

Bicycle Network Incorporated

Constitution
October 2021



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Bicycle Network Incorporated Constitution

October 2021

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.
- At the Annual General Meeting of 15 October 2013, members voted to amend the constitution to comply with the new Associations Incorporation Reform Act 2012.
- At the Annual General Meeting of 29 October 2014, members passed a name change and amended clause 31.5.
- At the Annual General Meeting of 30 October 2019, members passed amendments to clause 13 and 27.
- At the Annual General Meeting of 20 October 2021, members passed amendments to clause 13.3 and 33.2(a).

The Bicycle Network 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:
www.bicyclenetwork.com.au or log onto our website and search ‘constitution’.

Bicycle Network Incorporated

CONSTITUTION

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PART 2 – NAME AND PURPOSES

2. Name

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

2.2 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 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 of an incorporated body, and

- (b) power to do anything incidental or conducive to the attainment of its purpose.

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) For current members:
 - (i) Name,
 - (ii) Address last given by the member,
 - (iii) Date of birth
 - (iv) Category of membership,
 - (v) Date of becoming a member, and
 - (vi) Date the subscription was last paid, and

(b) For former members:

- (i) Name, and
- (ii) 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 are entitled to vote, subject to clauses 7(d), 12.4, 13.2, 13.3 and 14.1.

13.2 Members under 18 are not entitled to vote.

13.3 Members who have not been members for a continuous period of at least the last 9 months are not entitled to vote.

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

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

13.6 Under section 46 and 67 of the Act this constitution is an enforceable contract

between the association and each member.

13.7 Under section 52(1) 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 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.

14.4 The members of 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.

14.5 Clauses 14.1 and 14.2 apply to the disciplinary committee in the same way as the Board.

14.6 The disciplinary procedure under this clause must be completed as soon as is reasonably practicable.

14.7 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 register of members must be amended in accordance with clause 11.1(b).

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 55(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 At the annual general meeting the Board must submit to members:

- (a) The financial statements for the last financial year prepared in accordance with clause 57, and
- (b) the accompanying audit report in accordance with clause 58.

18.3 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.

18.4 The annual general meeting may only consider other business of which notice

has been given in accordance with clause 20.2(c).

18.5 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.

18.6 The secretary must lodge with the registrar:

- (a) An annual statement in the form approved by the Registrar,
- (b) The financial statements and accompanying 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.

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

27.1 The Board has:

- (a) 6 elected Board members – 2 elected each year under clause 29, with staggered 3 year terms; and
- (b) up to 4 co-opted Board members – appointed under clause 33.

27.2 At all times at least 40% of Board members must be women.

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 Two Board members must be elected each year for a 3 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 38.4;

- (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 Nominations may be made by emailing the nomination to the email address given by the returning officer so that it is received by the returning officer by the close of nominations.

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 4 individuals as Board members.

33.2 Co-opted Board members must:

- (a) be 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 passed by a simple majority:

- (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) become insolvent under administration as defined in section 38 of the Victorian Interpretation of *Legislation Act 1984*;
- (c) become a represented person under the Victorian *Guardianship and Administration Act 1986*;
- (d) fail to attend 3 consecutive Board meetings without leave of absence from the Board; or

(e) 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 83 of the Act, Board members and former Board members must not make improper use of:
- (a) their position, or
 - (b) information acquired by virtue of their position,
- so as:
- (c) to gain an advantage for themselves or any other person; or
 - (d) to cause detriment to the association.
- 38.2 Under section 84 of the Act, Board members must exercise their powers

and discharge their duties with reasonable care and diligence.

38.3 Under section 85 of the Act, Board members must exercise their powers and discharge their duties:

- (a) In good faith in the best interest of the association; and
- (b) For a proper purpose.

38.4 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

Under section 87 of the Act, the association indemnifies Board members and the secretary against any liability incurred in good faith by them in the course of performing their duties.

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. Use of technology

46.1 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 clearly and simultaneously communicate with every other such Board member.

46.2 Without limiting clauses 45.4(a) and Board meetings may be convened and held by telephone.

47. Quorum

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

48. Chairing

48.1 The President is entitled to chair Board meetings.

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

48.3 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.

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

49. Voting

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

49.2 Board members may only vote in person, and not by proxy.

49.3 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.

50. Conflict of Interest

50.1 Under sections 80 and 81 of the Act, 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.

50.2 Clause 50.1 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.

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 clause 51.1 does not apply to material personal interest 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.

PART 8 – FINANCIAL AND LEGAL

52. Chief Executive Officer

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

52.2 The CEO 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, events, sales, grants, donations, 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.

55. Management of Funds

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

55.2 Under section 89(1) of the Act, 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 57.

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

56. Payments

56.1 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.

