

# The Bridge Incorporated

Reg. No. A0033971H, ABN 31 506 563 698

## CONSTITUTION

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### PART 2 – NAME AND PURPOSE

#### 2. Name

The name of the incorporated association is “The Bridge Incorporated”.

Note: Under section 23 of the Act\*, the name and registration number of the association must appear in legible characters in all notices, advertisements and other official publications of the association, and in all its business documents.

#### 3. Purpose

The purpose of the association is to provide services to assist people with intellectual and other disabilities and their carers.

#### 4. Legal Capacity, Powers and Location

4.1 The association has the legal capacity of an incorporated body.

See section 29(2) of the Act\*.

4.2 The association has power to do everything incidental or conducive to the attainment of its purpose.

See section 30(d) of the Act\*.

4.3 The association may only:

- (a) exercise its powers; and
- (b) use its income and assets (including any surplus);

for its purpose.

4.4 The association:

- (a) is established and legally recognised in Australia; and
- (b) makes operational and strategic decisions only in Australia.

See item 1 of section 30-15 of the *Income Tax Assessment Act 1997* (Cth).

#### 5. Not For Profit Organisation

5.1 The association must not distribute any surplus, income or assets directly or indirectly to its members.

See section 33 of the Act\*.

5.2 Clause 5.1 does not prevent the association from paying its members:

- (a) reimbursement for expenses properly incurred by them, and
- (b) for goods supplied and services provided by them,

if this is done in good faith on terms no more favourable than if the member were not a member.

See section 4 of the Act\*.

### PART 3 – MEMBERSHIP

#### 6. Eligibility

6.1 Any person who supports the purpose of the association is eligible for membership.

6.2 In clause 6.1, “person” includes an individual, incorporated body or unincorporated body, and part of an incorporated or unincorporated body, subject to clause 6.3.

6.3 An unincorporated body, or part of an incorporated or unincorporated body may only become a member by nominating an individual or incorporated body to be a member on its behalf.

6.4 In this constitution, unless the contrary intention appears, “member” includes an unincorporated body, or part of an incorporated or unincorporated body represented by a member in accordance with clause 6.3.

#### 7. Applications

Applications for membership must be:

- (a) in writing\*, stating that the applicant:
  - (i) wishes to become a member of the association;
  - (ii) supports the purpose of the association; and
  - (iii) agrees to comply with the constitution and regulations\* of the association;
- (b) signed\* by the applicant;
- (c) accompanied by the first subscription; and
- (d) given to the association.

## **8. Approval**

- 8.1 The Board must by resolution approve or reject the application at the next meeting after the association has received it.
- 8.2 The Board must without delay notify the applicant in writing\* whether the application has been approved or rejected.
- 8.3 No reason need be given for the rejection of an application.
- 8.4 If the Board approves the application:
  - (a) the applicant becomes a member from the date of the Board meeting; and
  - (b) the name and address of the new member, and the date of becoming a member must be entered without delay in the register of members.
- 8.5 If the Board rejects the application, it must return the subscription to the applicant.

## **9. Subscriptions**

- 9.1 The Board must by regulation\* set the subscription.
- 9.2 The amount of the subscription and the date for payment may vary according to criteria set by the Board in the regulation\*.
- 9.3 The voting and other rights of members who have not paid the subscription by the date for payment are suspended until the subscription is paid.
- 9.4 Except for the subscription, there are no entrance fees or other amounts to be paid in respect of membership of the association.

## **10. Rights, Obligations and Liability**

- 10.1 The rights of members include:
  - (a) to submit items of business for consideration at general meetings under clause 19.3;
  - (b) to receive notice of general meetings under clause 19;
  - (c) to participate in general meetings under clause 25;
  - (d) to elect the Board under clause 28; and
  - (e) to have access to the records of the association under clause 61.

See sections 53, 57, 60 and 61 of the Act\*.

- 10.2 The rights of members are not transferable, and end when the member ceases to be a member in accordance with clause 13.
- 10.3 By becoming and remaining members, members agree to support the purpose of the association.
- 10.4 Members agree that all intellectual property created by them while participating in the association belongs to the association and must not be used without its permission.
- 10.5 Members must at all times comply with the constitution and regulations\*.
- 10.6 This constitution is an enforceable contract between the association and each member.  
See sections 46 and 67 of the Act\*.
- 10.7 Members and Board members are not liable to contribute to the debts and liabilities of the association only because of their membership of the association or the Board.  
See section 52(1) of the Act\*.

## **11. Disciplinary Action**

- 11.1 The Board may by resolution passed by an absolute majority\* reprimand, suspend or expel a member for:
  - (a) failing to comply with the constitution or regulations\*; or
  - (b) conduct prejudicial to the association.
- 11.2 The Board must not pass a resolution under clause 11.1 unless the member concerned has been:
  - (a) informed of the grounds for the proposed disciplinary action; and
  - (b) given a reasonable opportunity to be heard.  
See section 54(3)(a) of the Act\*.
- 11.3 The Board:
  - (a) may delegate its powers under this clause to a disciplinary committee appointed by the Board; and
  - (b) must do so if any Board member is biased against (or in favour of) the member concerned.  
See section 54(3)(b) of the Act\*.

- 11.4 The members of the disciplinary committee:
- (a) need not be Board members or members of the association; but
  - (b) must not be biased against (or in favour of) the member concerned.

See section 54(3)(b) of the Act\*.

