

Constitution of The Lost Dogs' Home

"This is a copy of the Constitution as last amended at the
General Meeting of The Lost Dogs' Home on 13 July 2017
and signed for identification by the Chair".

Signature *Paul E. Gillies*

Name: *Paul E. Gillies*



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Constitution of The Lost Dogs' Home ACN 004 789 726

A public company limited by guarantee and incorporated in the State of Victoria.

1. Company Name

The name of the Company is The Lost Dogs' Home.

2. Alteration to Company Name

The name of the Company may be altered or changed by a Special Resolution passed by a meeting of the Voting Members.

3. Registered Office

The registered office of the Company will be located at such place within Australia as may from time to time be determined by the Directors.

4. Definitions and interpretation

4.1 Definitions

In this Constitution unless there is something in the subject or context inconsistent:

ACNC Act	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
Chief Executive Officer	means the person for the time being appointed as chief executive officer of the Company under clause 20.1 (if any).
Company	means The Lost Dogs' Home ACN 004 789 726.
Constitution	means this constitution as originally adopted and from time to time amended, substituted or supplemented.

Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Director	means any person holding the position of director of the Company.
Directors and Board	mean the Directors for the time being of the Company or such number of them who have the authority to act for the Company.
Executive Officer	means a Chief Executive Officer or Secretary.
in writing or written	means and includes words printed lithographed represented or reproduced in any mode in a visible form.
Life Member	has the meaning given to that term in clause 8.2(b)
Member	means a person who is a current registered member of the Company and Membership has a corresponding meaning.
Month	means a calendar month.
Register	means the register of Members to be kept by the Company pursuant to the Corporations Act.
Registered Office	means the registered office for the time being of the Company.
Representative	means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate being a Member of the Company.
Secretary	means any person appointed to perform the duties of a Secretary of the Company.
Special Resolution	has the meaning given to that term by the Corporations Act.
Voting Member	has the meaning given to that term in clause 8.2(a).

4.2 Interpretation

- (a) Words importing the singular mean and include the plural and vice versa and each gender means and include every other gender.
- (b) The word "person" means a natural person and any partnership, association, body or entity whether incorporated or not.
- (c) The headings in this Constitution do not form part of this Constitution and do not affect its interpretation and a reference to a clause is a reference to a clause of this Constitution.

5. Legal Capacity and Objectives of the Company

5.1 Capacity

The Company:

- (a) has, subject to this Constitution, the legal capacity and powers of a natural person and of a company limited by guarantee under the Corporations Act;
- (b) must be conducted as a charity within the meaning of the ACNC Act;
- (c) has as its primary objectives:
 - (i) to serve the community and enhance the welfare of dogs and cats by alleviating animal suffering and minimising the number of lost, injured and unwanted animals;
 - (ii) providing shelter, animal management and Veterinary services in a quality environment;
 - (iii) to educate the public on responsible pet ownership and to provide programs that will enhance the objectives of the Company; and
 - (iv) to advocate animal management and welfare policies at all levels of Government so that all the objectives listed above will be enhanced.

5.2 Prohibition on Profit Distribution

Notwithstanding anything in this Constitution the property and income of the Company however derived shall be applied solely towards the promotion of the objectives of the Company and no portion thereof shall be transferred or paid or applied directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Members.

5.3 Payments to Directors

- (a) The Company must not pay fees to a Director for acting as a Director.

- (b) The Company may:
 - (i) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (ii) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- (c) Any payment made under clause 5.3(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.

6. Application of Corporations Act

The internal management of the Company is governed by this Constitution to the exclusion of any replaceable rule of the Corporations Act.

7. Alteration of Constitution

7.1 Power to Modify

Subject to clause 7.3, the Voting Members may modify or repeal this Constitution, or a provision of this Constitution, by Special Resolution.

7.2 Effect of Resolution

Subject to clause 7.3 and the Corporations Act, a Special Resolution modifying or repealing this Constitution or adopting a new constitution for the Company will take effect:

- (a) on the date on which the resolution is passed; or
- (b) on a later date (if any) specified in, or determined in accordance with, the resolution.

7.3 Amendment of Objects and Not-for-Profit Clauses

A Special Resolution modifying or repealing clause 5 (Legal Capacity and Objectives) or 26 (Winding Up) does not have any effect unless the modification or repeal has been approved in writing by at least 50% of the Life Members.

