



Helping Illawarra & South Coast children who are sick, disadvantaged or have a disability



# CONSTITUTION OF THE KIDZWISH FOUNDATION INC

as at 1 March 2021

Australian Business Number (ABN) 33 580 801 245

An incorporated association under the *Associations Incorporations Act 2009* (NSW)

Charity begins at home



P 1300 260 990 | F (02) 4295 7502 | W [kidzwish.org.au](http://kidzwish.org.au) | A 1 Hinchinbrook Drive Shell Cove NSW 2529

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**Table of contents**

- Preliminary ..... 5
  - 1. Name of the association ..... 5
  - 2. Type of association ..... 5
  - 3. Liability of members ..... 5
  - 4. Fees and Subscriptions ..... 5
  - 5. Definitions ..... 5
- Charitable purposes and powers ..... 5
  - 6. Object ..... 5
  - 7. Powers ..... 6
  - 8. Not-for-profit ..... 6
  - 9. Amending the constitution ..... 6
- Members ..... 6
  - 10. Membership and register of members ..... 6
  - 11. Who can be a member ..... 7
  - 12. How to apply to become a member ..... 7
  - 13. Committee decide whether to approve membership ..... 7
  - 14. When a person becomes a member ..... 8
  - 15. When a person stops being a member ..... 8
- Dispute resolution and disciplinary procedures ..... 8
  - 16. Dispute resolution ..... 8
  - 17. Disciplining members ..... 9
- General meetings of members ..... 10
  - 18. General meetings called by committee ..... 10
  - 19. General meetings called by members ..... 10
  - 20. Annual general meeting ..... 11
  - 21. Notice of general meetings ..... 11
  - 22. Quorum at general meetings ..... 12
  - 23. Auditor’s right to attend meetings ..... 12
  - 24. Representatives of members ..... 12
  - 25. Using technology to hold meetings ..... 13
  - 26. Chairperson for general meetings ..... 13
  - 27. Role of the chairperson ..... 13
  - 28. Adjournment of meetings ..... 13
- Members’ resolutions and statements ..... 14
  - 29. Members’ resolutions and statements ..... 14

30.	Association must give notice of proposed resolution or distribute statement .....	14
31.	Circular resolutions of members .....	15
Voting at general meetings .....		15
32.	How many votes a member has .....	15
33.	Challenge to member's right to vote .....	15
34.	How voting is carried out .....	15
35.	When and how a vote in writing must be held.....	16
36.	Appointment of proxy .....	16
37.	Voting by proxy .....	17
Committee members .....		17
38.	Composition and membership of committee.....	17
39.	Election and appointment of committee members .....	18
40.	Election of chairperson.....	18
41.	Term of office .....	18
42.	When a committee member stops being a committee member .....	19
Powers of committee members .....		19
43.	Powers of committee members .....	19
44.	Delegation of committee members' powers .....	20
45.	Payments to committee members .....	20
46.	Execution of documents .....	20
Duties of committee members .....		20
47.	Duties of committee members.....	20
48.	Conflicts of interest.....	21
Committee meetings .....		21
49.	When the committee meet.....	21
50.	Calling committee meetings .....	21
51.	Chairperson for committee meetings.....	22
52.	Quorum at committee meetings .....	22
53.	Using technology to hold committee meetings.....	22
54.	Passing committee members' resolutions .....	22
55.	Circular resolutions of committee members.....	22
Secretary and Treasurer.....		23
56.	Appointment and role of secretary.....	23
57.	Appointment and role of Treasurer .....	23
Minutes and records.....		23
58.	Minutes and records.....	23

59.	Financial and related records .....	24
	By-laws .....	24
60.	By-laws .....	24
	Notice.....	24
61.	What is notice.....	24
62.	Notice to the association .....	24
63.	Notice to members .....	25
64.	When notice is taken to be given.....	25
	Financial year.....	25
65.	Association’s financial year .....	25
	Indemnity, insurance and access .....	25
66.	Indemnity .....	25
67.	Insurance .....	26
68.	Committee members’ access to documents .....	26
	Winding up .....	26
69.	Distribution of surplus assets to another entity .....	26
	Definitions and interpretation .....	27
70.	Definitions .....	27
71.	Reading this constitution with the Associations Incorporation Act and ACNC Act..	27
72.	Interpretation .....	28

## Preliminary

### 1. Name of the association

The name of the association is The KidzWish Foundation Inc (the **association**).