- 11.5 Clauses 11.1 and 11.2 apply to the disciplinary committee in the same way as the Board.
- 11.6 The disciplinary procedure under this clause must be completed as soon as is reasonably practicable.
- See section 54(3)(c) of the Act\*.
- 11.7 The association must not take disciplinary action under this clause against a member who is involved in the grievance procedure under clause 15 until the grievance procedure has been completed.
- Compare section 55(4) of the Act\*.
- 11.8 The association may not fine members.

## **12. Resignation**

- 12.1 Members may resign in writing\* given to association.
- 12.2 Members whose subscriptions are more than 1 year in arrears are taken to have resigned.

## **13. Cessation**

- 13.1 Members cease to be members on resignation, expulsion or ceasing to exist.
- 13.2 If a member ceases to be a member:
- (a) the date of ceasing to be a member must be entered in the register of members; and
  - (b) the address and date of becoming a member of the former member must be removed from the register of members; within 14 days.
- See sections 56(3) and 56(4) of the Act\*.

## **14. Register of Members**

- 14.1 The Board must ensure that a register is kept containing:
- (a) in the case of current members:
    - (i) the name of the member,
    - (ii) the address for notices last given by the member, and

- (iii) the date of becoming a member; and
- (b) in the case of former members:
  - (i) the name of the member, and
  - (ii) the date of ceasing to be a member.

See section 56 of the Act\*.

- 14.2 Members may inspect and obtain copies of the register in accordance with clause 61.
- See section 57 of the Act\*.

## **15. Grievance Procedure**

- 15.1 The grievance procedure in this clause applies to all internal disputes within the association.
- 15.2 The parties to the dispute must first attempt to resolve the dispute themselves.
- 15.3 If the parties are unable to resolve the dispute, the Board must appoint a conciliator and arbitrator (in this clause, “conciliator”).
- 15.4 The conciliator:
- (a) must not have a personal interest in the dispute;
  - (b) must not be biased in favour of or against any party; See section 55(3)(b) of the Act\*.
  - (c) may be a member or former member of the association; and
  - (d) if possible, must be appointed with the agreement of all parties.
- 15.5 The conciliator must conduct a conciliation at which each party is given a reasonable opportunity to be heard.
- See section 55(3)(a) of the Act\*.
- 15.6 The parties must in good faith attempt to resolve the dispute by conciliation.
- 15.7 The conciliator may during, and must at the end of, the conciliation attempt to resolve the dispute by agreement between the parties.
- 15.8 If the conciliator is unable to resolve the dispute by agreement between the parties, the conciliator must determine the respective rights and obligations under this constitution of the parties and any other members.
- 15.9 A determination of a conciliator under clause 15.8 is binding on the parties and all members.

15.10 A party may appoint another person to act on its behalf in the grievance procedure.

See section 55(2) of the Act\*.

15.11 A member who is the subject of a disciplinary procedure under clause 11 must not initiate the grievance procedure under this clause until the disciplinary procedure has been completed.

See section 54(4) of the Act\*.

15.12 The State, Territory and Commonwealth Acts applying to commercial arbitrations do not apply to the grievance procedure in this clause.

## **16. Life Members**

16.1 The Board may by resolution passed by an absolute majority\* award life membership of the association to any individual who has made a significant contribution to the association.

16.2 The Board may by regulation\* prescribe additional criteria for eligibility for life membership.

16.3 Clauses 7–9 do not apply to life members.

## **PART 4 – GENERAL MEETINGS**

### **17. Annual General Meeting**

17.1 The Board must convene\* an annual general meeting each year.

See section 63(1) of the Act\*.

17.2 The annual general meeting must be held within 5 months after the end of the association’s financial year under clause 54.

See section 63(4) of the Act\*.

17.3 At the annual general meeting, the Board must submit to the members:

- (a) the financial statements for the last financial year prepared in accordance with clause 56.4, and
- (b) if required by clause 58 – the accompanying review or audit report.

See sections 94, 97 and 100 of the Act\*.

17.4 The ordinary business of the annual general meeting is:

- (a) to verify the minutes of:
  - (i) the last annual general meeting, and

- (ii) any special general meetings since the last annual general meeting;

- (b) to consider the annual report of the Board on the activities of the association during its last financial year;

- (c) to consider the financial statements and any accompanying review or audit report; and

- (d) to elect the Board in accordance with clause 28.

17.5 The annual general meeting may only consider other business of which notice has been given in accordance with clause 19.2(c).

17.6 At, or as soon as practicable after, the conclusion of the annual general meeting, a Board member must certify in the form approved by the Registrar\* that:

- (a) the Board member attended the annual general meeting; and
- (b) the financial statements were submitted to the members at the annual general meeting.

See sections 94(3), 97(3) and 100(3) of the Act\*.

17.7 The Secretary must lodge with the Registrar\*:

- (a) an annual statement in the form approved by the Registrar\*,
- (b) the financial statements and any accompanying review or audit report, and
- (c) a statement of the terms of any resolution passed at the annual general meeting concerning the financial statements,

within 1 month after the annual general meeting.

See section 102 of the Act\*.

### **18. Special General Meetings**

18.1 The Board may by resolution convene\* a special general meeting whenever it considers appropriate.

18.2 The Board must convene\* a special general meeting on the request in writing\* of at least 25% of members entitled to vote.