8. Membership of the Company

8.1 Members

The Members of the Company will be:

- (a) every person who at the date of adoption of this Constitution is a Member of the Company; and
- (b) subject to clause 11.4 such persons as shall from time to time be appointed or elected Members.

8.2 Class of Membership

The Company shall have the following categories of membership:

- (a) **Voting Members**, being the Directors of the Company for the time being; and
- (b) **Life Members**, being all Members of the Company other than Voting Members.

8.3 Rights

- (a) A Voting Member has all the rights of a Member under this Constitution including the right to:
 - (i) receive notice of, attend and speak at any general meeting of the Company; and
 - (ii) vote at any general meeting of the Company.
- (b) A Life Member has the right to:
 - (i) receive notice of, and attend and speak at any general meeting of the Company;
 - (ii) receive the annual financial report, directors' report and auditor's report;
 - (iii) support or oppose any proposed change to the objects and not-for-profit clauses in this Constitution in accordance with clause 7.3;
 - (iv) propose and/or second any candidate for Membership in accordance with clause 11.1;
 - (v) nominate a candidate or candidates for appointment or election as a Director by the Board or by the Voting Members for the purpose of clause 19.3(c); and
 - (vi) such other rights as determined by the Board,

but is not entitled to vote at any Annual General Meeting or general meeting of the Company, to call a general meeting or to be counted in determining the rights of Members to call a general meeting.

9. Liability and Guarantee of Members

Each Member undertakes by way of guarantee to contribute an amount not exceeding \$20.00 towards the Company's debts and liabilities contracted before the Membership ends and of the costs, charges and expenses of winding up if the Company is wound up either during the Membership or within 12 months after the Membership ends. The liability of each Member is accordingly limited to an amount not exceeding \$20.00.

10. Admission to Membership

All persons who are admitted to Membership in accordance with this Constitution shall have their names entered on the Register.

11. Application for Membership

- 11.1 Every candidate for Membership shall be proposed by one and seconded by another Member of the Company.
- 11.2 Every application for Membership must be made in writing signed by the candidate and addressed to the Secretary of the Company.
- 11.3 Every application for Membership must be made in the form prescribed by the Board from time to time and must include a statement by the candidate that they agree to be bound by this Constitution in the event that the application is accepted.
- 11.4 Any applicant for Membership may be admitted by the Board in accordance with this Constitution. The Board may reject any application for Membership without the necessity to give reasons for doing so.

12. Resignation of Membership

A Member may resign as a Member of the Company by giving notice in writing to the Secretary.

13. Non-transferability of Membership

No Membership or any benefit thereof may be transferred or assigned.

14. Cessation of Membership

14.1 Death, resignation and other events

A person immediately ceases to be a Member if the person:

- (a) dies;
- (b) resigns as a Member by giving written notice to the Secretary in accordance with clause 12;
- (c) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) is expelled under clause 14.2; or
- (f) becomes, if the Directors decide in their absolute discretion, an untraceable Member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

14.2 Expulsion

- (a) The Directors may by resolution expel a Member from the Company if, in their absolute discretion, they decide it is not in the best interests of the Company for the person to remain a Member.
- (b) If the Directors intend to propose a resolution under clause 14.2(a), at least one week before the meeting at which the resolution is to be proposed, they must give the Member written notice:
 - (i) stating the date, place and time of the meeting;
 - (ii) setting out the intended resolution and the grounds on which it is based; and
 - (iii) informing the Member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

15. Subscriptions

No subscription fees are payable by Members.

16. General Meetings

16.1 Annual General Meetings

- (a) The Company must in addition to any other general meeting held by it, hold an Annual General Meeting as required by the Corporations Act.
- (b) The Company's annual financial report, directors' report and auditor's report for the immediately preceding financial year shall be laid before the Annual General Meeting.
- (c) The Company may hold an Annual General Meeting or a general meeting of its Members at two or more venues using any technology that gives the Voting Members as a whole a reasonable opportunity to participate.
- (d) The business of an Annual General Meeting may, subject to this Constitution, include any of the following matters even if not referred to in the notice of the meeting:
 - (i) the consideration of the annual financial report, directors' report and auditor's report;
 - (ii) the election of directors;
 - (iii) the appointment of the auditor;
 - (iv) the fixing of the auditor's remuneration.
- (e) The chairperson of an Annual General Meeting is to allow a reasonable opportunity for the Voting Members as a whole at the meeting to ask questions about or make comments on the management of the Company or in relation to any proposed resolution.
- (f) If the Company's auditor or their representative is at an Annual General Meeting, the chairperson must allow a reasonable opportunity for the Voting Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

