 Multiple Postal Vote Notices**

If two or more Postal Vote Notices are validly given by the same member under clause 48.3:

- (a) if both Postal Vote Notices have the same date, and they do not indicate the same voting directions, both Postal Vote Notices are treated as revoked; and
- (b) if the Postal Vote Notices have different dates, the Postal Vote Notice with the latest date is treated as valid and any Postal Vote Notice with an earlier date is treated as revoked.

For this purpose, the date of a Postal Vote Notice is its date (or deemed date) under clause 48.3(b), but this clause 48.4 does not validate a Postal Vote Notice which by reason of clause 48.3(d) is invalid.

## **48.5 Postal Vote Notice and appointment of proxy**

If both a Postal Vote Notice and an appointment of proxy is validly given by the same member:

- (a) if the Postal Vote Notice and the appointment of proxy have the same date, the appointment of proxy is treated as revoked and the Postal Vote Notice is treated as valid; and
- (b) if the Postal Vote Notice and the appointment of proxy have different dates, the earlier one is treated as revoked and the later one is treated as valid.

For this purpose, the date of a Postal Vote Notice is its date (or deemed date) under clause 48.3(b). The date of an appointment of proxy is its date, or the date it is deemed to have under section 250A of the Corporations Act

## **48.6 Validity of Postal Vote Notice**

A decision as to the validity of a Postal Vote Notice (including validity by reason of being the later Postal Vote Notice) must be made by the directors prior to the commencement of the meeting at which the relevant Postal Vote is to be cast. The decision of the directors as to the validity of a Postal Vote is conclusive.

## **48.7 Validity not affected by subsequent events**

A Postal Vote Notice validly given under clause 48.3 remains valid even if, before the resolution to which the Postal Vote relates is put to members, the member who gave the Postal Vote Notice:

- (a) dies; or
- (b) becomes mentally incapacitated,

unless the Company receives actual notice (from any source) of the relevant event before the meeting at which the resolution is put to members, in which case the Postal Vote Notice is revoked.

## **48.8 Revocation of Postal Vote Notice by member**

A member may revoke a Postal Vote Notice in respect of a meeting only as follows:

- (a) by giving the Company a later valid Postal Vote Notice in accordance with clause 48.4;
- (b) by giving the Company a later valid appointment of proxy in accordance with clause 48.5;
- (c) by giving the Company written notice of the member's intention to revoke that Postal Vote Notice in a form acceptable to the Board, but only where the notice of revocation is received at least 48 hours before the time for which the meeting was called, or, if the meeting has been adjourned, before the resumption of the meeting; or
- (d) as provided in clause 48.10(b).

## **48.9 Postal Vote not affected by presence of member**

The presence of a member at a meeting, or the appointment of, or presence at a meeting of, an attorney of that member does not of itself invalidate or affect a Postal Vote given by that member, except to the extent provided in clause 48.10.

## **48.10 Attendance at meeting if Postal Vote Notice given**

If a member who has validly given a Postal Vote Notice attends, or if the member's attorney attends, the meeting to which the Postal Vote Notice relates, then:

- (a) the rights of the member or its attorney (as the case requires) to participate in the meeting (including voting on a show of hands or on procedural motions, or joining in a demand for a vote in writing) are the same as if the Postal Vote Notice had not been given; and
- (b) on a resolution on which a vote in writing has been demanded the vote cast by the Postal Vote Notice on that resolution is the vote of the member on the resolution, unless the member or, attorney votes on the vote in writing, in which case the Postal Vote Notice is taken to be revoked in relation to that resolution.

## **Directors**

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### **49. Number of directors**

The number of directors must be the number, not being less than three (3) nor more than nine (9), determined by the directors, but the number so determined at a particular time must not be less than the number of directors in office when the determination takes effect. In the absence of any such determination, the number of directors will be nine (9).