- 18.3 The request:
- (a) must state the business to be considered at the meeting, including any resolution to be proposed;
  - (b) may consist of multiple copies of the same document;
  - (c) must include the names, addresses and signatures of the members making the request; and
  - (d) must be given to the association.
- 18.4 If the Board does not arrange for the special general meeting to be held within 6 weeks of the request being made, the members making the request (or any of them) may convene\* the special general meeting.
- 18.5 A special general meeting convened by members under clause 18.4:
- (a) must be held within 3 months of the original request having been made; and
  - (b) may only consider the business stated in the original request.
- 18.6 The association must reimburse all reasonable expenses incurred by the members convening a special general meeting under clause 18.4.
- 18.7 Special general meetings may only consider business of which notice has been given in accordance with clause 19.2(c).

## 19. Notice

- 19.1 At least 21 days notice in writing\* of general meetings must be given to each member entitled to vote.
- See section 60 of the Act\*.
- 19.2 The notice must state:
- (a) the date, time and place (or places) of the meeting,  
See section 60(a) of the Act\*.
  - (b) if the meeting is to be held at more than 1 place – the technology that will be used,
  - (c) the general nature of each item of business to be considered, and

- (d) if a special resolution\* is to be proposed:
  - (i) the proposed resolution in full, and
  - (ii) the intention to propose the resolution as a special resolution\*.

See section 64(3) of the Act\*.

- 19.3 The notice must include under clause 19.2(c) any item of business that any member has requested in writing\* be considered at least 14 days before the notice is sent.
- 19.4 The notice must also include:
- (a) a statement that members that are incorporated bodies may appoint a representative to attend, speak and vote on their behalf in accordance with clause 20,
  - (b) a statement that:
    - (i) all members may appoint a proxy to attend, speak and vote instead of the member in accordance with clause 21, and
    - (ii) proxies must be members of the association, and
  - (c) a copy of clauses 20 and 21.
- 19.5 The notice may include forms of appointment for the purposes of clauses 20 and 21, but members are not required to use the forms.
- 19.6 Despite clause 19.1, the accidental omission to give notice of the meeting to a member or members, or the non-receipt by a member or members of notice of the meeting does not invalidate the meeting.
- ## 20. Representatives
- 20.1 Members that are incorporated bodies may appoint individuals to represent them at general meetings.
- 20.2 Appointments of representatives must be:
- (a) in writing\*, naming the individual (or individuals, in order) appointed;
  - (b) sealed by, or signed\* on behalf of, the member making the appointment; and
  - (c) sent to the association or given to the chair of the meeting before the commencement of the meeting.
- 20.3 Representatives may exercise all the rights of members under this Part.

## **21. Proxies**

- 21.1 Members may only appoint other members as proxies.
- 21.2 Appointments of proxies must be:
- (a) in writing\*, naming the member (or members, in order) appointed;
  - (b) signed\* by the member making the appointment; and
  - (c) sent to the association or given to the chair of the meeting before the commencement of the meeting.

## **22. Use of Technology**

- 22.1 General meetings may be held at more than 1 place, provided that the technology used enables each member present at all places the meeting is held to communicate clearly and simultaneously with every other such member.
- See section 62(1) of the Act\*.
- 22.2 A member participating in a general meeting using technology is taken to be present at the meeting.
- See section 62(2) of the Act\*.

## **23. Quorum**

- 23.1 The quorum for the consideration of the ordinary business of the annual general meeting is the presence in person or by representative of at least 10 members entitled to vote.
- 23.2 The quorum for the consideration of a proposed resolution (including a special resolution) recommended by the Board is the presence in person, by representative or by proxy of at least 10% of members entitled to vote.
- 23.3 The quorum for the consideration of all other business at general meetings is the presence in person, by representative or by proxy of at least 25% of members entitled to vote.
- 23.4 If a quorum is not present within 30 minutes from the time of the meeting of which notice has been given, the meeting must not proceed.

## **24. Chairing**

- 24.1 The Chair is entitled to chair general meetings.
- 24.2 If the Chair is not present, or does not wish to chair the meeting, the Deputy Chair is entitled to chair.
- 24.3 If neither the Chair nor the Deputy Chair is present, or if neither wishes to chair the meeting, the meeting must elect another member to chair.
- 24.4 The chair of the meeting does not have a casting vote.

## **25. Participation**

All members are entitled to attend and speak and vote at general meetings, except those whose rights have been suspended under clause 9.3 or 11.1.

See section 61 of the Act\*.

## **26. Voting**

- 26.1 Each member has 1 vote.
- 26.2 Members may vote in person, by representative or by proxy.
- 26.3 Voting is by show of hands, unless a count is demanded.
- Compare section 65(2) of the Act\*.
- 26.4 Any member entitled to vote (including the chair of the meeting) may demand a count before or immediately after the declaration of the result on a show of hands.
- Compare section 65(3) of the Act\*.
- 26.5 If a count is demanded, the votes of each member must be counted, as directed by the chair of the meeting.
- 26.6 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.
- 26.7 The declaration by the chair of the meeting of the result of the vote is conclusive evidence of that result.
- Compare section 65(1) of the Act\*.

## PART 5 – THE BOARD

### 27. Membership

- 27.1 The Board has:
- (a) a minimum of 6 members, and
  - (b) a maximum of 9 members.
- 27.2 Each ordinary term of Board members is 3 years.
- 27.3 As far as possible, Board members must have staggered terms.
- 27.4 Depending on the total number of Board members under clause 27.1, each annual general meeting must elect under clause 28.1(a):
- (a) a minimum of 2 Board members, and
  - (b) a maximum of 3 Board members, for ordinary terms.
- 27.5 Subject to clause 27.1, the Board may by resolution passed by an absolute majority\* increase or reduce the number of Board member positions.
- 27.6 If the Board increases the number of Board member positions:
- (a) the Board may fill any new positions as a casual vacancy under clause 30.7 until the next annual general meeting;
  - (b) the Board must fix the initial term of any new positions from the next annual general meeting at 3, 2 or 1 years so as to continue to comply with clause 27.4; and
  - (c) the next annual general meeting must elect under clauses 28.1(b)–28.1(d) any new positions for their initial term.
- 27.7 If the Board reduces the number of Board member positions:
- (a) the term of any current Board member is not affected; and
  - (b) the Board must continue to comply with clause 27.4.