### 2. Type of association

The association is a not-for-profit incorporated association which is established to be, and to continue as, a charity.

### 3. Liability of members

The liability of members is limited to the amount payable in clause 4.

### 4. Fees and Subscriptions

4.1 A member of the association must, on admission to membership, pay to the association a fee of \$1.00 or, if some other amount is determined by the committee, that other amount.

4.2 In addition to any amount payable by the member under clause 4.1, a member of the association must pay to the association an annual membership fee as determined by the committee, that other amount:

- (a) except as provided by clause 4.2(b), before the first day of the financial year of the association in each calendar year, or
- (b) if the member becomes a member on or after the first day of the financial year of the association in any calendar year—on becoming a member and before the first day of the financial year of the association in each succeeding calendar year.

### 5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 70 and 72.

## Charitable purposes and powers

### 6. Object

The objects and dominant purpose of the association are to promote and further the interests of sick, disabled and disadvantaged children in regional Australia, as follows:

- (a) to provide benevolent assistance by relieving poverty, suffering, sickness and misfortune to sick, disabled, disadvantaged and underprivileged children and give support to the immediate family of those in extreme circumstances in a compassionate manner and without reference to race, colour, creed or any other distinction;
- (b) to hold or arrange competitions and provide or contribute towards the provisions of prizes, awards and distinctions in connection with competitions, provided that no member of The KidzWish Foundation may receive any prize, award or distinction;
- (c) hold or arrange functions including a Christmas Party and Charity Bail and other events to assist in the achievement of the objects of the association;

- (d) to provide pleasurable and rewarding experiences to sick, disabled and disadvantaged children;
- (e) to provide speech therapy, occupational therapy and physiotherapy to sick, disabled and disadvantaged children;
- (f) to use the strength of the 'KidzWish Foundation' brand and its contacts to advocate change up to government level to improve the rights and lives of sick, disabled and disadvantaged children;
- (g) acquire by purchase, lease, hire, gift or otherwise any real or personal property or any interest therein for the purpose of achieving these objects;
- (h) raise funds by any legal and appropriate means for the purpose of achieving these objects;
- (i) exercise all the powers of a natural person and do all such lawful things as incidental or conducive to the attainment of these objects or any of them; and
- (j) to provide essential support to the immediate family of sick, disabled and disadvantaged children where there is a benefit to the child/children.

None of the objects will be construed so as to limit or be limited by any other object.

## **7. Powers**

Subject to clause 8, the association has the following powers, which may only be used to carry out its purposes set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of an association limited by guarantee under the Associations Incorporation Act.

## **8. Not-for-profit**

8.1 The association must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 69.

8.2 Clause 8.1 does not stop the association from doing the following things, provided they are done in good faith:

- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the association; or
- (b) making a payment to a member in carrying out the association's charitable purposes.

## **9. Amending the constitution**

9.1 Subject to clause 9.2, the members may amend this constitution by passing a special resolution.

9.2 The members must not pass a special resolution that amends this constitution if passing it causes the association to no longer be a charity.

## **Members**

### **10. Membership and register of members**

10.1 The members of the association are:

- (a) initial members; and
  - (b) any other person that the committee members allow to be a member, in accordance with this constitution.
- 10.2 The association must establish and maintain a register of members in New South Wales at the main premises or official address of the association. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the member for the service of notices;
    - (iv) email address; and
    - (v) date the member was entered on to the register.
  - (b) for each person who stopped being a member in the last 7 years:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the member for the service of notices;
    - (iv) email address; and
    - (v) dates the membership started and ended.
- 10.3 The association must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

## **11. Who can be a member**

- 11.1 A person who supports the purposes of the association is eligible to apply to be a member of the association under clause 12.
- 11.2 In this clause 11, 'person' means an individual or incorporated body.

