



# Bicycle Victoria Constitution

November 2011



**BICYCLE**  
NETWORK  
VICTORIA

# ***Bicycle Victoria Constitution***

## ***November 2011***

The original constitution was adopted in August 1987.

The constitution was changed:

- At the Annual General Meeting of 29 August 1989
- At the Annual General Meeting of 15 October 1992
- At the Annual General Meeting of 18 September 1993
- At the Special General Meeting of 12 April 1995
- At the Annual General Meeting of 19 October 1996
- At the Special General Meeting of 23 March 1998
- At the Annual General Meeting on 10 November 2003
- At the Annual General Meeting of 7 November 2005, members at the AGM passed the name change, and adopted a new Constitution.
- At the Annual General Meeting of 16 November 2009, the statement of purpose was expanded to include - The purpose of the association is to promote the health of the community through the prevention and control of disease by “More People Cycling More Often” and by the insertion of clause 63.3 (d) is endorsed by the Commissioner of Taxation as a Deductible Gift Recipient.”. And by inserting a new clause 63.4, requiring consent of the Commissioner of Taxation to amend the Constitution.
- At the Annual General Meeting 15 November 2010, rule 63.4 was renumbered to 63.5 and a new rule 63.4 was added
- At the Annual General Meeting of 14 November 2011, members at the AGM passed to amend the Constitution to make it possible for the Board to directly co-opt new Board members with appropriate expertise in order to strengthen the governance and decision making of the Board.

The Bicycle Victoria office is located at Level 4, 426 Bourke St, Melbourne  
Our ABN is 41 026 835 903.

An electronic copy of The Constitution can be found on our website at this URL:  
<http://www.bv.com.au/about-us/41502/> or log onto our website and search ‘constitution’.  
Other areas which may be of interest are The Board Charter –  
<http://www.bv.com.au/about-us/41504/> and the Board Delegation of Authority -  
<http://www.bv.com.au/about-us/41505/>

# ***Bicycle Victoria Incorporated***

## **CONSTITUTION**

### **PART 1 – CONTENTS**

#### 1. Contents

The contents of this constitution are:

#### **PART 1 – CONTENTS**

##### 1. Contents

#### **PART 2 – STATEMENT OF PURPOSES**

2. Name
3. Purpose
4. Legal Capacity and Powers
5. Not For Profit

#### **PART 3 – MEMBERSHIP**

6. Eligibility
7. Categories
8. Individual Membership
9. Family Membership
10. Life Membership
11. Register of Members
12. Subscriptions
13. Rights, Obligations and Liability
14. Discipline
15. Resignation
16. Cessation
17. Grievance Procedure

#### **PART 4 – GENERAL MEETINGS**

18. Annual General Meeting
19. Special General Meetings
20. Notice
21. Proxies
22. Use of Technology
23. Quorum
24. Chairing
25. Participation
26. Voting

#### **PART 5 – THE BOARD**

27. Membership

28. Eligibility
29. Elections
30. Returning Officer
31. Nominations
32. Ballot
33. Co-option
34. Term of Office
35. Responsibilities and Powers
36. Regulations
37. Public Statements
38. Duties
39. Payments to Board Members
40. Indemnity

#### **PART 6 – OFFICE-BEARERS AND COMMITTEES**

41. Office-Bearers
42. Audit Committee
43. Other Committees

#### **PART 7 – BOARD MEETINGS**

44. Convening
45. Notice
46. Quorum
47. Chairing
48. Voting
49. Disclosure of Interest
50. Resolutions without Meeting

#### **PART 8 – FINANCIAL AND LEGAL**

51. Chief Executive Officer
52. Sources of Funds
53. Financial Year
54. Management of Funds
55. Payments
56. Audit
57. Records
58. Minutes
59. Common Seal
60. Public Officer
61. Registered Address
62. Amendment of Constitution
63. Winding Up

- 64. Notices
- 65. Interpretation
- 66. Transitional

**PART 9 - INDEX**

- 67. Index

## **PART 2 – STATEMENT OF PURPOSES**

### **2. Name**

2.1 The name of the incorporated association is “Bicycle Victoria Incorporated”.

2.2 Under section 12A 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 promote the health of the community through the prevention and control of disease by “More People Cycling More Often”.

### **4. Legal Capacity and Powers**

4.1 The association has:

- (a) the legal capacity and powers of an incorporated body, and

- (b) all the powers of an individual.

4.2 The association may only:

- (a) exercise its powers; and
- (b) use its income, assets and profit; for its purpose.

### **5. Not For Profit**

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

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.

5.3 Clause 39 further restricts payments to Board members.

## **PART 3 – MEMBERSHIP**

### **6. Eligibility**

6.1 Any individual is eligible for membership of the association.

6.2 Only individuals are eligible for membership.

### **7. Categories**

The association has the following categories of membership:

- (a) individual membership,
- (b) family membership,
- (c) life membership, and
- (d) any other categories of membership determined by the Board by regulation (which may include non-voting members).

### **8. Individual Membership**

8.1 An individual who wishes to apply for membership of the association must:

- (a) give the association their name, address and date of birth; and

- (b) pay the subscription.

8.2 The individual becomes a member from the time the subscription is paid.

### **9. Family Membership**

9.1 In this clause “family” has the same meaning as it has in the current personal accident insurance policy of the association.

9.2 A member of a family who wishes to apply for membership of the association on behalf of the family must:

- (a) give the association:
  - (i) the name and date of birth of each member of the family, and
  - (ii) the address of the family; and

- (b) pay the subscription.