16.2 General Meetings

- (a) All meetings of Members other than Annual General Meetings are called general meetings.
- (b) Any of the Directors may convene a general meeting at any time.
- (c) No Member is entitled to call a general meeting unless the Corporations Act provides otherwise.

16.3 Notice of Meetings

- (a) At least 21 days notice shall be given of an Annual General Meeting or a general meeting except where the Corporations Act permits a shorter notice period to be given.
- (b) Notwithstanding clause 16.3(a), at least 21 days notice must be given to pass a resolution to:
 - (i) remove any Director under the Corporations Act;
 - (ii) appoint a Director in place of any Director removed under the Corporations Act;
 - (iii) remove an auditor of the Company under section 329 of the Corporations Act.
- (c) Notices of any meetings must be given individually to each person entitled to receive notice of the meeting and the notice must:
 - (i) set out 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 the meeting);
 - (ii) state the general nature of the business to be transacted at the meeting;
 - (iii) if a special resolution is to be proposed, the details of and intention to propose it; and
 - (iv) any other information required by the Corporations Act.

16.4 Omission to give notice

The accidental omission to give notice of a meeting to, or the non-receipt of notice of the meeting by, a person entitled to receive notice does not invalidate any resolution passed at that meeting.

17. Proceedings at Meetings of Members

17.1 Quorum

- (a) The quorum for an Annual General Meeting or general meeting is a majority of the Voting Members present at all times during the meeting. No business must be transacted at any meeting without a quorum. In determining whether a quorum is present, individuals attending as proxies, attorneys or Representatives shall be counted provided that if a Voting Member has appointed more than one proxy, attorney or representative, only one of them may be counted in determining whether a quorum exists.

(b) An Annual General Meeting or a general meeting that does not have a quorum present within 30 minutes (or such other time as specified from time to time by all the Directors) after the time for the meeting set out in the notice of meeting will be adjourned to the date, time and place the Directors specify and if none specified, the meeting will be 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,

and if no quorum is again present within 30 minutes (or such other time as specified by all the Directors in respect of the original meeting) after the specified time for the resumed meeting, that meeting shall be dissolved.

17.2 Chairperson

The Director chairing the Board for the time being will be deemed to have been elected to chair every Annual General Meeting and general meeting and if that Director is not present at the meeting or is unwilling to chair the meeting then the Voting Members present will elect one of their number to chair the meeting.

17.3 Adjournment of Meeting

- (a) The Chairperson of any Annual General Meeting or general meeting may with the consent of the meeting at which a quorum is present (and shall if so directed by the Voting Members present with a majority of votes) adjourn the meeting and no business may be transacted after adjournment until the meeting is resumed.
- (b) If any meeting is to be adjourned for more than 21 days the meeting may direct that a notice of the adjournment be given to all Members and the notice must contain the same information as the notice informing of the original meeting.
- (c) A resolution passed at a meeting resumed after an adjournment is taken to be passed on the day it was passed.
- (d) Only unfinished business of an adjourned meeting shall be transacted at a meeting resumed after the adjournment.

17.4 Voting

A resolution put to the vote at any Annual General Meeting or general meeting is to be decided at first instance on a show of hands unless a poll is demanded. On a show of hands, a declaration by the chairperson of the meeting will be conclusive evidence of the result without that person or the minutes having to state the number or proportion of the votes recorded in favour or against.

17.5 Polls

- (a) A poll may be demanded on any resolution other than to elect the chairperson of the meeting or to adjourn the meeting and such demand may be withdrawn at any time before the poll is taken.
- (b) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (c) A poll may be demanded by:
 - (i) at least three Members entitled to vote on the resolution;
 - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll (taking into account any veto power exercised); or
 - (iii) the person chairing the meeting.
- (d) A poll demanded shall be taken when and in the manner the chairperson of the meeting directs.
- (e) The demand of a poll will not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

17.6 Offensive or disruptive behaviour

The chairperson of an Annual General Meeting or a general meeting may take any action that he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairman to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or
- (f) who is not entitled to receive notice of the meeting.