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### **50. Election and appointment of directors**

- (a) Apart from the directors in office on the Adoption Date and directors appointed or taken to have been appointed under clause 50(d), the members may, by a resolution passed at an annual general meeting, fill an office vacated by a director under this constitution by electing or re-electing an eligible person to that office.
- (b) Each of the directors must be appointed by a separate resolution, unless:
  - (i) the Members Present have first passed a resolution that the appointments may be voted on together; and
  - (ii) no votes were cast against that resolution.
- (c) A person is eligible for election as a director if:
  - (i) in the case of a person who was appointed, or is taken to have been appointed, as a director under clause 50(d) and is standing for election at the annual general meeting at which they must retire in accordance with clause 52(a)(i), they are a member;
  - (ii) in the case of a person other than a person mentioned in clause 50(c)(i), they have been a member of the Company for at least 2 years continuously up to the Close of Nominations;
  - (iii) they are nominated by two members in accordance with clause 50(e) unless they were previously elected as a director at an annual general meeting and have been a director since that meeting;
  - (iv) they give the Company their signed consent to act as a director of the Company;
  - (v) they are not ineligible to be a director under the Corporations Act or the ACNC Act;



- (vi) they are not an office bearer or employee of any Animal Welfare Group;
  - (vii) they are not a member, office bearer or employee of:
    - A. any body whether incorporated or not which at least three quarters of the directors present and entitled to vote specify in writing provided always that at least three quarters of the directors present and entitled to vote may subsequently resolve that such specification shall cease to have effect; or
    - B. any corporation related within the meaning of the Corporations Act to any body specified in (A) above; or
    - C. any successor body of any corporation referred to in either (A) or (B) above; or
    - D. any shareholder or member of any body within the meaning of (A), (B) or (C) above;
  - (viii) they ordinarily reside within New South Wales; and
  - (ix) they have not served as a director for nine (9) years or more (in aggregate, either continuously or in broken periods) after first being elected or appointed as a director (either before, on or after the Adoption Date).
- (d) The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (i) is a member of the Company,
  - (ii) gives the Company their signed consent to act as a director of the Company;
  - (iii) is not ineligible to be a director under the Corporations Act or the ACNC Act; and
  - (iv) satisfies clauses 50(c)(vi), 50(c)(vii), 50(c)(viii) and 50(c)(ix).
- (e) The Company must call for nominations for the election of directors no later than 60 days before the proposed date of each annual general meeting by a notice published on the Company's website. The notice must specify the proposed date of the annual general meeting and the Close of Nominations. The Close of Nominations must be at 5.00pm (Sydney time) on the day which is 45 days before the proposed date of the annual general meeting specified in the notice. For a nomination to be valid, it must be:
- (i) in writing;
  - (ii) name the nominee and be signed by the nominee and two members;
  - (iii) in the form published by the Company on its website; and
  - (iv) be received by the secretary at the registered office of the Company before the Close of Nominations.
- (f) For the purposes of this clause, a person appointed as a director by the directors in accordance with rule 6.2 of the constitution of the Company in force immediately before the Adoption Date is taken to have been appointed as a director under clause 50(d).

- (g) if the number of directors is reduced to fewer than three 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 three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

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## **51. Election of office bearers**

- (a) The directors must elect a director as the Elected Chairperson.
- (b) The directors must elect:
  - (i) up to two directors as the Elected Vice-Chairpersons; and
  - (ii) a director as the Treasurer.

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## **52. Term of office**

- (a) At each annual general meeting:
  - (i) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
  - (ii) at least one-third (or if that number is not a whole number, the next lowest whole number nearest to one third) of the remaining directors must retire.
- (b) The directors who must retire at each annual general meeting under clause 52(a)(ii) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by random drawing of names unless they agree otherwise.
- (c) Other than a director appointed, or taken to have been appointed, under clause 50(d), 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.
- (d) Each director must retire no later than the longer of the third annual general meeting or 3 years, following that director's last election or appointment.
- (e) The directors who must retire under this clause is decided having regard to the composition of the board of directors at the date of the notice calling the annual general meeting. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice but before the meeting closes.
- (f) A director who retires under clause 52(a) or 52(d) may nominate for election or re-election if they are eligible for election in accordance with clause 50(c).

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## **53. Removal from office**

The Company may, by ordinary resolution, remove a director from office.

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## **54. When a director stops being a director**

The office of a director automatically becomes vacant 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) stop being a member of the Company;
- (e) are absent for 3 consecutive directors' meetings without approval from the directors;
- (f) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act;
- (g) become of unsound mind or physically or mentally incapable of performing the functions of that office;
- (h) are or become a member, office bearer or employee of any body or entity specified in clause 50(c)(vii);
- (i) are or become an office bearer or employee of any Animal Welfare Group; or
- (j) are convicted of an offence under any law applying to the welfare care and control of animals as defined in the POCTAA.