9.3 Each member of the family becomes a member of the association from the time the subscription is paid.

## 10. **Life Membership**

10.1 The Board may by resolution passed by an absolute majority grant life membership to any individual who has made an outstanding contribution to the association.

10.2 The individual becomes a life member from the time the resolution is passed.

10.3 Life members have the same rights and obligations as other members of the association, except that life members are not required to pay the subscription.

## 11. **Register of Members**

11.1 The CEO must ensure that the association keeps a register containing the following details for each member:

- (a) name,
- (b) address last given by the member,
- (c) date of birth,
- (d) category of membership,
- (e) date of becoming a member,

(f) date the subscription was last paid, and

(g) in the case of former members – date of ceasing to be a member.

11.2 The CEO must ensure that:

(a) the details for each new member, and

(b) all changes in the details of members,

are promptly entered in the register of members.

## 12. **Subscriptions**

12.1 The Board must by regulation set the subscription.

12.2 The first subscription may include an entrance fee.

12.3 The amount of the subscription and the date for payment may vary according to criteria set by the Board in the regulation, including the category of membership.

12.4 The voting and other entitlements of members who have not paid the subscription by the date for payment are suspended until the subscription is paid.

12.5 Except for the subscription, there are no other amounts to be paid in respect of membership of the association.

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

13.1 All members 18 and over are entitled to vote, subject to clauses 7(d), 12.4 and 14.1.

13.2 Members under 18 are not entitled to vote.

13.3 The rights of members are not transferable, and end when the member ceases to be a member in accordance with clause 16.

13.4 Members must at all times comply with the constitution and regulations.

13.5 Under section 14A of the Act this constitution is an enforceable contract

between the association and each member.

13.6 Under section 15 of the Act members (including Board members) are not liable to contribute to the debts and liabilities of the association by reason only of their membership.

### 14. **Discipline**

14.1 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.

14.2 The Board must not pass a resolution under clause 14.1 unless the member has been:

(a) informed of what it is alleged the member has done; and

(b) given a reasonable opportunity to be heard.

14.3 The association may not fine members.

## 15. Resignation

15.1 Members may resign by writing to the association.

15.2 Members whose subscriptions are more than 3 months in arrears are taken to have resigned.

## 16. Cessation

16.1 Members cease to be members on resignation, expulsion or ceasing to have legal capacity.

16.2 If a member ceases to be a member, the date of ceasing to be a member must be entered in the register of members.

## 17. Grievance Procedure

17.1 The grievance procedure in this clause applies to disputes under this constitution between:

- (a) a member and another member, and

(b) a member and the Board or the association,

except for disputes about the disciplining of a member under clause 14.

17.2 The parties must first attempt to resolve the dispute themselves.

17.3 If the parties are unable to resolve the dispute, the Board must appoint a mediator.

17.4 The mediator:

(a) must not have a personal interest in the dispute;

(b) must not be biased in favour of or against any party;

(c) may be a member or former member of the association; and

(d) if possible, must be appointed with the agreement of all parties.

17.5 The mediator must conduct a hearing at which each party is given a reasonable opportunity to be heard.

17.6 The mediator may during, and must at the end of, the hearing attempt to resolve the dispute by agreement between the parties.

17.7 If the mediator is unable to resolve the dispute by agreement between the parties, the mediator must determine the respective rights and obligations under this constitution of the parties and any other members.

17.8 A determination of a mediator under clause 17.7 is binding on the parties and all members.

17.9 Under section 14B(2) of the Act a party may appoint another person to act on its behalf in the grievance procedure.

## **PART 4 – GENERAL MEETINGS**

### **18. Annual General Meeting**

18.1 The Board must convene an annual general meeting each year, to be held in October or November.

18.2 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 statement submitted to members in accordance with section 30(3) of the Act containing particulars of:

- (i) the income and expenditure of the association during its last financial year,
- (ii) the assets and liabilities of the association at the end of its last financial year,
- (iii) the mortgages, charges and securities of any description affecting any of the property of the association at the end of its last financial year,
- (iv) the same particulars in respect of each trust of which the association was trustee during any part of the last financial year, and
- (v) 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; and

(d) to consider the audited accounts that accompany the statement.

18.3 The annual general meeting may only consider other business of which notice has been given in accordance with clause 20.2(c).

18.4 Under section 30(4) of the Act the public officer must give the Registrar a statement of the annual general meeting within 1 month after the annual general meeting (including a copy of the audited accounts and the auditor's report).

## 19. Special General Meetings

19.1 The Board may convene a special general meeting.

19.2 5% or more of members entitled to vote may by notice (or notices) signed by those members convene a special general meeting.

19.3 Special general meetings may only consider business of which notice has

been given in accordance with clause 20.2(c).

## 20. Notice

20.1 At least 21 days notice in writing of general meetings must be given to each member entitled to vote.

20.2 The notice must state:

(a) the date, time and place (or places) of the meeting,

(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, and

(ii) that it is intended that the resolution be proposed as a special resolution.

20.3 The notice must include under clause 20.2(c) any business that any member

entitled to vote has requested in writing be considered at least 1 month before notice of the meeting is sent to members.

20.4 The notice must also include:

- (a) a statement that members may appoint proxies in accordance with clause 21;
- (b) a copy of clause 21; and
- (c) a copy of the proxy form prescribed by the Board under clause 21.3(a).

20.5 Despite clause 20.1, 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.

## 21. Proxies

21.1 Members may only appoint other members as proxies.

21.2 Members may not exercise more than 5 votes as proxies.

21.3 Appointments of proxies must be:

- (a) in a form prescribed by the Board by regulation; and
- (b) received at the principal office of the association by 5.00 pm on the last business day before the meeting.