### 28. Election

- 28.1 At the annual general meeting there must be separate elections for:
- (a) all of the ordinary terms under clause 27.4,
  - (b) any initial term of 3 years under clause 27.6(c),
  - (c) any initial term of 2 years under clause 27.6(c), and
  - (d) any initial term of 1 year under clause 27.6(c).
- 28.2 The notice of each annual general meeting must include a call for nominations for each of the terms required to be elected under clause 28.1.
- 28.3 Only individuals who:
- (a) are members of the association entitled to vote at the annual general meeting; and
  - (b) are not employees of the association; are eligible:
  - (c) to be elected as Board members; and
  - (d) to nominate candidates and second nominations.
- 28.4 Nominations must be in writing\* signed\* by:
- (a) the nominator and seconder, and
  - (b) the candidate, consenting to the nomination.
- 28.5 If any initial terms are to be elected under clause 28.1:
- (a) there must be a separate nomination for each term; and
  - (b) the nomination must state which term the nomination is for.
- 28.6 The Board may by regulation\* prescribe a nomination form for the purposes of clauses 28.5 and 28.6, in which case nominations must be in the prescribed form.
- 28.7 Nominations must be received by the association no later than 4.00 p.m. 1 week before the annual general meeting.
- 28.8 If the number of nominations for a particular term equals the number of positions to be elected for that term, the chair of the annual general meeting must declare those candidates elected for that term.

28.9 If there are more nominations for a particular term than positions to be elected for that term, a ballot for that term must be held at the annual general meeting in accordance with clause 29.

28.10 If there are fewer nominations for a particular term than positions to be elected for that term, the chair of the annual general meeting must declare any candidate who has nominated for that term elected for that term, and the Board must fill the remaining vacancy or vacancies in accordance with clause 30.7.

## **29. Ballot**

29.1 The chair of the meeting must appoint a returning officer to conduct the ballot (who may be the chair of the meeting).

29.2 The candidates may each make a short speech in support of their election.

29.3 The election must be by secret ballot.

29.4 There must be a separate ballot for each term in the order listed in clause 28.1.

29.5 The returning officer must give:

(a) each member present in person or by representative, and

(b) each proxy appointed by a member, a ballot paper for each ballot with the names of the candidates listed in an order decided by lot.

29.6 Voters must cross off the names of those candidates they do not wish to vote for, leaving the names of those candidates they do wish to vote for.

29.7 Voters must cross off sufficient names so that the number of candidates whose names have not been crossed off is no more than the number of positions to be elected.

29.8 Ballot papers that do not comply with clause 29.7 are informal.

29.9 Each formal ballot paper where the name of a candidate has not been crossed off counts as 1 vote for that candidate.

29.10 The returning officer must declare elected to the number of positions to be elected the candidates who receive the most votes, subject to clause 29.11.

29.11 If 2 or more candidates receive the same number of votes, and not all of those candidates are to be elected, the returning officer must decide by lot which is or are to be elected.

29.12 If a candidate is elected for a particular term, any nominations of that candidate for other terms lapse.

## **30. Term of Office**

30.1 In clauses 27 and 28, “year” means the period of approximately 1 year:

(a) from the end of the annual general meeting at which a Board member is elected,

(b) until the end of the next annual general meeting after they are elected.

30.2 Board members hold office for each ordinary term under clause 27.2 or initial term under clause 27.6(b), subject to clauses 30.3–30.6.

30.3 Board members may be re-elected.

30.4 Board members may resign in writing\* given to the association.

See section 78(2)(a) of the Act\*.

30.5 Board members cease to be Board members if they:

(a) cease to be members of the association;

(b) become an employee of the association;

(c) fail to attend 3 consecutive Board meetings without leave of absence under clause 50;

(d) become insolvent under administration;

See section 38 of the Victorian *Interpretation of Legislation Act 1984*.

(e) become a represented person under the Victorian *Guardianship and Administration Act 2019*; or

(f) are disqualified under the *Commonwealth Corporations Act 2001*, the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* or the *Co-operatives National Law (Victoria)*.

See section 78(2) of the Act\*.

- 30.6 A general meeting may by resolution passed by a simple majority:
- (a) remove any Board member; and
  - (b) fill the resulting vacancy.
- Compare section 78(2)(b) of the Act\*.
- 30.7 If there is a vacancy in its membership (including a vacancy in accordance with clause 30.6(a) not filled under clause 30.6(b)), the Board may appoint an individual who would be eligible to be elected under clause 28.3 to fill the vacancy for the remainder of the term of office.
- 30.8 The Board may continue to act despite any vacancy in its membership.
- 30.9 Even if it is subsequently found that a person who has acted as a Board member was not properly elected or appointed, the validity of:
- (a) the acts of that person as a Board member, and
  - (b) decisions of Board meetings in which that person has participated,
- is not affected.

### **31. Notification to ACNC**

If a person becomes or ceases to be a Board member, the association must notify the Australian Charities and Not-for-profits Commission in the approved form:

- (a) if the revenue of the association for the financial year is \$250,000 or more – within 28 days; or
- (b) if the revenue of the association for the financial year is less than \$250,000 – within 60 days.