## **12. How to apply to become a member**

A person (as defined in clause 11.2) may apply to become a member of the association by lodging with the secretary an application in the form determined by the committee.

## **13. Committee decide whether to approve membership**

- 13.1 The committee must consider an application for membership within a reasonable time after the secretary receives the application.
- 13.2 If the committee approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).

- 13.3 If the committee reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 For the avoidance of doubt, the committee may approve an application even if the application does not state the matters listed in clause 12. In that case, by applying to be a member, the applicant agrees to those three matters.

#### **14. When a person becomes a member**

Other than initial members, an applicant will become a member when they are entered on the register of members.

#### **15. When a person stops being a member**

A person immediately stops being a member if they:

- (a) die;
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member);
- (c) resign, by writing to the secretary;
- (d) are expelled under clause 17; or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

### **Dispute resolution and disciplinary procedures**

#### **16. Dispute resolution**

- 16.1 The dispute resolution procedure in this clause 16 applies to disputes (**disagreements**) under this constitution between a member or committee member and:
- (a) one or more members;
  - (b) one or more committee; or
  - (c) the association.
- 16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days:
- (a) tell the committee about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:



- (i) for disputes between members, a person chosen by the committee; or
  - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the association has its registered office.
- 16.6 A mediator chosen by the committee under clause 16.5(b)(i):
- (a) may be a member or former member of the association;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and
  - (d) not make a decision on the dispute.
- 17. Disciplining members**
- 17.1 In accordance with this clause 17, the committee may resolve to warn, suspend or expel a member from the association if the committee consider that:
- (a) the member has breached this constitution; or
  - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the association.
- 17.2 At least 14 days before the committee meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
- (a) that the committee is considering a resolution to warn, suspend or expel the member;
  - (b) that this resolution will be considered at a 'committee meeting and the date of that meeting;
  - (c) what the member is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and
  - (e) that the member may provide an explanation to the committee, and details of how to do so.
- 17.3 Before the committee pass any resolution under clause 17.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the committee a written explanation before that 'committee meeting; and/or
  - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the committee may:
- (a) take no further action;
  - (b) warn the member;

- (c) suspend the member's rights as a member for a period of no more than 12 months;
  - (d) expel the member;
  - (e) refer the decision to an unbiased, independent person on conditions that the committee consider appropriate (however, the person can only make a decision that the committee could have made under this clause 17.4); or
  - (f) require the matter to be determined at a general meeting.
- 17.5 The committee cannot fine a member.
- 17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause 17.

## General meetings of members

### 18. General meetings called by committee

- 18.1 The committee may call a general meeting.
- 18.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the association for a general meeting to be held, the committee must:
- (a) within 21 days of the members' request, give all members notice of a general meeting; and
  - (b) hold the general meeting within 2 months of the members' request.
- 18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the association.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 19. General meetings called by members

- 19.1 If the committee does not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 19.2 To call and hold a meeting under clause 19.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution;
  - (b) call the meeting using the list of members on the association's member register, which the association must provide to the members making the request at no cost; and

- (c) hold the general meeting within three months after the request was given to the association.
- 19.3 The association must pay the members who request the general meeting any reasonable expenses they incur because the committee did not call and hold the meeting.
- 20. Annual general meeting**
- 20.1 A general meeting, called the annual general meeting, must be held:
  - (a) within 18 months after registration of the association, and
  - (b) after the first annual general meeting, at least once in every calendar year.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
  - (a) a review of the association's activities;
  - (b) a review of the association's finances;
  - (c) any auditor's report
  - (d) the election of committee members; and
  - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the annual general meeting, the committee must give information to the members on the association's activities and finances during the period since the last annual general meeting.
- 20.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the association.