## 22. Use of Technology

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 clearly and simultaneously communicate with every other such member.

## 23. Quorum

23.1 The quorum for consideration of:

- (a) the ordinary business of the annual general meeting, and
- (b) a special resolution recommended by the Board,

is the presence in person of at least 10 members entitled to vote.

23.2 The quorum for the consideration of all other business at general meetings is the presence in person of at least 0.5% of members entitled to vote.

23.3 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 President is entitled to chair general meetings.

24.2 If the President is not present, or does not wish to chair the meeting, the Vice-President is entitled to chair.

24.3 If neither the President nor the Vice-President 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 has a deliberative vote, but does not have a casting vote.

#### 25. Participation

25.1 All members may attend general meetings.

25.2 Only members entitled to vote may speak at general meetings.

#### 26. Voting

26.1 Each member present at the meeting and entitled to vote has 1 vote.

26.2 Members whose membership rights have been suspended under clause 12.4 or 14.1 are not entitled to vote.

26.3 Members may vote in person or by proxy.

26.4 Unless a poll is demanded:

- (a) voting is by show of hands; and
- (b) the declaration by the chair of the meeting of the result of the vote is conclusive evidence of that result.

26.5 Any member entitled to vote (including the chair of the meeting) may demand a poll before or immediately after the declaration of the result on a show of hands.

26.6 The poll must be taken as directed by the chair of the meeting.

26.7 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.

## **PART 5 – THE BOARD**

### **27. Membership**

The Board has:

- (a) 6 elected Board members – 2 elected each year under clause 29, with staggered 3 year terms; and
- (b) up to 3 co-opted Board members – appointed under clause 33.

### **28. Eligibility**

28.1 Only members of the association entitled to vote are eligible to be Board members.

28.2 Employees of the association are not eligible to be Board members.

28.3 All Board members must give the undertaking required by clause 31.2(b).

### **29. Elections**

29.1 Three Board members must be elected each year for a 2 year term.

29.2 In addition, if:

(a) there has been a vacancy in an elected Board member position since the last election (“a casual vacancy”); and

(b) the remainder of the term of office of that position is for 1 or 2 years after the next annual general meeting;

an election must be held to fill the casual vacancy for the remainder of the term.

29.3 If there is more than 1 casual vacancy to be filled, a separate election must be held:

(a) for all casual vacancy positions where there is a 1 year term of office remaining; and

(b) for all casual vacancy positions where there is a 2 year term of office remaining.

**30. Returning Officer**

30.1 The Board must appoint a returning officer at least 16 weeks before the annual general meeting.

30.2 The returning officer:

- (a) must not be a Board member or employee of the association;
- (b) is responsible for the conduct of the elections; and
- (c) may decide all matters not provided for in the constitution or regulations.

**31. Nominations**

31.1 The returning officer must call for nominations by notice to all members entitled to vote at least 12 weeks before the annual general meeting.

31.2 Nominations must:

- (a) be in writing;
- (b) contain an undertaking that, if elected, the candidate will:

- (i) comply with the code of conduct for Board members; and

- (ii) participate in:

- (A) the training program, and

- (B) performance review,

- for Board members;

as required by clause 38.3;

- (c) if an election is being held to fill a casual vacancy for a 1 year or 2 year term or both (in addition to the election of 2 positions for a 3 year term) – indicate which election or elections the nomination is for;

- (d) be signed by the candidate, consenting to the nomination; and

- (e) be signed by 5 other members entitled to vote, nominating the candidate.

31.3 The Board may by regulation prescribe a nomination form, but failure to use

the prescribed form does not invalidate a nomination if it complies with clause 31.2.

31.4 Nominations close with the returning officer at 5.00 pm on the last business day 8 weeks before the annual general meeting.

31.5 The original nomination must be received by the returning officer by the close of nominations, not a faxed copy or email.

31.6 The Board must by regulation provide for candidate statements and photographs to be submitted with nominations and published to members.

31.7 If the number of nominations received for an election is the same as or fewer than the number of positions to be elected, the returning officer must declare those candidates elected.

## 32. **Ballot**

32.1 If more nominations are received for an election than there are positions to be elected, the returning officer must conduct a ballot.

32.2 The ballot must be a secret ballot.

32.3 The ballot may be conducted by post, telephone or email, online, or by any other means approved by the Board by regulation.

32.4 Only members entitled to vote at the close of nominations are eligible to vote.

32.5 The voting system is first past the post.

32.6 Members may vote for as many candidates as there are positions to be elected.

32.7 The returning officer must give notice of the ballot to all members eligible to vote before the ballot opens.

32.8 The ballot must remain open for at least 2 weeks.

32.9 The ballot must close at 5.00 pm on the last business day 2 weeks before the annual general meeting.

32.10 If 2 or more candidates receive the same number of votes, and 1 or some but not all of those candidates must be elected, the returning officer must decide by lot which is to be elected.

### 33. **Co-option**

33.1 The Board may:

- (a) at its first meeting after the annual general meeting each year, and
- (b) at any subsequent meeting, by resolution passed by an absolute majority co-opt up to 3 individuals as Board members.

33.2 Co-opted Board members must:

- (a) be, or become, members of the association; and
- (b) give an undertaking in similar form to that required of elected Board members under clause 31.2(b).

33.3 The Board may by resolution decide when the term of office of a co-opted Board member is to begin and end.

### 34. **Term of Office**

34.1 Board members elected for a 3 year term hold office from the end of the annual general meeting after they are elected until the end of 4th annual general meeting after they are elected, subject to clauses 34.3 - 34.6.