The chairperson may delegate the powers conferred by this rule to any person he or she thinks fit.

18. Votes of Members

18.1 Voting Rights

- (a) Unless provided otherwise by this Constitution, every Voting Member is entitled to vote and to demand a poll either personally, by attorney, by proxy, or by Representative.
- (b) On a show of hands or in a poll each Voting Member present in person, by proxy, attorney or by Representative is entitled to one vote only.
- (c) Life Members are not entitled to vote at any meeting of the Members.

18.2 Proxies

- (a) A Voting Member who is entitled to attend and cast a vote at any Annual General Meeting or general meeting may appoint a person as a proxy to attend and vote for the Voting Member at the meeting.
- (b) A proxy appointed pursuant to this Constitution has the same rights as the Voting Member (subject to any limitation contained in this Constitution) to speak, vote and join in a demand for a poll at the meeting except that such rights are suspended while the Voting Member is personally present at the meeting.
- (c) The instrument to appoint a proxy will be in such form as determined from time to time by the Directors but will be valid if signed by the Voting Member (or an authorised attorney) and contains the following information:
 - (i) the Voting 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 meetings at which the appointment may be used or the appointment may be a standing one until revoked.
- (d) The instrument of appointment of a proxy (and if the proxy's appointment is signed by the Voting Member's attorney - the power of attorney under which the appointment was signed or a certified copy thereof) must be received by the Company either at the Company's registered office at least twenty four (24) hours before the appointment is effective for a meeting or a meeting resumed after an adjournment.

- (e) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes, the appointing Voting Member:
 - (i) dies or is mentally incapacitated;
 - (ii) revokes the proxy's appointment;
 - (iii) revokes the authority under which the proxy was appointed by a third party; or
 - (iv) assigns the Membership or is succeeded.
- (f) Where a Voting Member in a valid instrument of proxy directs the proxy to vote in a specified way in respect of a particular item of business at a meeting the appointee must cast a vote on that item of business in accordance with that direction.
- (g) Unless the instrument of proxy directs the proxy to vote in a specified way the appointee may vote as they see fit.

18.3 **Representatives**

- (a) Any Member which is a body corporate within the definition of that term in the Corporations Act may appoint an individual as a Representative to exercise all or any of the powers it may exercise at any Annual General Meeting or general meeting or any meeting of creditors or debenture holders of the Company.
- (b) Such appointment may:
 - (i) be a standing appointment; or
 - (ii) set out restrictions on the Representative's powers.
- (c) More than one Representative may be appointed but only one Representative may exercise the Member's powers at any one time and the person chairing a meeting shall conclusively determine this for the purposes of the meeting or in the absence of a meeting, the Chairperson of the Board for the time being shall so determine.

18.4 **Attorney**

Any Member by power of attorney duly executed in the presence of at least one witness may appoint an individual as attorney to act on behalf of the Member at all meetings of the Company and such power of attorney or certified copy thereof shall be received by the Company at the Company's registered office at least 24 hours before such appointment is effective for a meeting or a meeting resumed after an adjournment.

18.5 **Right to Vote**

A challenge to a Member's right to vote (whether or not voting in person, by attorney, proxy or representative) at an Annual General Meeting or a general meeting may only be made

at the meeting at which the purported voter wishes to vote or the vote is cast and will be conclusively determined by the chairperson of the meeting and a vote not disallowed as a result is valid for all purposes.

19. The Directors

19.1 Number of Directors

The number of Directors may be determined from time to time by the Voting Members in general meeting provided that the Board is at all times constituted with not less than seven or more than 11 Directors.