## **21. Notice of general meetings**

- 21.1 Notice of a general meeting must be given to:
  - (a) each member entitled to vote at the meeting
  - (b) each committee member, and
  - (c) the auditor (if any).
- 21.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
  - (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
  - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - (a) remove a committee member;
  - (b) appoint a committee member in order to replace a committee member who was removed; or

- (c) remove an auditor.
- 21.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) the general nature of the meeting's business;
  - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - (i) the proxy does not need to be a member of the association;
    - (ii) the proxy form must be delivered to the association at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
    - (iii) the proxy form must be delivered to the association at least 48 hours before the meeting.
- 21.6 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## **22. Quorum at general meetings**

- 22.1 For a general meeting to be held, at least 3 members (a **quorum**) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 22.2 No business may be conducted at a general meeting if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
  - (b) if the time is not specified – the same time; and
  - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **23. Auditor's right to attend meetings**

- 23.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 23.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

## **24. Representatives of members**

- 24.1 An incorporated member may appoint as a representative:

- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 31; and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a committee member.
- 24.2 The appointment of a representative by a member must:
- (a) be in writing;
  - (b) include the name of the representative;
  - (c) be signed on behalf of the member; and
  - (d) be given to the association or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 24.4 The appointment may be standing (ongoing).

## **25. Using technology to hold meetings**

- 25.1 The association may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

## **26. Chairperson for general meetings**

- 26.1 The president, or in the president's absence, the vice-president, is entitled to chair general meetings.
- 26.2 The members present and entitled to vote at a general meeting may choose a committee member or member to be the chairperson for that meeting if:
- (a) there is no president or vice president;
  - (b) the president or vice president is not present within 30 minutes after the starting time set for the meeting; or
  - (c) the president and/or vice president is present but says they do not wish to act as chairperson of the meeting.

## **27. Role of the chairperson**

- 27.1 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 27.2 The chairperson does not have a casting vote.

## **28. Adjournment of meetings**

- 28.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

### **29. Members' resolutions and statements**

- 29.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the association of a resolution they propose to move at a general meeting (members' resolution); and/or
  - (b) a written request to the association that the association give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 29.5 The percentage of votes that members have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the association.
- 29.6 If the association has been given notice of a members' resolution under clause 29.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 29.7 This clause 29 does not limit any other right that a member has to propose a resolution at a general meeting.

### **30. Association must give notice of proposed resolution or distribute statement**

- 30.1 If the association has been given a notice or request under clause 29:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the association's cost; or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the association in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the association will pay these expenses.
- 30.2 The association does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1,000 words long;
  - (b) the committee consider it may be defamatory;
  - (c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the association enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or

- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

### **31. Circular resolutions of members**

- 31.1 Subject to clause 31.3, the committee may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 31.3 Circular resolutions cannot be used:
  - (a) for a resolution to remove an auditor, appoint a committee member or remove a committee member;
  - (b) for passing a special resolution; or
  - (c) where the Associations Incorporation Act or this constitution requires a meeting to be held.
- 31.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.
- 31.5 Members may sign:
  - (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 The association may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **Voting at general meetings**

### **32. How many votes a member has**

Each member has one vote.

### **33. Challenge to member's right to vote**

- 33.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### **34. How voting is carried out**

- 34.1 Voting must be conducted and decided by:
  - (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

- 34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **35. When and how a vote in writing must be held**

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five members present;
  - (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
  - (c) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
- (a) for the election of a chairperson under clause 26.2; or
  - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

### **36. Appointment of proxy**

- 36.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 36.2 A proxy does not need to be a member.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
  - (b) the association's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meetings at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).



- 36.6 Proxy forms must be received by the association at the address stated in the notice under clause 21.5(d) or at the association's registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 36.8 Unless the association receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **37. Voting by proxy**

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 37.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Committee members**

### **38. Composition and membership of committee**

- 38.1 The committee is to consist of:
- (a) the office-bearers of the association, and
  - (b) at least 3 ordinary committee members,
- each of whom is to be elected at the annual general meeting of the association under clause 39.
- 38.2 The total number of committee members is to be at least three and no more than nine.
- 38.3 The office-bearers of the association are as follows:
- (a) the president;
  - (b) the vice-president;
  - (c) the treasurer; and
  - (d) the secretary.

38.4 A committee member may hold up to two offices (other than both the offices of president and vice-president).

### **39. Election and appointment of committee members**

39.1 Apart from the committee members appointed under clause 39.4, the members may elect a committee member by a resolution passed in a general meeting.