34.2 Board members elected to fill a casual vacancy hold office from the end of the annual general meeting after they are elected for the remainder of the term of the vacancy they are filling, subject to clauses 34.4 - 34.10.

34.3 Co-opted Board members hold office from the time they are co-opted until the end of the annual general meeting after they are co-opted, subject to clauses 33.3 and 34.4 - 34.7.

34.4 Board members may be re-elected and co-opted again.

34.5 Board members may resign by writing to the CEO.

34.6 A general meeting may by resolution:

- (a) remove any Board member; and
- (b) fill the resulting vacancy.

34.7 Board members also cease to hold office if they:

- (a) cease to be members of the association;
- (b) fail to attend 3 consecutive Board meetings without leave of absence from the Board; or
- (c) receive any payment from the association otherwise than in accordance with this constitution.

34.8 If there is a vacancy in its membership including a vacancy under clause 34.6(a) not filled in accordance with clause 34.6(b), the Board may appoint a member who would be eligible to be elected under clause 28 to fill the vacancy until the end of the next annual general meeting.

34.9 The Board may continue to act despite any vacancy in its membership.

34.10 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 meetings of the Board in which that person has participated,

is not affected.

### **35. Responsibilities and Powers**

35.1 The Board is responsible for both the governance and management of the association.

35.2 The Board must by regulation delegate the management of the association to the CEO.

35.3 The Board may exercise all powers of the association on its behalf.

35.4 The Board may delegate its powers as it thinks appropriate.

35.5 No delegation by the Board under this clause limits the duties and liability of each member of the Board.

### 36. Regulations

36.1 The Board may by resolution passed with at least 5 votes in favour make regulations to give effect to this constitution.

36.2 Members must at all times comply with the regulations as if they formed part of this constitution.

### 37. Public Statements

37.1 The Board may by regulation or resolution authorise the President, CEO or another person to make public statements on behalf of the association.

37.2 No person may make any public statement on behalf of the association unless authorised by the Board.

### 38. Duties

38.1 Under section 29A of the Act members and former Board members must not knowingly or recklessly make improper use of:

(a) their position, or

(b) information acquired by virtue of their position,

so as:

(c) to gain, directly or indirectly, any financial benefit or material advantage for themselves or any other person; or

(d) to cause a detriment to the association.

38.2 Board members also owe the association duties:

(a) to act honestly and in good faith; and

(b) to exercise reasonable care and diligence;

as Board members.

38.3 Board members must:

- (a) comply with the code of conduct for Board members; and
- (b) participate in:
  - (i) the training program, and
  - (ii) performance review,for Board members.

### 39. **Payments to Board Members**

39.1 The association must reimburse Board members for all expenses properly incurred by them:

- (a) in their capacity as Board members, or
- (b) otherwise on behalf of the association.

39.2 The association must not make any other payments to:

- (a) Board members, or
- (b) any entity directly or indirectly controlled by a Board member.

### 40. **Indemnity**

The association indemnifies Board members against any liability incurred by them as Board members (other than to the association), unless the liability did not arise out of conduct in good faith.

## **PART 6 – OFFICE-BEARERS AND COMMITTEES**

### **41. Office-Bearers**

41.1 The office-bearers of the association are:

(a) President, and

(b) Vice-President,

subject to clause 41.2.

41.2 The Board may by regulation establish other office-bearer positions.

41.3 The Board must at its first meeting after the annual general meeting each year elect the office-bearers from its members.

41.4 Office-bearers hold office from the time of their election until their successor is elected, subject to clauses 41.6–41.8.

41.5 Office-bearers are eligible for re-election.

41.6 Office-bearers may resign as office-bearers by writing to the CEO.

41.7 Office-bearers who cease to be Board members cease to be office-bearers.

41.8 Office-bearers may be removed by resolution of the Board passed with at least 5 votes in favour.

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

### **42. Audit Committee**

42.1 The Board must at its first meeting after the annual general meeting each year appoint an Audit Committee consisting of at least 3 members, who:

(a) may or may not be Board members or members of the association; but

(b) must not be employees of the association.

42.2 The Audit Committee must:

(a) ensure that accurate and up-to-date financial statements are presented to each meeting of the Board;

(b) report to each Board meeting on the financial position of the association; and

(c) ensure that the Board complies with its obligations under Part 8.

42.3 Nothing in this clause limits the duties and liability of each member of the Board.

#### 43. **Other Committees**

43.1 The Board may by regulation or resolution establish other standing or ad hoc committees with such membership and terms of reference as it thinks appropriate.

43.2 Board committees may include members who are not Board members or members of the association.

43.3 The quorum for committee meetings is the presence in person of a majority of committee members at the time, unless the Board resolves otherwise.

43.4 Part 7 applies to committee meetings (including the Audit Committee) with

such modifications as are necessary, except as provided in clause 43.3.

## **PART 7 – BOARD MEETINGS**

### **44. Convening**

44.1 The CEO, President, or 3 Board members may convene a Board meeting.

44.2 Ordinary Board meetings must be held at least 6 times each year.

44.3 At its first meeting after the annual general meeting each year the Board must by resolution set the dates, times and places of ordinary Board meetings until the next annual general meeting.

44.4 The Board may by resolution subsequently change the dates, times and places of ordinary meetings.

### **45. Notice**

45.1 Each Board member must be given at least 7 days notice in writing of Board meetings, subject to clause 45.4.

45.2 Notice may be given of more than 1 Board meeting at the same time.

45.3 The notice must include the date, time and place (or places) of the meeting, but need not include the business to be considered.