See section 65-5 of the Commonwealth *Australian Charities and Not-for-profits Commission Act 2012*.

### **32. Responsibility and Powers**

- 32.1 The Board is responsible for both the governance and management of the association.
- 32.2 The Board must by regulation\* delegate the management of the association to the Chief Executive Officer.
- 32.3 The Board may exercise all powers of the association on its behalf.

- 32.4 The Board may delegate its powers as it considers appropriate.
- 32.5 No delegation by the Board under this clause limits the duties and liability of each Board member.

### **33. Committees**

The Board may establish committees with such membership and terms of reference as it considers appropriate.

### **34. Regulations**

- 34.1 The Board may by resolution passed by an absolute majority\* make regulations to give effect to this constitution.
- 34.2 Members must at all times comply with the regulations as if they formed part of this constitution.

### **35. Public Statements**

- 35.1 The Board may by regulation\* or resolution authorise the Chief Executive Officer, a Board member or other person to make public statements on behalf of the association.
- 35.2 No person may make any public statement on behalf of the association unless authorised by the Board.

### **36. Duties**

- 36.1 Board members must exercise their powers and discharge their duties:
- (a) in good faith in the best interests of the association; and
  - (b) for a proper purpose.
- See section 85 of the Act\*.
- 36.2 Board members must exercise their powers and discharge their duties with reasonable care and diligence.
- See section 84 of the Act\*.
- 36.3 Board members and former Board members must not make improper use of:
- (a) their position, or
  - (b) information acquired by virtue of holding their position,
- so as:
- (c) to gain an advantage for themselves or any other person; or

(d) to cause detriment to the association.

See section 83 of the Act\*.

### **37. Remuneration**

The Board may by regulation\* set reasonable remuneration to be paid to Board members in that capacity, including reimbursement for expenses.

### **38. Indemnity**

The association indemnifies Board members against any liability incurred in good faith by them in the course of performing their duties.

See section 87 of the Act\*.

## **PART 6 – OFFICE-BEARERS**

### **39. Positions**

The office-bearers of the association are:

- (a) the Chair,
- (b) the Deputy Chair,
- (c) the Treasurer, and
- (d) the Secretary.

### **40. Election**

40.1 The Board must at its first meeting after the annual general meeting each year elect the office-bearers (other than the Secretary) from among the Board members.

40.2 Office-bearers may be re-elected.

### **41. Term of Office**

41.1 Office-bearers hold office from the time of their election until their successor is elected, subject to clauses 41.2–41.5.

41.2 Office-bearers may resign in writing\* given to the Board.

41.3 Office-bearers who cease to be Board members, other than by the expiry of their term of office, cease to be office-bearers.

41.4 Office-bearers may be removed by resolution of the Board passed by an absolute majority\*.

41.5 The Board must as soon as practicable fill vacancies in office-bearer positions for the remainder of the term.

41.6 This clause does not apply to the Secretary.

### **42. Secretary**

42.1 The Board must by resolution appoint the Chief Executive Officer or another senior employee as the Secretary of the association.

42.2 The Secretary is the secretary of the association for the purposes of the Act\*.

42.3 The Secretary must notify the Registrar\* of:

- (a) their appointment, and
- (b) any change of address,

within 14 days.

See sections 74 and 74A of the Act\*.

42.4 The Secretary whose appointment was last notified to the Registrar\* remains the secretary of the association in some circumstances under the Act\* until the appointment of a new Secretary is notified.

See section 215 of the Act\*.

42.5 The Secretary may resign in writing\* given to the Board.

See section 78(2)(a) of the Act\*.

42.6 The Secretary ceases to be the Secretary if they:

- (a) become insolvent under administration;

See section 38 of the Victorian *Interpretation of Legislation Act 1984*.

- (b) become a represented person under the Victorian *Guardianship and Administration Act 2019*;

- (c) are disqualified under the *Commonwealth Corporations Act 2001*, the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* or the *Co-operatives National Law (Victoria)*; or

- (d) cease to reside in Australia.

See section 78(2) of the Act\*.

42.7 A general meeting may by resolution passed by a simple majority:

- (a) remove the Secretary; and
- (b) fill the resulting vacancy.

Compare section 78(2)(b) of the Act\*.

42.8 The Board must fill any vacancy in the position of Secretary within 14 days (except for a vacancy already filled under clause 42.7(b)).

See section 73 of the Act\*.

## **PART 7 – BOARD MEETINGS**

### **43. Convening**

- 43.1 The Secretary, Chair or any other 3 Board members may convene\* a Board meeting.
- 43.2 Ordinary Board meetings must be held at least 6 times each year.
- 43.3 At its first meeting each year the Board must by resolution set the dates, times and places of ordinary Board meetings for that year.
- 43.4 The Board may by resolution subsequently change the dates, times and places of ordinary meetings.

### **44. Notice**

- 44.1 Each Board member must be given at least 7 days notice in writing\* of Board meetings, subject to clause 44.4.
- 44.2 Notice may be given of more than 1 Board meeting at the same time.
- 44.3 The notice must state the date, time and place (or places) of the meeting, but need not include the business to be considered.
- 44.4 In cases of urgency a meeting may be held without the notice required by clause 44.1, provided that:
- (a) as much notice as practicable is given to each Board member by the quickest practicable means; and
  - (b) resolutions may only be passed by an absolute majority\*.