19.2 Term of Office

- (a) Subject to clause 19.1 and subject to the individual signing a consent to act as a Director, the Directors may appoint any individual as a Director, either to fill a casual vacancy or as an addition to the existing Directors.
- (b) A Director appointed by the Directors under clause 19.2(a) holds office only until the conclusion of the next Annual General Meeting following his or her appointment under clause 19.2(a).
- (c) At every Annual General Meeting at least one third of the Directors (excluding any Director appointed by the Directors under clause 19.2(a)) must retire from office.
- (d) No Director may hold office without re-election beyond the third Annual General Meeting following the meeting at which the Director was last elected or re-elected.
- (e) The Directors to retire under clause 19.2(c) are those Directors who wish to retire and not offer themselves for re-election, those Directors required to retire under clause 19.2(d) and, so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment. As between Directors who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be decided by lot.
- (f) The Directors to retire under clause 19.2(c) (both as to number and identity) 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.
- (g) The Voting Members may by resolution passed at an Annual General Meeting fill an office vacated by a Director under clause 19.2(b), 19.2(c) or 19.2(d) by electing or re-electing an eligible person to that office.

- (h) A Director retiring from office under clause 19.2(b), 19.2(c) or 19.2(d) is eligible for re-election subject to a maximum term of nine years, unless the maximum term is varied for a particular Director by the Directors.
- (i) The retirement of a Director from office under this Constitution and the re-election of the Director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- (j) The procedures for nomination and election of Directors shall be as determined by the Directors from time to time.

19.3 **Qualification**

A person is only eligible for appointment or election as a Director if they:

- (a) are a Member of the Company;
- (b) are not an employee of the Company;
- (c) are nominated by the Board or by a Member or are a retiring Director who is standing for re-election;
- (d) give the Company their signed consent to act as a Director of the Company;
and
- (e) are not ineligible to be a Director under the Corporations Act or the ACNC Act.

19.4 **Costs and Expenses**

The Directors may be reimbursed for their reasonable costs and expenses incurred in carrying out their functions and duties as directors of the Company only as permitted by clause 5.3.

19.5 **Appointment and Removal**

The Voting Members may by resolution passed in general meeting:

- (a) remove any Director;
- (b) subject to clause 19.1, appoint a person as a Director (either to fill a vacancy or as an addition to the Board); and
- (c) increase or reduce the number of Directors in office.

19.6 **Disclosure of Interest**

- (a) 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.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) 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 19.6(d):
 - (i) be present at the meeting while the matter is being discussed, or
 - (ii) vote on the matter.
- (d) 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 28(c));
 - (iii) their interest relates to a payment by the Company under clause 28(b) (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.

19.7 **Vacation of office**

The office of a Director becomes vacant if the Director:

- (a) resigns by notice in writing to the Company;
- (b) ceases to be a Director by virtue of the Corporations Act;
- (c) becomes bankrupt or enters into any arrangement with creditors generally;

- (d) becomes prohibited from continuing as a Director by the Corporations Act or the ACNC Act;
- (e) becomes of unsound mind or liable to be dealt with in any way under the law relating to mental health or the Director's estate is liable to be dealt with in any way under such law;
- (f) becomes an employee of the Company;
- (g) is removed pursuant to this provisions of this Constitution or the Corporations Act; or
- (h) is absent personally for 50% or more of Board meetings held in any 12 month period or absent (either personally or by proxy) without the leave of the Board for any three consecutive meetings of the Directors.

20. Executive Officers

20.1 Chief Executive Officer

- (a) The Directors may appoint a person to the position of Chief Executive Officer of the Company.
- (b) If the position of Chief Executive Officer is vacant, the Directors may appoint any other person to act temporarily as Chief Executive Officer.

20.2 Company secretary

The Directors must appoint at least one Secretary who may be a Director.

20.3 Provisions that apply to all Executive Officers

- (a) The appointment of an Executive Officer may be for the period, at the remuneration and on the conditions that the Directors think fit.
- (b) Subject to any contract between the Company and the relevant Executive Officer, an Executive Officer may be removed or dismissed by the Directors at any time, with or without cause.
- (c) The Directors may:
 - (i) confer on an Executive Officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the Directors) they think fit;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an Executive Officer; and
 - (iii) authorise the Executive Officer to delegate all or any of the powers, discretions and duties conferred on him or her.

- (d) An act done by a person acting as an Executive Officer is not invalidated merely because of:
 - (i) a defect in the person's appointment as an Executive Officer; or
 - (ii) the person being disqualified to be an Executive Officer,if that circumstance was not known by the person when the act was done.

21. Powers and Duties of Directors

21.1 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 5;
- (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 to ensure that the financial affairs of the Company are managed responsibly; and
- (f) not to allow the Company to operate while it is insolvent.