45.4 In cases of urgency a meeting may be held without the notice required by clause 45.1, provided that:

(a) as much notice as practicable is given to each Board member by the quickest practicable means; and

(b) no resolution is passed except by an absolute majority.

### **46. Quorum**

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

### **47. Chairing**

47.1 The President is entitled to chair Board meetings.

47.2 If the President is not present, or does not wish to chair the meeting, the Vice-President is entitled to chair.

47.3 If neither the President nor the Vice-President is present, or if neither wishes to chair the meeting, the meeting must elect another Board member to chair.

47.4 The chair of the meeting has a deliberative vote, but does not have a casting vote.

#### 48. **Voting**

48.1 Each Board member present at the meeting has 1 vote.

48.2 Board members may only vote in person, and not 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. **Disclosure of Interest**

49.1 Under sections 29B and 29C of the Act, Board members who have any direct or indirect financial interest in a

contract or proposed contract with the association 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) in the statement submitted to the next annual general meeting under section 30(3) of the Act and clause 18.2(c); and

(b) not take part in any decision of the Board with respect to that contract, but may take part in any deliberations with respect to that contract.

49.2 Clause 49.1 does not apply to financial interests that:

(a) exist only because the Board member is a member of 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.

**50. Resolutions without Meeting**

50.1 A resolution agreed to in writing by all Board members has the same effect as a resolution passed at a Board meeting.

50.2 In clause 50.1 “all Board members” does not include those who have leave of absence from the Board.

## **PART 8 – FINANCIAL AND LEGAL**

### **51. Chief Executive Officer**

51.1 The Board must appoint a Chief Executive Officer of the association (in this constitution “CEO”).

51.2 The CEO is responsible to the Board for the management of the association.

### **52. Sources of Funds**

The funds of the association may be derived from subscriptions, events, sales, grants, donations, interest and any other sources approved by the Board.

### **53. Financial Year**

The financial year of the association is from 1 July to 30 June.

### **54. Management of Funds**

54.1 The Board is responsible for the management of the funds of the association.

54.2 Under section 30A of the Act the association must maintain adequate and accurate accounting records of its financial transactions.

54.3 The Board must make regulations providing for the financial management of the association.

### **55. Payments**

55.1 All payments by the association must be:

(a) specifically authorised by the signatures of, and

(b) in the case of cheques – signed by, at least 2 persons nominated by the Board by regulation.

55.2 The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 55.1.

### **56. Audit**

The Board must arrange for the accounts for the last financial year to

be audited in accordance with section 30B of the Act before being submitted to the annual general meeting in accordance with clause 18.2(d).

## 57. **Records**

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

57.2 Members may inspect the records of the association at any reasonable time, subject to clause 57.3.

57.3 Members may not inspect the records of the association that relate to confidential personal, employment, commercial and legal matters.

57.4 Copies of the constitution and regulations must be freely available to members and applicants for membership.

## 58. **Minutes**

The CEO must ensure that minutes are taken and kept of all general meetings and Board meetings.

## 59. **Common Seal**

59.1 Under section 14(2) of the Act the association may have a common seal.

59.2 Clauses 59.3–59.7 only apply if the association has a common seal.

59.3 Under section 12A(1)(a) of the Act the name of the association must appear in legible characters on the common seal.

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

59.5 The sealing must be witnessed by the signatures of at least 2 Board members nominated by the Board by regulation or resolution.

59.6 The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 59.5.

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

## 60. **Public Officer**

60.1 The CEO is the public officer of the association for the purposes of the Act, subject to clause 60.2.

60.2 The effect of section 25(1) of the Act is that, if the position of CEO will remain vacant for more than 14 days, the Board must before the end of that period appoint another person as public officer until a new CEO is appointed.

60.3 Under section 28(1) of the Act the public officer must notify the Registrar within 14 days of appointment.

60.4 The effect of section 42 of the Act is that the person last notified to the Registrar remains the public officer until a new person is notified.

## 61. **Registered Address**

61.1 The registered address of the association for the service of documents is the address of the principal office of the association,

unless the Board by regulation nominates a different address.

61.2 Under section 13A(2) of the Act the association must notify the Registrar within 14 days of any change of registered address.

## 62. **Amendment of Constitution**

62.1 Under section 22(1) of the Act this constitution may only be amended by special resolution.

62.2 Under section 22(2) of the Act an amendment to this constitution does not take effect until it has been approved by the Registrar.

62.3 Under section 22(4) of the Act the public officer must apply to the Registrar for approval of the amendment within 28 days after the special resolution was passed.

## 63. **Winding Up**

63.1 The association may be wound up voluntarily by special resolution in accordance with section 33 of the Act.

63.2 If the association is:

- (a) wound up:
  - (i) voluntarily, or
  - (ii) by a court; or
- (b) its incorporation is cancelled;

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

63.3 Subject to sections 33A–33E of the Act, the remaining assets must be given to an entity that:

- (a) has a similar purpose to the association;
- (b) also prohibits the distribution of profit, income and assets to its members to at least as great an extent as the association; and
- (c) is also exempt from income tax.
- (d) is endorsed by the Commissioner of Taxation as a Deductible Gift Recipient.

