

ANIMAL WELFARE LEAGUE NSW
ACN 000 533 086
(Company)

PROPOSED NEW CONSTITUTION -EXPLANATORY NOTES

Background

A proposed new constitution of the Company (**2019 Proposed Constitution**), which was formulated after an extensive Board review and Member consultation process, was submitted for approval by the Members at the Company's 2019 AGM. A former director and a number of other Members raised concerns about some aspects of the 2019 Proposed Constitution in the lead up to, and at, the 2019 AGM. In the result, the special resolution to adopt the 2019 Proposed Constitution was not passed by the required majority of votes cast by Members (or their proxies).

An updated proposed new constitution (**New Constitution**) has now been prepared. It includes a number of amendments to the 2019 Proposed Constitution intended to address the concerns previously raised by Members as well as some drafting refinements. The New Constitution is otherwise substantially the same as the 2019 Proposed Constitution. The key amendments to the 2019 Proposed Constitution are:

- increasing the minimum number of directors from 3 to 5 (clause 49);
- including a specific prohibition on the payment of fees to a director (or any entity the director controls) for any professional, technical or other services they provide to, or other work they do for, the Company (clause 58(c)); and
- inserting a consequential limitation on the payments for goods and services provided to the Company by members which are permitted as an exception to the prohibition on the distribution of the Company's income and assets to its members (clause 10(b)).

The approval of Members to the New Constitution is being sought at the Company's 2020 AGM to be held on 20 February 2021. If approved, the New Constitution will entirely replace the Company's existing constitution (**Existing Constitution**). Members are being asked to approve the New Constitution as a whole.

The purpose of the following Explanatory Note is to:

- explain why Members are being asked to approve the New Constitution;
- summarise the key differences between the New Constitution and the template constitution for companies limited by guarantee which are registered charities published by the Australian Charities and Not-for-profit Commission (**ACNC Template Constitution**); and
- summarise the key differences between the New Constitution and the Existing Constitution.

1.1 Why are Members being asked to approve a new constitution?

The Existing Constitution was adopted by Members at the 1999 Annual General Meeting and subsequently amended in 2007 and 2013.

In December 2012, the Company became a registered charity (**Registered Charity**) under the *Australian Charities and Not-for-profit Commission Act 2012* (Cth) (**ACNC Act**). Amongst other things, the ACNC Act "switched off" some requirements of the Corporations Act relating to the governance of Registered Charities registered under the Corporations Act, including the Company.

In December 2014, the Australian Charities and Not-for-profit Commission (**ACNC**) released a template constitution designed to help a charitable, not-for-profit company limited by guarantee (such as the Company) create a suitable governing document (**ACNC Template Constitution**). It is a straightforward and modern set of rules for the good governance of a Registered Charity intended to be adapted by Registered Charities to suit their particular circumstances. It complies with the legal requirements under the ACNC Act for the constitution

of a Registered Charity and is consistent with the provisions of the Corporations Act which continue to apply to Registered Charities registered under that Act. It is drafted in a plain English style.

The Existing Constitution is inconsistent in some respects with the dual regulatory regime which currently applies to Registered Charities. Some provisions are now obsolete. The Board considers it is important that the Company's constitution be consistent with the current law and good practice and that it embody a governance structure which is contemporary and relevant. Accordingly, following an extensive review process, the Board has formulated the New Constitution for approval by the Members at the Meeting.

The Board considered it was appropriate that the New Constitution be based on the ACNC Template Constitution and that it be modified as appropriate in the light of some of the key principles embodied in the Existing Constitution.

1.2 Proposed New Constitution

A copy of the proposed New Constitution is available on the Company's website - www.awlnsw.com.au/members. A copy is also available for inspection at the Company's head office at Kemps Creek and at each Branch office. Members can also obtain a copy without charge by calling Tegan Primmer on 02 8777 4461 - in which case, the Company will mail you a copy. A copy will also be available for inspection at the Meeting.

1.3 What are the key differences from the ACNC Template Constitution?

The New Constitution differs from the ACNC Template Constitution in regard to certain matters relevant to the Company. The key differences from the ACNC Template Constitution are the following - but those differences reflect the Existing Constitution:

- (a) the requirement for a unanimous resolution of members to amend clause 54(h) dealing with the loss of office of a director who is or becomes a member, office bearer or employee of certain bodies (clause 11);
- (b) the recognition of certain categories or groups of membership, including General Members, Life Members, Concession Members and Junior Members, the automatic classification of existing members as appropriate and confirmation of the voting and other rights of members in each Membership Group (clause 15) and requirements for a meeting of members in a Membership Group (clause 36);
- (c) obligations on applicants for membership to pay an Application Fee and on members other than Life Members to pay an annual fee (clauses 17 - 21);
- (d) the ability of the Directors to postpone or cancel a general meeting of members (clause 29);
- (e) voting restrictions at general meetings (eg. if the Membership Group of a member specifically excludes voting rights) (clause 44);
- (f) the inclusion of postal voting procedures (clause 48);
- (g) requirements to be eligible for election as a director (clause 50(c)) or appointment as a director (clause 50(d)) and election of office bearers (clause 51);
- (h) removal of directors (clause 53) and circumstances when a director stops being a director (clause 54);
- (i) proceedings of directors' committees (clause 57) and the effect of irregularities on resolutions of directors / directors' committees (clause 69); and
- (j) requirements relating to branches (clauses 78 - 83).