56.2 The Board may nominate a list of individuals or positions to be

signatories for the purpose of clause

56.1.

57. Financial Statements

57.1 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 the Australian Accounting Standards.

57.2 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.

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

57.4 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.

57.5 The Board must submit the financial statements (including the attached certificate) to the annual general meeting under clause 18.2(a).

58. Audit

58.1 The Board must have:

- (a) Have the financial statements audited in accordance with section 99 of the Act; and
- (b) Submit the audit report to the annual general meeting under clause 18.2(b).

58.2 Clause 58.1 applies whether the association is required to be audited under section 99 of the Act or not.

58.3 An Auditor may only be removed by a general meeting in accordance with the procedure set out in sections 106 and 107 of the Act.

59. Minutes

59.1 The Chief Executive Officer must ensure that minutes are taken and kept of all general meetings and Board

meetings (including resolutions without meeting).

59.2 The minutes of annual general meetings must include a copy of the financial statements and accompanying audit report submitted at the meeting in accordance with clause 18.2.

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

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 Under section 89(2) of the Act, the association must keep its financial records for at least 7 years after the

transactions covered by the records are completed.

60.3 Under section 105(1) of the Act, the association must keep the financial statements submitted to the annual general meeting for at least 7 years after the annual general meeting.

60.4 Under section 105(2) of the Act, the association must keep the certificate referred to in clause 18.5 for at least 7 years after the certificate was signed.

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

60.6 Under section 88 of the Act, a person who is no longer entitled to custody of records of the association must return them to the Board within 28 days.

61. Access to Records

61.1 A member 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 57.2(e)

(d) Subject to clause 61.2, the other records of the association, including the minutes of Board meetings at any reasonable time.

61.2 Subject 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.

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

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

- (a) The register of members (subject to clause 61.5), and
- (b) The minutes of general meetings, available to members without charge.

61.5 A member may request that access to their personal information in the register of members be restricted in accordance with

section 59 of the Act, if there are special circumstances that justify doing so.

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

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 purpose of the association; and
- (b) Authorised by the Board.

63. Common Seal

63.1 Under section 29(2)(b) of the Act the association may have a common seal.

63.2 Clauses 59.3-59.7 only apply if the association has a common seal.

63.3 Under section 23(1)(a) of the Act the name of the association must appear

in legible characters on the common seal.

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

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

63.6 The Board may nominate a list of individuals or positions to be signatories for the purposes of clause 59.5

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

64. Secretary

64.1 The CEO is the secretary of the association for the purposes of the Act, subject to clause 64.2.

64.2 The effect of section 73 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.

64.3 Under section 74 of the Act the Secretary must notify the Registrar within 14 days of appointment.

64.4 Under section 215 of the Act, 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.

64.5 The secretary may resign by writing to the Board.

64.6 The secretary ceases to be the secretary if they:

- (a) Die
- (b) Become insolvent under the administration as defined in section 38 of the *Victorian*

Interpretation of Legislation Act 1984.

(c) Become a represented person under the *Victorian Guardianship and Administration Act 1986.*

(d) Cease to reside in Australia

64.7 The A general meeting may by resolution passed by a simple majority:

- (a) Remove the secretary; and
- (b) Fill the resulting vacancy.

65. Registered Address

65.1 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.

65.2 Under section 28(3) of the Act the association must notify the Registrar within 14 days of any change of registered address.

66. Amendment of Constitution

66.1 Under section 50(1) of the Act this constitution may only be amended by special resolution.

66.2 Under section 50(2) of the Act an amendment to this constitution does not take effect until it has been approved by the Registrar.

66.3 Under section 50(3) of the Act the secretary must apply to the Registrar for approval of the amendment within 28 days after the special resolution was passed.

67. Winding Up

67.1 The association may be wound up voluntarily by special resolution in accordance with section 125 of the Act.

67.2 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.

67.3 Subject to clauses 67.4 and 67.5 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.

67.4 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.

67.5 Under section 123(3) of the Act, the remaining 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.

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

68. Notices

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

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

68.3 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).

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

68.5 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.

68.6 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.

68.7 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.

68.8 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.

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

69. Interpretation

69.1 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 2.1;
- (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 52.1, 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 64 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.

69.2 The provisions of this constitution are the rules of the association for the purposes of the Act.

69.3 The headings form part of this constitution.

69.4 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.

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

69.6 This constitution is intended to make provision for all matters required by Schedule 1 to the Act, with the intention that none of the model rules prescribed under section 49 of the Act apply to the association under section 48(3) of the Act.

70. Transitional

70.1 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.

70.2 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.

70.3 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.

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