### **45. Use of Technology**

- 45.1 Board meetings may be held at more than 1 place, provided that the technology used enables each Board member present at all places the meeting is held to communicate clearly and simultaneously with every other such Board member.
- See section 79(1) of the Act\*.
- 45.2 Without limiting clauses 44.4(a) and 45.1, Board meetings may be convened\* and held by telephone.
- 45.3 A Board member participating in a Board meeting using technology is taken to be present in person at the meeting.
- See section 79(2) of the Act\*.

### **46. Quorum**

The quorum for Board meetings is the presence in person of a majority of Board members at the time.

### **47. Chairing**

- 47.1 The Chair is entitled to chair Board meetings.
- 47.2 If the Chair is not present, or does not wish to chair the meeting, the Deputy Chair is entitled to chair.
- 47.3 If neither the Chair nor the Deputy Chair is present, or if neither wishes to chair the meeting, the Board must elect another Board member to chair.
- 47.4 The chair of the meeting does not have a casting vote.

### **48. Voting**

- 48.1 Each Board member has 1 vote.
- 48.2 There is no voting by proxy.
- 48.3 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.

### **49. Conflict of Interest**

- 49.1 Board members who have a material personal interest in a matter that is being considered at a Board meeting must:
- (a) disclose the nature and extent of their interest:
    - (i) to the Board as soon as they become aware of the interest; and
    - (ii) at the next general meeting;
  - (b) not be present while the matter is being considered at the meeting; and
  - (c) not vote on the matter.
- See sections 80 and 81 of the Act\*.
- 49.2 Clause 49.1 does not apply to material personal interests that:
- (a) exist only because the Board member belongs to a class of persons for whose benefit the association is established; or
  - (b) the Board member has in common with all or a substantial proportion of the members of the association.
- See sections 80 and 81 of the Act\*.

## **50. Leave of Absence**

- 50.1 The Board may by resolution grant Board members leave of absence from Board meetings for up to 3 months.
- 50.2 The Board may not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board member concerned to seek leave of absence in advance.

## **51. Resolutions without Meeting**

- 51.1 A resolution agreed to in writing\* by all Board members has the same effect as a resolution passed at a Board meeting.
- 51.2 In clause 51.1, “all Board members” does not include those Board members who:
- (a) would be prohibited by clause 49.1(c) from voting on the matter at a Board meeting; or
  - (b) have leave of absence from Board meetings under clause 50.

## **PART 8 – FINANCIAL AND LEGAL**

### **52. Chief Executive Officer**

- 52.1 The Board must appoint a Chief Executive Officer of the association.
- 52.2 The Chief Executive Officer is responsible to the Board for the management of the association.

### **53. Sources of Funds**

The funds of the association may be derived from subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

### **54. Financial Year**

The financial year of the association is from 1 July to 30 June, unless the Board by regulation\* adopts a different financial year.

### **55. Management of Funds**

- 55.1 The Board is responsible for the management of the funds of the association.
- 55.2 The association must keep financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and

- (b) would enable true and fair financial statements to be prepared in accordance with clause 56.4.

See section 89(1) of the Act\*.

- 55.3 All money received by or on behalf of the association must be deposited without delay into a bank account in the name of the association.

### **56. Payments**

- 56.1 All payments by the association must be:
- (a) specifically authorised in writing\*, and
  - (b) in the case of cheques – signed, by at least 2 persons nominated by the Board by regulation\* or resolution.
- 56.2 The Board may nominate a list of individuals or positions for the purposes of clause 56.1.
- 56.3 Signatories must not sign cheques until the payee and amount have been written in.
- 56.4 This clause does not apply to credit card and petty cash payments where the amount is within limits set by the Board by regulation\* or resolution.

### **57. Financial Statements**

- 57.1 In this clause and clause 58:
- (a) “tier one association” means an incorporated association that has a total revenue of less than \$250,000;
  - (b) “tier two association” means an incorporated association that has a total revenue of between \$250,000 and \$1 million;
  - (c) “tier three association” means an incorporated association that has a total revenue of more than \$1 million; and
  - (d) “total revenue” means the total income of the incorporated association during its last financial year from all the activities of the association before any expenses, including the cost to the association of goods sold by it, are deducted.

See section 90 of the Act\*.

57.2 As soon as practicable after the end of the association's financial year under clause 54, the Board must cause financial statements of the association for that year to be prepared in accordance with this clause.

See sections 92(1), 95(1) and 98(1) of the Act\*.

57.3 For tier one associations, the financial statements must give a true and fair view of the financial position and performance of the association during and at the end of its last financial year.

See section 92(2)(a) of the Act\*.

57.4 For tier two associations and tier three associations, the financial statements must be prepared in accordance with the Australian Accounting Standards.

See sections 95(2)(a) and 98(2)(a) of the Act\*.

57.5 The financial statements must contain particulars of:

- (a) the income and expenditure of the association during and at the end of its last financial year,
- (b) the assets and liabilities of the association at the end of its last financial year,
- (c) the mortgages, charges and securities of any description affecting any property of the association at the end of its last financial year,
- (d) the same particulars in respect of each trust of which the association was trustee during any part of its last financial year, and
- (e) any trust, held on behalf of the association by a person or body other than the association, in which funds or assets of the association are placed.

See section 101(1) of the Act\*.

57.6 The financial statements must also deal with any matters prescribed by the regulations under the Act\*.

See sections 92(2)(b), 95(2)(b) and 98(2)(b) of the Act\*.