## **Powers of directors**

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### **55. Powers of directors**

- (a) The directors are responsible for managing and directing the activities of the Company to achieve the purpose(s) set out in clause 8.
- (b) 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.
- (c) The directors must decide on the responsible financial management of the Company including:
  - (i) any suitable written delegations of power under clause 56; and
  - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (d) The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a General Meeting.

### **56. Delegation of directors' powers**

- (a) The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (including a Chief Executive Officer) or any other person, as they consider appropriate.
- (b) A delegate must exercise the powers delegated in accordance with any directions of the directors.
- (c) The delegation must be recorded in the Company's minute book.

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## **57. Proceedings of committees**

Subject to the terms of any delegation by the directors, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules which regulate the meetings and proceedings of the directors.

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## **58. Payments to directors**

- (a) The Company must not pay fees to a director for acting as a director.
- (b) The Company may reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- (c) Any payment made under clause 58(b) must be approved by the directors.
- (d) The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

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## **59. Execution of documents**

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 Chief Executive Officer.

## **Duties of directors**

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## **60. 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:

- (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 purpose(s) of the Company set out in clause 8;
- (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 61;
- (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.

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## **61. Conflicts of interest**

- (a) A director must disclose to the other directors if he or she is a member of any other entity or organisation interested in animal welfare.

- (b) 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):
  - (i) to the other directors; or
  - (ii) 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.
- (c) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- (d) 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 clause 61(e):
  - (i) be present at the meeting while the matter is being discussed; or
  - (ii) vote on the matter.
- (e) A director may still be present and vote if:
  - (i) their interest arises because they are a member of the Company, and the other members have the same interest;
  - (ii) 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 86);
  - (iii) their interest relates to a payment by the Company under clause 85 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (iv) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the director to vote on the matter; or
  - (v) the directors who do not have a material personal interest in the matter pass a resolution that:
    - A. 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
    - B. says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

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### 62. When the directors meet

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

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### 63. Calling directors' meetings

- (a) A director may call a directors' meeting by giving reasonable notice (being at least 24 hours except in the case of an emergency) to all of the other directors.
- (b) 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.

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## **64. Chairperson for directors' meetings**

- (a) The Elected Chairperson is entitled to chair directors' meetings unless the directors elect another director to chair directors' meetings in place of the Elected Chairperson. The directors may decide the period for which a director other than the Elected Chairperson is entitled to chair directors' meetings.
- (b) The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the Elected Chairperson or, if applicable, the director elected to chair directors' meetings in the place of the Elected Chairperson under clause 64(a) is:
  - (i) not present within 30 minutes after the starting time set for the meeting; or
  - (ii) present but does not want to act as chairperson of the meeting.

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## **65. Quorum at directors' meetings**

- (a) Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of the directors.
- (b) A quorum must be present for the whole directors' meeting.

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## **66. Using technology to hold directors' meetings**

- (a) The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- (b) The directors' agreement may be a standing (ongoing) one.
- (c) A director may only withdraw their consent within a reasonable period before the meeting.

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## **67. Passing directors' resolutions**

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

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## **68. Circular resolutions of directors**

- (a) The directors may pass a circular resolution without a directors' meeting being held.
- (b) A circular resolution is passed if a majority of directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 68(c) or clause 68(d).
- (c) Each director may sign:
  - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) 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.

- (e) A circular resolution is passed when the last of the required number of directors signs or otherwise agrees to the resolution in the manner set out in clause 68(c) or clause 68(d).

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## **69. Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

## **Secretary**

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### **70. Appointment and role of secretary**

- (a) The Company must have at least one secretary.
- (b) 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.
- (c) The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- (d) The role of the secretary includes maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and circular resolutions.

## **Minutes and records**

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### **71. Minutes and records**

- (a) The Company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of General Meetings;
  - (ii) minutes of circular resolutions of members;
  - (iii) a copy of a notice of each General Meeting; and
  - (iv) a copy of a members' statement distributed to members under clause 38.
- (b) The Company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (ii) minutes of circular resolutions of directors.
- (c) To allow members to inspect the Company's records:
  - (i) the Company must give a member access to the records set out in clause 71(a); and

- (ii) the directors may authorise a member to inspect other records of the Company, including records referred to in clause 71(b) and clause 72(a).
- (d) The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
  - (i) the chairperson of the meeting; or
  - (ii) the chairperson of the next meeting.
- (e) 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.