Other key differences from the ACNC Template Constitution are:

- (k) the requirement that only individuals can be members (clause 13);

- (l) the omission of detailed provisions regulating disputes between members, directors and the Company (clause 23) and the disciplining of members (clause 24) - which instead will be set out in the relevant Procedures approved by the directors from time to time;
- (m) signed proxies given by members without naming the proxy will be given to the Elected Chairperson (clause 45(e)) - this is typical practice to enable the members' voting wishes to be given effect to at a general meeting;
- (n) disclosure by directors of any memberships in animal welfare entities (clause 61(a));
- (o) the rights of former directors to access Company documents are limited to documents relating to their period of office (clause 87(c)); and
- (p) the key differences from the Existing Constitution listed in sections 1.4(g) - 1.4(u) below.

1.4 What are the key differences from the Existing Constitution?

The New Constitution differs from the Existing Constitution because the New Constitution is based on the ACNC Template Constitution.

The key differences from the Existing Constitution - but which reflect the ACNC Template Constitution are:

- (a) a director appointed by the directors to fill a casual vacancy on the Board must be a member (clause 50(d));
- (b) a person does not cease to be a director as a result of a failure to declare his or her interests;
- (c) a proxy cannot vote on a show of hands (clause 46(a));
- (d) the requirements regarding accounts and audit have been removed as they are governed by the ACNC Act (whilst the Company is a Registered Charity) or the Corporations Act (if the Company ceases to be a Registered Charity);
- (e) notice is taken to be given to members on the third day after posting of the notice (clause 77); and
- (f) the members of the Company will determine which similar entity will receive the Company's surplus assets on a winding up (clause 89(b)).

Other key differences from the Existing Constitution are:

- (g) the inclusion of a definition of companion animals (clause 5);
- (h) refinement of some of the Company's objects, including those relating to companion animals (clause 8);
- (i) the inclusion of an obligation for members other than Life Members to apply for renewal of their membership (clause 14(b));
- (j) the automatic cancellation of a member's membership (as opposed to their membership privileges) in the event they fail to pay their Annual Fee within 3 months from the due date for payment (clause 20(a)) and, as consequence, including such a failure (without reinstatement of membership by the directors) as an event resulting in the immediate cessation of a member's membership (clause 22(c));
- (k) the directors' power to reinstate the membership of a member who stops being a member because they fail to pay their Annual Fee within 3 months from the due date may only be exercised if they decide that exceptional circumstances warrant reinstatement (rather than just when all the member's arrears have been paid) (clause 20(b));
- (l) the inclusion of a detailed hierarchy of entitlement to act as chairperson of a general meeting (clause 33);
- (m) the transfer of a proxy appointment with voting directions given in favour of a person other than the chairperson of a general meeting to the chairperson where the appointed proxy does not attend the meeting or vote on a poll (in substantially the same terms as set out in the Corporations Act) (clause 46(c));
- (n) the minimum number of directors is 5 (rather than 6) (clause 49);

- (o) requiring that a person ordinarily reside in New South Wales in order to be eligible for election or appointment as a director (clauses 50(c)(viii) and 50(d)(iv));
- (p) imposing a maximum term of office for directors of 9 years (either continuously or in broken periods) (clauses 50(c)(ix) and 50(d)(iv));
- (q) modifying the exception from the 2 years membership requirement to be eligible for election as a director so that it only applies to the election of a director previously appointed to fill a casual vacancy at the AGM at the end of their casual vacancy term (clauses 50(c)(i) and (ii));
- (r) the inclusion of a timeframe for the calling and close of nominations for election as directors and requirements for a valid nomination (clause 50(e));
- (s) the inclusion of a specific prohibition on the payment of fees to a director (or any entity the director controls) for any professional, technical or other services they provide to, or other work they do for, the Company (clause 58(c));
- (t) a consequential limitation on the payments for goods and services provided to the Company by members which are permitted as an exception to the prohibition on the distribution of the Company's income and assets to its members (clause 10(b)); and
- (u) the quorum for a meeting of directors is a majority of the directors (rather than the fixed number of 4 directors) (clause 65).