57.7 The financial statements must have a certificate attached in the form prescribed under the Act\* signed by 2 Board members in accordance with a resolution of the Board certifying that the financial statements give a true and fair view of the financial position and performance of the association during and at the end of its last financial year.

Compare sections 94(2)(b), 97(2)(b) and 100(2)(b) of the Act\*.

57.8 The Board must submit the financial statements (including the attached certificate) to the annual general meeting under clause 17.3(a).

See sections 94, 97 and 100 of the Act\*.

57.9 If different amounts are prescribed under the Act\*, the amounts in clause 57.1 are varied accordingly.

See section 90 of the Act\*.

## **58. Review or Audit of Accounts**

58.1 For tier two associations, the Board must:

- (a) have the financial statements reviewed in accordance with the Act\*; and
- (b) submit the review report to the annual general meeting under clause 17.3(b).

See sections 96 and 97(2)(c) of the Act\*.

58.2 For tier three associations, the Board must:

- (a) have the financial statements audited in accordance with the Act\*; and
- (b) submit the audit report to the annual general meeting under clause 17.3(b).

See sections 99 and 100(2)(c) of the Act\*.

58.3 For tier one associations, if a majority of the members present at a general meeting vote to have the financial statements reviewed, the financial statements must be reviewed as if it were a tier two association.

See section 93 of the Act\*.

58.4 An auditor may only be removed by a general meeting in accordance with the procedure set out in the Act\*.

See sections 106 and 107 of the Act\*.

## **59. Minutes**

59.1 The Board must ensure that minutes are taken and kept of all general meetings, Board meetings and resolutions without meeting.

Compare item 14 of Schedule 1 of the Act\*.

59.2 The minutes of annual general meetings must include a copy of the financial statements and any accompanying review or audit report submitted at the meeting in accordance with clause 17.3.

See sections 94(4), 97(4) and 100(4) and item 15 of Schedule 1 of the Act\*.

59.3 The minutes of special general meetings must include a copy of any financial statements submitted at the meeting.

See item 15 of Schedule 1 of the Act\*.

59.4 Members may inspect and obtain copies of minutes in accordance with clause 61.

## **60. Retention of Records**

60.1 The Board must provide for the safe keeping of the records of the association.

60.2 The association must keep its financial records for at least 7 years after the transactions covered by the records are completed.

See section 89(2) of the Act\*.

60.3 The association must keep the financial statements submitted to the annual general meeting for at least 7 years after the annual general meeting.

See section 105(1) of the Act\*.

60.4 The association must keep the certificate referred to in clause 17.6 for at least 7 years after the certificate was signed.

See section 105(2) of the Act\*.

60.5 The association must keep all its other records for at least 7 years after the record was created.

60.6 A person who is no longer entitled to custody of records of the association must return them to the Board within 28 days.

See section 88 of the Act\*.

## **61. Access to Records**

61.1 Members may on request inspect:

- (a) the register of members,
- (b) the minutes of general meetings,
- (c) a copy of any trust deed referred to in clause 57.5(e), and
- (d) subject to clause 61.2, the other records of the association, including the minutes of Board meetings,

at any reasonable time.

See sections 53(1), 57 and 101(2) and items 13, 15 and 16 of Schedule 1 of the Act\*.

61.2 Members may not inspect the records of the association that relate to confidential personal, employment, commercial and legal matters, except as permitted by the Board.

See items 13 and 16 of Schedule 1 of the Act\*.

61.3 The association must on request make copies of the constitution and regulations\* available to members and applicants for membership without charge.

Compare section 53 of the Act\*.

61.4 The association must within 7 days of request make copies of:

- (a) the register of members (subject to clause 61.5),
- (b) the minutes of general meetings, and
- (c) any trust deed referred to in clause 57.5(e),

available to members without charge.

Compare section 53(2) and see items 13 and 15 of Schedule 1 of the Act\*.

61.5 Members may only have copies of records inspected under clause 61.1 if permitted by the Board.

61.6 A member may request that access to their personal information in the register of members be restricted in accordance with the Act\*, if there are special circumstances that justify doing so.

See section 59 of the Act\*.

## **62. Use of Register of Members**

62.1 Members may only use or disclose information from the register of members to contact or send material to other members if this is directly related to the management or purpose of the association.

See section 58 of the Act\*.

62.2 Non-members must not use or disclose information from the register of members to contact or send material to members unless this is:

- (a) directly related to the management or purpose of the association; and
- (b) authorised by the Board.

See section 58 of the Act\*.

## **63. Execution of Documents**

63.1 The association may execute deeds and other documents either:

- (a) by having the document signed by 2 Board members; or

See section 38 of the Act\*.

- (b) by using a common seal under clause 64.

63.2 A document may only be signed by 2 Board members if authorised by resolution of the Board.

## **64. Common Seal**

64.1 The association may have a common seal, in which case the remainder of this clause applies.

See section 29(2)(b) of the Act\*.

64.2 The name of the association must appear in legible characters on the common seal.

See section 23(1)(a) of the Act\*.

64.3 A document may only be sealed with the common seal if authorised by resolution of the Board.

64.4 The sealing must be witnessed by the signatures of at least 2 Board members.

64.5 The Board must provide for the safe keeping of the common seal.

## **65. Registered Address**

65.1 The association must have a registered address for the service of documents on the association.

See sections 28 and 217 of the Act\*.

65.2 The registered address of the association must be the address of the principal office of the association, unless the Board by regulation\* nominates a different address.

65.3 The association must notify the Registrar\* of any change of registered address within 14 days.

See section 28(3) of the Act\*.