63.4 Notwithstanding the foregoing, if the Association is endorsed as a deductible gift

recipient, at the first occurrence of the Association being wound up, its incorporation cancelled or the endorsement of the Association being revoked, the Association must transfer to a fund, authority or institution to which income tax deductible gifts can be made, any surplus:

(a) gifts of money or property received for the principal purpose of the association during any time that the Association is endorsed as a deductible gift recipient;

(b) contributions described in item 7 or 8 of the table in section 30-15 of the Income Tax Assessment Act 1997 )"ITAA 97" in relation to a fund-raising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Association is endorsed as a deductible gift recipient; and

(c) money received by the association because of such gifts or contributions received during any time that the

Association is endorsed as a deductible gift recipient.

63.5 This clause must not be amended without the consent of the Commissioner of Taxation.

#### 64. Notices

64.1 Members must give the association their address for notices, and any change in that address.

64.2 The address for notices may include a fax number and an email address.

64.3 The CEO must promptly enter any change in the address of a member in the register of members, as required by clause 11.2(b).

64.4 Notice may be given to a member by sending it to the address last given by the member.

64.5 In the case of family memberships, notice may be given to all members of the family by sending 1 notice to the address of the family last given on its behalf.

64.6 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.

64.7 Notices sent by prepaid post are taken to have been given on the second day after posting that is not a Saturday, Sunday or public holiday at that address.

64.8 Notices sent by fax or email are taken to have been given on the first day after sending that is not a Saturday, Sunday or public holiday at that address.

64.9 In this clause “member” includes a Board member.

#### 65. Interpretation

65.1 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 Act 1981*;
- (c) “the association” means the association named in clause 2.1;
- (d) “business day” means a day that is not a Saturday, Sunday or public holiday at the address of the principal office of the association;
- (e) “CEO” has the meaning given in clause 51.1, and includes an acting CEO;
- (f) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
- (g) “entity” includes body, trust and fund;
- (h) “the Registrar” means the Registrar of Incorporated Associations under the Act;
- (i) “regulations” means regulations of the association made under clause 36, and “regulation” has a corresponding meaning; and
- (j) “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 under section 29 of the Act may only be passed at a general meeting where:
- (v) at least 21 days notice of the proposed resolution has been given to all members 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 the members who vote at the meeting (whether in person or by proxy), vote in favour.

65.2 For the purposes of the Act:

(a) Part 2 of this constitution is the statement of purposes of the association; and

(b) all the provisions of this constitution (including those in Part 2) are its rules.

65.3 The headings form part of this constitution.

65.4 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.

65.5 The Board is responsible for the interpretation of the constitution and regulations.

65.6 This constitution is intended to include all matters in relation to which the model rules prescribed under section 54(2)(c) of the Act make provision, with the intention that none of the model rules apply to the association.

## 66. **Transitional**

66.1 In this clause:

(a) “2012 AGM”, “2013 AGM” and “2014 AGM” mean the annual general meetings held in those years;

(b) “2012-2013” means the period from the end of the 2012 AGM until the end of the 2013 AGM; and

(c) “2013-2014” means the period from the end of the 2013 AGM until the end of the 2014 AGM.

66.2 Despite clauses 27 and 33.1:

(a) In 2012-2013:

- (i) the Board has 8 elected Board members; and
  - (ii) the Board may only co-opt up to 1 Board member.
- (b) in 2013-2014:
- (i) the Board has 7 elected Board members; and
  - (ii) the Board may only co-opt up to 2 Board members.

66.3 This clause and the references to it in the table of contents in clause 1 and the index in clause 67 are deleted at the end of the 2014 AGM.

## PART 9 – INDEX

### 67. Index

Accounts .....	cl.54.2 .....	p.28
“the Act” .....	cl.65.1(a) .....	p.32
Amendment of Constitution .....	cl.62 .....	p.30
Annual General Meeting .....	cl.18 .....	p.11
“the association” .....	cl.65.1(c) .....	p.33
the Association		
Definition .....	cl.65.1(c) .....	p.33
Distribution of Profit, etc .....	cl.5.1 .....	p.5
" .....	cl.63.2 .....	p.31
Legal Capacity .....	cl.4.1(a) .....	p.5
Name .....	cl.2 .....	p.5
" .....	cl.59.3 .....	p.29
Not For Profit .....	cl.5 .....	p.5
Powers .....	cl.4 .....	p.5
Purpose .....	cl.3 .....	p.5
Associations Incorporation Act		
Definition .....	cl.65.1(a) .....	p.32
Section 12A .....	cl.2.2 .....	p.5
" .....	cl.59.3 .....	p.29
Section 13A .....	cl.61.2 .....	p.30
Section 14A .....	cl.13.5 .....	p.8
Section 14B .....	cl.17.9 .....	p.10
Section 15 .....	cl.13.6 .....	p.8
Section 22 .....	cl.62 .....	p.30
Section 28 .....	cl.60.3 .....	p.30
Section 29 .....	cl.65.1(j) .....	p.33
Section 29A .....	cl.38.1 .....	p.21
Sections 29B & 29C .....	cl.49 .....	p.26
Section 30 .....	cl.18.2(c) .....	p.11
Section 30A .....	cl.54.2 .....	p.28
Section 30B .....	cl.56 .....	p.28
Section 33 .....	cl.63.1 .....	p.30
Section 42 .....	cl.60.4 .....	p.30
Section 54 .....	cl.65.5 .....	p.34
<i>see also</i> Legal		
Audit .....	cl.56 .....	p.28