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## **72. Financial and related records**

- (a) The Company must make and keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance; and
  - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The Company must also keep written records that correctly record its operations.
- (c) The Company must retain its records for at least 7 years.
- (d) The directors must take reasonable steps to ensure that the Company's records are kept safe.

## **By-laws**

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### **73. By-laws**

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

## **Notice**

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### **74. What is notice**

- (a) Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 75 to 77, unless specified otherwise.
- (b) Clauses 75 to 77 do not apply to a notice of proxy under clause 45(g).

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### **75. Notice to the Company**

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

- (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;
- (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
- (d) sending it to the fax number notified by the Company to the members as the Company's fax number.

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## **76. Notice to members**

- (a) Written notice or any communication under this constitution may be given to a member:
  - (i) in person;
  - (ii) 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;
  - (iii) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
  - (iv) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
  - (v) 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).
- (b) If the Company does not have an address for the member, the Company is not required to give notice in person.

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## **77. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at 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 Business Day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the Business Day after it is sent; and
- (d) given under clause 76(a)(v) is taken to be given on the Business Day after the notification that the notice is available is sent.

## **Branches**

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### **78. Establishment of Branches**

The directors may from time to time authorise the establishment of a Branch in such place or places as the directors may determine comprised of members of the Company ordinarily resident within or outside the area in respect of which the Branch is established who are from time to time admitted and remain as members of the Branch in accordance with the Branch

Manual. The activities and affairs of a Branch shall at all times be subject to the ultimate control and direction of the directors.

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## **79. Compliance of Branch**

Branches must comply with:

- (a) this constitution;
- (b) the rules in the Branch Manual as amended from time to time by the directors; and
- (c) any other code or rules of conduct or any other standard prescribed by the directors from time to time.

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## **80. Accounts**

All duly established Branches shall cause accounts to be kept and forwarded monthly to the Company or person as specified in the Branch Manual.

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## **81. Powers of the Directors**

The directors shall have the power to:

- (a) dissolve a Branch under clause 83;
- (b) require the production of the accounts and records of any Branch for inspection by the Company or its officers upon demand;
- (c) make and alter regulations from time to time governing Branches and the election of office bearers;
- (d) delegate from time to time to Branches such powers and responsibilities as it may determine; and
- (e) vary or rescind any resolutions of a Branch.

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## **82. Notification of potential dissolution**

If the directors are of the opinion that a Branch has engaged in conduct:

- (a) in breach of clause 79; or
- (b) which is prejudicial to the interests of the Company;

the directors shall request the Branch to provide a written explanation of the conduct to the directors within 21 days.

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## **83. Dissolution of Branch**

The directors may dissolve, or revoke the delegation of power to, a Branch whether or not the delegation is expressed to be for a specified purpose, if;

- (a) the Branch fails to provide the directors with a written explanation under clause 82; or
- (b) the directors are of the view that the explanation provided by the Branch under clause 82 is inadequate and does not remedy or excuse the conduct of the Branch.

## Financial year

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### 84. Company's financial year

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

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### 85. Indemnity

- (a) 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.
- (b) In this clause, '**officer**' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- (c) In this clause, '**to the relevant extent**' means:
  - (i) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
  - (ii) 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).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

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### 86. Insurance

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.

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### 87. Directors' access to documents

- (a) A director has a right of access to the financial records of the Company at all reasonable times.
- (b) If the directors agree, the Company must give a director or former director access to:
  - (i) certain documents, including documents provided for or available to the directors; and
  - (ii) any other documents referred to in those documents.
- (c) If the directors agree, the Company may give a former director access to certain documents which relate to the period of time whilst that former director was a director.

## Winding up

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### **88. 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 89(a).

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### **89. Distribution of Surplus Assets**

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
    - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 8; and
    - (ii) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company.
  - (b) 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.
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### **90. Transfer of surplus assets – deductible gift recipients**

- (a) Where the Company has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act as an entity or in relation to a fund or an institution it operates, then where:
  - (i) the Company is wound up;
  - (ii) the fund or institution is wound up; or
  - (iii) the endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked;then any surplus assets of the Company, fund or institution (whichever is relevant) remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 89(a) and are deductible gift recipients.
- (b) Where the Company operates more than one fund or institution for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked only in relation to one of those funds or institutions then it may transfer any surplus assets of that fund or institution after payment of all liabilities to any other fund or institution for which it is endorsed as a deductible gift recipient.