39.2 Each of the committee members must be appointed by a separate resolution, unless:

- (a) the members present have first passed a resolution that the appointments may be voted on together; and
- (b) no votes were cast against that resolution.

39.3 A person is eligible for election as a committee member of the association if they:

- (a) are a member of the association, or a representative of a member of the association (appointed under clause 24);
- (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a committee member at a general meeting and has been a committee member since that meeting);
- (c) give the association their signed consent to act as a committee member of the association; and
- (d) are not ineligible to be a committee member under the Associations Incorporation Act or the ACNC Act.

39.4 The committee members may appoint a person as a committee member to fill a casual vacancy or as an additional committee member if that person:

- (a) is a member of the association, or a representative of a member of the association (appointed under clause 24);
- (b) gives the association their signed consent to act as a committee member of the association; and
- (c) is not ineligible to be a committee member under the Associations Incorporation Act or the ACNC Act.

39.5 If the number of committee members is reduced to fewer than three or is less than the number required for a quorum, the continuing committee members may act for the purpose of increasing the number of committee members to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

### **40. Election of chairperson**

The committee members must elect a committee member as the association's elected chairperson.

### **41. Term of office**

41.1 At each annual general meeting:

- (a) any committee member appointed by the committee members to fill a casual vacancy or as an additional committee member must retire; and
- (b) at least one-third of the remaining committee members must retire.

41.2 The committee members who must retire at each annual general meeting under clause 41.1(b) will be the committee members who have been longest in office since

last being elected. Where committee members were elected on the same day, the committee members to retire will be decided by lot unless they agree otherwise.

- 41.3 Other than a committee member appointed under clause 39.4, a committee member's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 41.4 Each committee member must retire at least once every three years.
- 41.5 A committee member who retires under clause 41.1 may nominate for election or re-election, subject to clause 41.6.
- 41.6 A committee member who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution

## **42. When a committee member stops being a committee member**

A committee member stops being a committee member if they:

- (a) give written notice of resignation as a committee member to the association;
- (b) die;
- (c) are removed as a committee member by a resolution of the members;
- (d) stop being a member of the association;
- (e) are a representative of a member, and that member stops being a member;
- (f) are a representative of a member, and the member notifies the association that the representative is no longer a representative;
- (g) are absent for 3 consecutive committee meetings without approval from the committee; or
- (h) become ineligible to be a committee member of the association under the Associations Incorporation Act or the ACNC Act.

## **Powers of committee members**

### **43. Powers of committee members**

- 43.1 The committee members are responsible for managing and directing the activities of the association to achieve the purposes set out in clause 6.
- 43.2 The committee members may use all the powers of the association except for powers that, under the Act or this constitution, may only be used by members.
- 43.3 The committee members must decide on the responsible financial management of the association including:
  - (a) any suitable written delegations of power under clause 44, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 43.4 The committee members cannot remove a committee member or auditor. Committee members and auditors may only be removed by a members' resolution at a general meeting.

#### **44. Delegation of committee members' powers**

- 44.1 The committee members may delegate any of their powers and functions to a committee, a committee member, an employee of the association (such as a chief executive officer) or any other person, as they consider appropriate.
- 44.2 The delegation must be recorded in the association's minute book.

#### **45. Payments to committee members**

- 45.1 The association must not pay fees to a committee member for acting as a committee member.
- 45.2 The association may:
- (a) pay a committee member for work they do for the association, other than as a committee member, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a committee member for expenses properly incurred by the committee member in connection with the affairs of the association.
- 45.3 Any payment made under clause 45.2 must be approved by the committee members.
- 45.4 The association may pay premiums for insurance indemnifying committee members, as allowed for by law (including the Associations Incorporation Act) and this constitution.

#### **46. Execution of documents**

- 46.1 The association may execute a document without using a common seal if the document is signed by:
- (a) two committee members of the association; or
  - (b) a committee member and the secretary.