21.2 General Powers

The business affairs and property of the Company is to be managed by the Directors who may exercise all powers, authorities and discretions of the Company and do all acts and things as may be exercised or done by the Company which are not by the Corporations Act or by this Constitution required to be exercised by the Company at a meeting of Members.

21.3 Power to Borrow

The Board may exercise at their discretion all powers of the Company to:

- (a) raise or borrow any sum or sums of money; and
- (b) to secure the payment or repayment of any money payable by the Company and any other obligation or liability in such manner and on such terms and

conditions as they think fit and whether by mortgage or a charge upon the assets and/or undertaking of the Company.

21.4 **Negotiable Instruments**

All cheques, promissory notes, drafts, bills of exchange or other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors may from time to time determine and failing any such determination, by any two Directors.

22. **Proceedings of Directors**

22.1 **Meetings**

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit (subject to the provisions of this Constitution and the Corporations Act) and without limitation may with the consent of all Directors hold a meeting between Directors some or all of whom are in different places if each Director who participates is able:

- (a) to hear each of the other participating Directors addressing the meeting; and
- (b) if he so wishes, to address each of the other participating Directors simultaneously whether directly, by conference telephone, video conferencing facility or any other form of communications equipment or by a combination of such methods. Consent to a meeting held in such a manner may be a standing consent provided that any Director may withdraw their consent within a reasonable period prior to the meeting.

22.2 **Calling Meetings**

A Director may at any time (and the Secretary must on the request of a Director) convene a meeting of the Directors by giving reasonable notice of the meeting to every other Director. Notice of a meeting of Directors need not be in writing.

22.3 **Chairperson**

The Directors may elect a Chairperson of their meetings and determine the period for which he or she is to hold office. If no such Chairperson is elected or if at any meeting the Chairperson is not present within ten minutes after the time appointed for holding the meeting then the Directors present will choose one of their number to be Chairperson of the meeting.

22.4 **Quorum**

The Directors shall from time to time determine the quorum necessary for the transaction of business provided that quorum is no less than 50% of the appointed

Directors present (or in conference) and entitled to vote on any business to be transacted at the meeting.

22.5 **Voting**

- (a) Questions arising at a Board meeting will be decided by a majority of the votes of the Directors present at such meeting. In case of an equality of votes the Chairperson will have a casting vote.
- (b) Each Director shall have one vote.
- (c) Every resolution and order of a meeting of the Board or a committee of Directors at which a quorum is present will be deemed a resolution or order of all the Directors or of the committee as the case may be.

22.6 **Circular Resolutions**

- (a) A resolution in writing signed by all the Directors for the time being entitled to vote in favour of a resolution (not being less than a quorum) and stating that the signatories are in favour of the resolution will be as valid and effectual from the time it is signed by the last Director as if it had been passed at a meeting of the Directors duly convened and held.
- (b) A resolution in writing may consist of several documents in identical form each signed by one or more Directors.
- (c) Every such resolution shall be deemed to have been passed on the day and at the time at which the document was last signed by a Director.

22.7 **Ability to act**

The Directors may act notwithstanding any vacancy in the Board unless the necessary quorum is not attainable in which case the continuing Director(s) may only act to summon a general meeting of the Company to consider the appointment of additional Directors.

22.8 **Committee**

- (a) The Directors may delegate any of their powers to committees consisting of such Directors as they think fit. Any committee so formed will in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the Board. Any powers so delegated may be revoked by the Directors at any time.
- (b) The meetings and proceedings of any such committee consisting of two or more Directors will be governed by the provisions contained in this Constitution for regulating the meetings and proceedings of the Directors (so far as they are applicable) and are not superseded by any regulations made by the Directors under the last preceding clause.

22.9 Defective Appointment

All acts done at any meeting of the Directors or of a committee of the Directors or by any Director will, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such Director or Directors or that any of them was disqualified, be as valid as if every such Director had been duly appointed and qualified.

22.10 Minutes

The Board shall cause minutes to be recorded for:

- (a) all appointments of officers of the Company;
- (b) names of Directors present at each Board meeting and each meeting of a committee of the Directors;
- (c) all orders made by the Board and committees of the Directors;
- (d) all resolutions and proceedings of general meetings; and
- (e) all resolutions and proceedings of Board meetings and meetings of committees of the Directors,

and any minutes of meeting purporting to be signed by the person chairing the meeting or by the person chairing the next successive meeting as having been approved in that successive meeting shall be taken as prima facie evidence of the matters recorded in such minutes.