Audit Committee .....	cl.42 .....	p.23
Ballot for Board Elections .....	cl.32 .....	p.18
The Board		
Audit Committee .....	cl.42 .....	p.23
Committees .....	cl.43 .....	p.24
Disclosure of Interest .....	cl.49 .....	p.26
Duties .....	cl.38 .....	p.21
Elections .....	cl.29 .....	p.16
Co-option .....	cl.33 .....	p.19
Ballot .....	cl.32 .....	p.18
Nominations .....	cl.31 .....	p.17
Returning Officer .....	cl.30 .....	p.17
Eligibility .....	cl.28 .....	p.16
Indemnity .....	cl.40 .....	p.22
Membership .....	cl.27 .....	p.16
Office-Bearers .....	cl.41 .....	p.23
Payments to Board Members .....	cl.39 .....	p.22
Public Statements .....	cl.37 .....	p.21
Regulations .....	cl.36 .....	p.21
Responsibilities and Powers .....	cl.35 .....	p.20
Term of Office .....	cl.34 .....	p.19
Board Meetings		
Chairing .....	cl.47 .....	p.25
Convening .....	cl.44 .....	p.25
Board Meetings <i>contd</i>		
Disclosure of Interest .....	cl.49 .....	p.26
Minutes .....	cl.58 .....	p.29
Notice .....	cl.45 .....	p.25
Proxies .....	cl.48.2 .....	p.26
Quorum .....	cl.46 .....	p.25
Resolutions without Meeting .....	cl.50 .....	p.27
Voting .....	cl.48 .....	p.26
<i>see also</i> General Meetings		
“business day” .....	cl.65.1(d) .....	p.33
Categories of Membership .....	cl.7 .....	p.6
“CEO” .....	cl.65.1(e) .....	p.33
<i>see also</i> Chief Executive Officer		
Cessation of Membership .....	cl.16 .....	p.9

Chairing		of Association .....	cl.6.....	p.6
of Board Meetings .....	cl.47 .....			p.25
of General Meetings .....	cl.24 .....			p.14
Cheques		<i>see</i>	Payments	
Chief Executive Officer.....	cl.51 .....			p.28
"	cl.35.2 .....			p.20
"	cl.11 .....			p.7
"	cl.34.5 .....			p.20
"	cl.37.1 .....			p.21
"	cl.41.6 .....			p.23
"	cl.44.1 .....			p.25
"	cl.58 .....			p.29
"	cl.60.1 .....			p.30
"	cl.64.3 .....			p.32
Committees .....	cl.43 .....			p.24
Common Seal .....	cl.59 .....			p.29
Contents of Constitution .....	cl.1 .....			p.3
“convene” .....	cl.65.1(f).....			p.33
Convening		of Annual General Meeting.....	cl.18.1 .....	p.11
of Board Meetings .....	cl.44 .....			p.25
of Special General Meetings .....	cl.19 .....			p.12
Definitions		“the Act” .....	cl.65.1(a) .....	p.32
“the association” .....	cl.65.1(c) .....			p.33
“business day” .....	cl.65.1(d) .....			p.33
“CEO” .....	cl.65.1(e) .....			p.33
“convene” .....	cl.65.1(f).....			p.33
“entity” .....	cl.65.1(g) .....			p.33
“the Registrar” .....	cl.65.1(h) .....			p.33
“regulations”, “regulation” .....	cl.65.1(i).....			p.33
“special resolution” .....	cl.65.1(j).....			p.33
Disciplining of Members.....	cl.14 .....			p.8
Disclosure of Interest.....	cl.49 .....			p.26
Distribution of Profit, etc.....	cl.5.1 .....			p.5
"	cl.63.2 .....			p.31
Duties of Board Members.....	cl.38 .....			p.21
Election of Board Members .....	cl.29 .....			p.16
Eligibility for Membership		of Association .....	cl.6.....	p.6
		of Board .....	cl.28.....	p.16
		“entity” .....	cl.65.1(g).....	p.33
		Expulsion of Members of Association .....	cl.14	p.8
		Family Membership .....	cl.9.....	p.6
		Financial		
		Accounts .....	cl.54.2.....	p.28
		Audit.....	cl.56.....	p.28
		Audit Committee.....	cl.42.....	p.23
		Chief Executive Officer .....	cl.51.....	p.28
		Distribution of Profit, etc.....	cl.5.1.....	p.5
		"	cl.63.2.....	p.31
		Financial Year.....	cl.53.....	p.28
		Management of Funds .....	cl.54.....	p.28
		Payments.....	cl.55.....	p.28
		to Board Members .....	cl.39.....	p.22
		to Members of Association .....	cl.5.....	p.5
		Financial <i>contd</i>		
		Records .....	cl.57.....	p.29
		Sources of Funds .....	cl.52.....	p.28
		Financial Year .....	cl.53.....	p.28
		General Meetings		
		Annual General Meeting .....	cl.18.....	p.11
		Chairing.....	cl.24.....	p.14
		Minutes.....	cl.58.....	p.29
		Notice.....	cl.20.....	p.12
		Participation.....	cl.25.....	p.14
		Poll.....	cl.26.5, 26.6 .....	p.15
		Proxies .....	cl.21.....	p.13
		"	cl.26.3.....	p.14
		Quorum.....	cl.23.....	p.13
		Special General Meetings.....	cl.19.....	p.12
		Technology, Use of .....	cl.22.....	p.13
		Voting .....	cl.26.....	p.14
		Grievance Procedure .....	cl.17.....	p.9
		Indemnity.....	cl.40.....	p.22
		Index .....	cl.67.....	p.36
		Individual Membership.....	cl.8.....	p.6

Interpretation ..... cl.65 ..... p.32

Legal

Amendment of Constitution ..... cl.62 ..... p.30

Common Seal..... cl.59 ..... p.29

Interpretation..... cl.64.1 ..... p.32

Minutes..... cl.58 ..... p.29

Notices ..... cl.64 ..... p.32

Public Officer..... cl.60 ..... p.30

Records ..... cl.57 ..... p.29

Registered Address ..... cl.61 ..... p.30

Winding Up ..... cl.63 ..... p.30

*see also* the Association, Associations Incorporation Act, “special resolution”