### **Duties of committee members**

#### **47. Duties of committee members**

The committee members must comply with their duties as committee members under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a committee member of the association;
- (b) to act in good faith in the best interests of the association and to further the charitable purposes of the association set out in clause 6;
- (c) not to misuse their position as a committee member;
- (d) not to misuse information they gain in their role as a committee member;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48;
- (f) to ensure that the financial affairs of the association are managed responsibly; and
- (g) not to allow the association to operate while it is insolvent.

## **48. Conflicts of interest**

- 48.1 A committee member must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of committee members (or that is proposed in a circular resolution):
- (a) to the other committee members; or
  - (b) if all of the committee members have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- 48.2 The disclosure of a conflict of interest by a committee member must be recorded in the minutes of the meeting.
- 48.3 Each committee member who has a material personal interest in a matter that is being considered at a meeting of committee members (or that is proposed in a circular resolution) must not, except as provided under clauses 48.4:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 48.4 A committee member may still be present and vote if:
- (a) their interest arises because they are a member of the association, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the committee member against liabilities that the committee member incurs as a committee member of the association (see clause 67);
  - (c) their interest relates to a payment by the association under clause 66 (indemnity), or any contract relating to an indemnity that is allowed under the Associations Incorporation Act; or
  - (d) the committee members who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the committee member, the nature and extent of the committee member's interest in the matter and how it relates to the affairs of the association; and
    - (ii) says that those committee members are satisfied that the interest should not stop the committee member from voting or being present.

## **Committee meetings**

### **49. When the committee meet**

The committee may decide how often, where and when they meet.

### **50. Calling committee meetings**

- 50.1 A committee member may call a committee meeting by giving reasonable notice to all of the other committee members.
- 50.2 A committee member may give notice in writing or by any other means of communication that has previously been agreed to by all of the committee members.

## **51. Chairperson for committee meetings**

- 51.1 The elected chairperson is entitled to chair committee meetings.
- 51.2 The committee members at a committee meeting may choose a committee member to be the chairperson for that meeting if the elected chairperson is:
- (a) not present within 30 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.

## **52. Quorum at committee meetings**

- 52.1 Unless the committee members determine otherwise, the quorum for a committee meeting is a majority (more than 50%) of committee members.
- 52.2 A quorum must be present for the whole committee meeting.

## **53. Using technology to hold committee meetings**

- 53.1 The committee members may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the committee members.
- 53.2 The committee members' agreement may be a standing (ongoing) one.
- 53.3 A committee member may only withdraw their consent within a reasonable period before the meeting.

## **54. Passing committee members' resolutions**

A committee members' resolution must be passed by a majority of the votes cast by committee members present and entitled to vote on the resolution.

## **55. Circular resolutions of committee members**

- 55.1 The committee members may pass a circular resolution without a committee meeting being held.
- 55.2 A circular resolution is passed if all the committee members entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.
- 55.3 Each committee member may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The association may send a circular resolution by email to the committee members and the committee members may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 55.5 A circular resolution is passed when the last committee member signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.

## Secretary and Treasurer

### 56. Appointment and role of secretary

- 56.1 The association must have at least one secretary, who may also be a committee member.
- 56.2 A secretary must be appointed by the committee (after giving the association their signed consent to act as secretary of the association) and may be removed by the committee.
- 56.3 The committee must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 56.4 The role of the secretary includes:
- (a) maintaining a register of the association's members; and
  - (b) maintaining the minutes and other records of general meetings (including notices of meetings), committee meetings and circular resolutions.

### 57. Appointment and role of Treasurer

- 57.1 The association must have at least one treasurer, who may also be a committee member.
- 57.2 A treasurer must be appointed by the committee (after giving the association their signed consent to act as treasurer of the association) and may be removed by the committee.
- 57.3 The committee must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 57.4 The role of the treasurer is to ensure:
- (a) that all money due to the association is collected and received and that all payments authorised by the association are made, and
  - (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

## Minutes and records

### 58. Minutes and records

- 58.1 The association must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
  - (b) minutes of circular resolutions of members;
  - (c) a copy of a notice of each general meeting; and
  - (d) a copy of a members' statement distributed to members under clause 30.
- 58.2 The association must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of committee meetings (including meetings of any committees); and
  - (b) minutes of circular resolutions of committee members.
- 58.3 To allow members to inspect the association's records:

- (a) the association must give a member access to the records set out in clause 58.1; and
  - (b) the committee members may authorise a member to inspect other records of the association, including records referred to in clause 58.2 and clause 59.1.
- 58.4 The committee members must ensure that minutes of a general meeting or a committee meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next meeting.
- 58.5 The committee members must ensure that minutes of the passing of a circular resolution (of members or committee members) are signed by a committee member within a reasonable time after the resolution is passed.