## **66. Amendment of Constitution**

66.1 This constitution may only be amended by special resolution\*.

See section 50(1) of the Act\*.

66.2 An amendment to this constitution does not take effect until it has been approved by the Registrar\*.

See section 50(2) of the Act\*.

66.3 The Secretary must apply to the Registrar\* for approval of the amendment within 28 days after the special resolution\* was passed.

See section 50(3) of the Act\*.

## **67. Winding Up**

67.1 The association may be wound up voluntarily by special resolution\*.

See section 125 of the Act\*.

67.2 If the association is:

- (a) wound up voluntarily or otherwise; or
- (b) its incorporation is cancelled;

the surplus assets of the association must not be distributed to any member.

See section 132(4) of the Act\*.

67.3 The surplus assets must be given to a body that:

- (a) has a similar purpose to the association; and
- (b) also prohibits the distribution of any surplus, income and assets to its members to at least as great an extent as the association;

subject to clauses 67.5, 68.2(e) and 68.2(f).

67.4 If the association is wound up voluntarily, the body to which its surplus assets are to be given must be decided by special resolution\*.

67.5 The surplus assets of the association do not include any property supplied by a government department, public authority or municipal council, including the unexpended portion of a grant. On winding up, that property must be returned to the body that supplied it or its nominee.

See section 132(3) of the Act\*.

## 68. Tax Deductibility

68.1 In this clause:

- (a) “contributions” and “fund-raising event” have the same meaning as in Division 30 of the Tax Act;
- (b) “DGR” means a deductible gift recipient under Division 30 of the Tax Act;
- (c) “gift funds” means:
  - (i) gifts and contributions to the association, and
  - (ii) money received by the association because of such gifts and contributions; and
- (d) “the Tax Act” means the Commonwealth *Income Tax Assessment Act 1997*.

68.2 If the association has been endorsed as a DGR:

- (a) receipts for gifts to the association must include:
  - (i) the name and ABN of the association, and
  - (ii) the fact that the receipt is for a gift;
- (b) receipts for contributions to the association in relation to a fund-raising event must include:
  - (i) the name and ABN of the association, and
  - (ii) the other information required by section 30-228 of the Tax Act;
- (c) the association must keep records that record and explain all transactions and other acts it engages in relevant to its status as a DGR for at least 5 years;

- (d) the records must show that the association uses gift funds only for the principal purpose of the association;
- (e) on winding up of the association or revocation of its endorsement (whichever occurs earlier), any surplus gift funds must be transferred to another DGR; and
- (f) on winding up or dissolution of the association its surplus assets other than any surplus gift funds must also be given to another DGR.

## 69. Notices

- 69.1 Members must give the association their address for notices, and any change in that address.
- 69.2 The address for notices may include an email address and a fax number.
- 69.3 The association must enter any change in the address of a member in the register of members without delay.
- 69.4 Notice may be given to a member by sending it to the address last given by the member.
- 69.5 In this constitution a period of notice of a meeting expressed in days:
  - (a) does not include the day on which notice is given; but
  - (b) includes the day on which the meeting is held.
- 69.6 Notices sent by priority post are taken to have been given on the 4th day after posting that is not a Saturday, Sunday or public holiday at that address.
- 69.7 Notices sent by email or fax are taken to have been given on the 1st day after sending that is not a Saturday, Sunday or public holiday at that address.
- 69.8 In this clause, “member” includes a Board member.

## 70. Interpretation

- 70.1 In this constitution, unless the contrary intention appears:
  - (a) “absolute majority” means a majority of the votes of all Board members entitled to vote at the time, whether or not those Board members are present, and whether or not they vote;

- (b) “the Act” means the Victorian *Associations Incorporation Reform Act 2012*;
- (c) “the association” means the association named in clause 2;
- (d) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
- (e) “member” has the extended meanings given in clauses 6.4 and 20.3;
- (f) “the Registrar” means the Registrar of Incorporated Associations under the Act\*;
- (g) “regulations” means regulations of the association made under clause 34, and “regulation” has a corresponding meaning;
- (h) “signed” includes agreed to in writing\*;
- (i) “special resolution” means a resolution:
  - (i) to amend this constitution;
  - (ii) to change the name of the association;
  - (iii) to amalgamate the association with another association incorporated under the Act\*; or
  - (iv) to wind up the association;
 which may only be passed at a general meeting where:
  - (v) at least 21 days notice of the proposed resolution has been given to each member entitled to vote;
  - (vi) the notice specifies that it is intended that the resolution be proposed as a special resolution; and
  - (vii) at least three-quarters of those members who vote at the meeting (whether in person, by representative or by proxy), vote in favour; and
 See section 64 of the Act\*.
- (j) “writing” includes emails and other written communications in electronic form.

70.2 Where this constitution requires a document to be signed, in the case of an incorporated body the document must either be sealed, or signed on its behalf.

- 70.3 The headings form part of this constitution.
- 70.4 The explanatory notes inserted in a smaller font size after provisions of this constitution are for guidance only and do not form part of this constitution.
- 70.5 This constitution is to be interpreted in accordance with the Victorian *Interpretation of Legislation Act 1984* as if this constitution were an Act of the State of Victoria, unless the contrary intention appears.
- 70.6 The Board is responsible for the interpretation of the constitution and regulations\*.
- 70.7 The provisions of this constitution are the rules of the association for the purposes of the Act\*.
- 70.8 This constitution is intended to make provision for all matters required by the Act\*, with the intention that none of the model rules prescribed under the Act\* apply to the association.  
See section 48(3) and Schedule 1 of the Act\*.

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