Legal Capacity of Association ..... cl.4.1(a)..... p.5

Liability of Members..... cl.13.6 ..... p.8

Life Membership..... cl.10 ..... p.7

Management of Funds..... cl.54 ..... p.28

Membership of Association

Categories..... cl.7 ..... p.6

Cessation ..... cl.16 ..... p.9

Discipline..... cl.14 ..... p.8

Eligibility..... cl.6 ..... p.6

Expulsion..... cl.14 ..... p.8

Family Membership..... cl.9 ..... p.6

Grievance Procedure ..... cl.17 ..... p.9

Individual Membership..... cl.8 ..... p.6

Life Membership ..... cl.10 ..... p.7

Payments to Members ..... cl.5 ..... p.5

Register of Members ..... cl.11 ..... p.7

Resignation..... cl.15 ..... p.9

Rights, Obligations & Liability..... cl.13 ..... p.8

Subscriptions..... cl.12 ..... p.7

Suspension..... cl.14 ..... p.8

Membership of Board ..... cl.27 ..... p.16

Minutes of Meetings ..... cl.58 ..... p.29

Name of Association ..... cl.2 ..... p.5

    " ..... cl.59.3 ..... p.29

Nominations for Board Elections..... cl.31 ..... p.17

Not For Profit Association..... cl.5 ..... p.5

Notice

    of Board Meetings ..... cl.45 ..... p.25

    of General Meetings..... cl.20 ..... p.12

Notices..... cl.64 ..... p.32

Obligations of Members ..... cl.13.4 ..... p.8

Office-Bearers ..... cl.41 ..... p.23

*see also* President, Vice-President

Participation in General Meetings .. cl.25 ..... p.14

Payments ..... cl.55 ..... p.28

    to Board Members..... cl.39 ..... p.22

    to Members of Association..... cl.5 ..... p.5

Poll at General Meetings..... cl.26.5, 26.6 . p.15

Powers

    of Association ..... cl.4 ..... p.5

    of Board ..... cl.35.3, 35.4 . p.20

President..... cl.41.1(a)..... p.23

    " ..... cl.24.1 ..... p.14

    " ..... cl.37.1 ..... p.21

    " ..... cl.44.1 ..... p.25

    " ..... cl.47.1 ..... p.25

Proxies

    at Board Meetings..... cl.48.2 ..... p.26

    at General Meetings ..... cl.21, ..... p.13

        “ ..... cl.26.3 ..... p.14

Public Officer ..... cl.60 ..... p.30

    " ..... cl.18.4 ..... p.12

    " ..... cl.62.3 ..... p.30

Public Statements ..... cl.37 ..... p.21

Purpose of Association..... cl.3 ..... p.5

Quorum

    for Board Meetings ..... cl.46 ..... p.25

    for General Meetings ..... cl.23 ..... p.13

Records..... cl.57 ..... p.29

Register of Members..... cl.11 ..... p.7

Registered Address..... cl.61 ..... p.30

“the Registrar” ..... cl.65.1(h) ..... p.33

“regulations”, “regulation” ..... cl.65.1(i) ..... p.33

Regulations of Association ..... cl.36 ..... p.21

    " ..... cl.7(d)..... p.6

"	..... cl.12.1	..... p.7	at General Meetings	..... cl.26	..... p.14
"	..... cl.21.3(a)	..... p.13	Winding Up	..... cl.63	..... p.30
"	..... cl.31.3	..... p.17	Transitional	..... cl.66	..... p.34
"	..... cl.31.6	..... p.18			
"	..... cl.32.3	..... p.18			
"	..... cl.35.2	..... p.20			
"	..... cl.37.1	..... p.21			
"	..... cl.41.2	..... p.23			
"	..... cl.43.1	..... p.24			
"	..... cl.54.3	..... p.28			
"	..... cl.55.1	..... p.28			
"	..... cl.59.5	..... p.29			
<b>Removal</b>					
of Board Members	..... cl.34.6	..... p.20			
of Members of Association	..... cl.14	..... p.8			
of Office-Bearers	..... cl.41.8	..... p.23			
<b>Resignation</b>					
of Board Members	..... cl.34.5	..... p.20			
of Members of Association	..... cl.15	..... p.9			
of Office-Bearers	..... cl.41.6	..... p.23			
Resolutions without Meeting	..... cl.50	..... p.27			
Responsibilities of Board	..... cl.35.1	..... p.20			
Returning Officer for Elections	..... cl.30	..... p.17			
Rights of Members	..... cl.13.1, 13.3	p.8			
Sources of Funds	..... cl.52	..... p.28			
Special General Meetings	..... cl.19	..... p.12			
“special resolution”	..... cl.65.1(j)	..... p.33			
Amendment of Constitution	..... cl.62	..... p.30			
Winding Up	..... cl.63	..... p.30			
Statement of Purposes	..... cl.2–5	..... p.5			
"	..... cl.65.2	..... p.34			
Subscriptions	..... cl.12	..... p.7			
Suspension of Members	..... cl.12.4	..... p.8			
"	..... cl.14	..... p.8			
Vice-President	..... cl.41.1(b)	..... p.23			
"	..... cl.24.2	..... p.14			
"	..... cl.47.2	..... p.25			
<b>Voting</b>					
at Board Meetings	..... cl.48	..... p.26			