23. Executing Documents

- (a) The Company may execute any document (including a deed) in any way permitted by the Corporations Act. It will not be necessary to execute that document under common seal.
- (b) The Company is not required to have a common seal, but if it does the seal must only be used by the authority of the Directors and every instrument to which the seal is affixed must also be signed by a Director and countersigned by the Secretary (not being the same person as the first mentioned Director) or by another Director.

24. Financial Records

- (a) The Directors shall cause written financial records to be kept that:
 - (i) correctly record and explain the transactions and financial position and performance of the Company; and
 - (ii) would enable true and fair financial statements to be prepared and audited,and such financial records shall be retained for at least seven years after the transactions covered by the records are completed.
- (b) The Directors may determine where to keep the financial records mentioned in the foregoing clause provided they are readily available for inspection and if kept in electronic form are readily convertible into hard copy.
- (c) The Directors shall in accordance with the requirements of the Corporations Act cause a financial report and a directors' report to be prepared for each financial year of the Company and audited and shall report the same to the Members by sending them copies of the reports (including an auditor's report on the financial report) or a concise financial report that complies with the Corporations Act, in either case by the earlier of 21 days before the next Annual General Meeting following the end of that financial year or four months after the end of that financial year.

25. Company's Notices

- (a) A notice may be served by the Company upon any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by prepaid post addressed to the Member or at the address given to the Company by the Member;
 - (iii) sending it to the facsimile number supplied by the Member to the Company; or
 - (iv) sending it to the Members electronic mail address.
- (b) Any notice sent by post shall be deemed to have been served two business days following the day of posting and a certificate in writing signed by any officer of the Company stating that the notice was properly addressed and posted shall be prima facie evidence of that fact.
- (c) Any notice sent by facsimile transmission or electronic transmission shall be deemed to have been served on the business day after it is sent.

- (d) Any Member who has not supplied to the Company his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.

26. Winding Up

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members of the Company but shall be given or transferred to some other organisation:

- (a) having objects similar to the objects of the Company;
- (b) which is not carried on for the profit or gain to its individual members;
- (c) which is charitable at law and exempt from income tax; and
- (d) to which income tax deductible gifts can be made.

The identity of the organisation referred to in this clause 26 must be decided by the Board at or before the time of winding up or dissolution of the Company and, if the Board cannot decide, by the Supreme Court of Victoria.

27. Revocation of deductible gift recipient endorsement

If the Company's endorsement as a deductible gift recipient is revoked, the following shall be transferred to another fund, authority or institution which is charitable at law and to which income tax deductible gifts can be made – any surplus:

- (a) gifts of money or property for the principal purpose of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principle purpose of the Company; and
- (c) money received by the Company because of such gifts and contributions,

such fund, authority or institution to be determined by the Board and in default thereof by application to the Supreme Court of Victoria for determination.

28. Indemnity

- (a) In this Clause 28, **Officer** has the meaning given to that term by the Corporations Act.
- (b) To the extent permitted under the Corporations Act, every Officer will be indemnified by the Company against all liabilities, costs and expenses incurred by him or her as a result of holding or formerly holding a position as an Officer

of the Company except where liability arises out of conduct involving fraud or bad faith on the part of the Officer.

- (c) To the extent permitted under the Corporations Act, the Company may effect and maintain insurance policies (or pay or agree to pay the premiums payable under such policies) in respect of each Officer to cover any liabilities incurred by the Officer as a result of him or her holding or formerly holding a position as an Officer of the Company.

29. Transitional provisions

This Constitution must be interpreted in such a way that:

- (a) every Director and Secretary in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this Constitution;
- (b) any register maintained by the Company immediately before this Constitution is adopted is taken to be a register maintained under this Constitution;
- (c) any seal adopted by the Company immediately before this Constitution is adopted is taken to be a seal which the Company has under a relevant authority given by this Constitution;
- (d) unless a contrary intention appears in this Constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the Company in force before this Constitution is adopted, continue to have the same status, operation and effect after this Constitution is adopted.