## **59. Financial and related records**

- 59.1 The association must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 59.2 The association must also keep written records that correctly record its operations.
- 59.3 The association must retain its records for at least 7 years.
- 59.4 The committee members must take reasonable steps to ensure that the association's records are kept safe.

## **By-laws**

### **60. By-laws**

- 60.1 The committee members may pass a resolution to make by-laws to give effect to this constitution.
- 60.2 Members and committee members must comply with by-laws as if they were part of this constitution.

## **Notice**

### **61. What is notice**

- 61.1 Anything written to or from the association under any clause in this constitution is written notice and is subject to clauses 62 to 64, unless specified otherwise.
- 61.2 Clauses 62 to 64 do not apply to a notice of proxy under clause 36.6.

### **62. Notice to the association**

Written notice or any communication under this constitution may be given to the association, the committee members or the secretary by:

- (a) delivering it to the association's registered office;
- (b) posting it to the association's registered office or to another address chosen by the association for notice to be provided;



- (c) sending it to an email address or other electronic address notified by the association to the members as the association's email address or other electronic address; or
- (d) sending it to the fax number notified by the association to the members as the association's fax number.

### **63. Notice to members**

63.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

63.2 If the association does not have an address for the member, the association is not required to give notice in person.

### **64. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 63.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## **Financial year**

### **65. Association's financial year**

65.1 The association's financial year is from 1 July to 30 June, unless the committee members pass a resolution to change the financial year.

## **Indemnity, insurance and access**

### **66. Indemnity**

66.1 The association indemnifies each officer of the association out of the assets of the association, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the association.

- 66.2 In this clause 66, 'officer' means a committee member or secretary and includes a committee member or secretary after they have ceased to hold that office.
- 66.3 In this clause 66, 'to the relevant extent' means:
- (a) to the extent that the association is not precluded by law (including the Associations Incorporation Act) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 66.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the association.

## **67. Insurance**

To the extent permitted by law (including the Associations Incorporation Act), and if the committee members consider it appropriate, the association may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the association against any liability incurred by the person as an officer of the association.

## **68. Committee members' access to documents**

- 68.1 A committee member has a right of access to the financial records of the association at all reasonable times.
- 68.2 If the committee members agree, the association must give a committee member or former committee member access to:
- (a) certain documents, including documents provided for or available to the committee members; and
  - (b) any other documents referred to in those documents.

## **Winding up**

### **69. Distribution of surplus assets to another entity**

- 69.1 This rule applies if the association:
- (a) is wound-up under part 10 of the Associations Incorporated Act; and
  - (b) has surplus assets.
- 69.2 The surplus assets must not be distributed among the members of the association.
- 69.3 The surplus assets must be given to another entity:
- (a) having objects similar to the association's objects;
  - (b) the rules of which prohibit the distribution of the entity's income and assets to its members; and
  - (c) that is or are deductible gift recipients within the meaning of the ITAA97.
- 69.4 If the association's deductible gift recipient endorsement is revoked (whether or not the association is to be wound up), any surplus gift funds must be transferred to one or more organisations that meet the requirements of rules 69.1, 69.2 and 69.3 but otherwise as decided by the committee.

## Definitions and interpretation

### 70. Definitions

In this constitution:

**ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).

**association** means the association referred to in clause 1.

**Associations Incorporation Act** means the *Associations Incorporation Act 2009* (NSW). **contribution** has the meaning given to that term in Division 30 of the ITAA97.

**elected chairperson** means a person elected by the committee members to be the association's chairperson under clause 40.

**fund-raising event** has the meaning given to that term in Division 30 of ITAA97.

**general meeting** means a meeting of members and includes the annual general meeting, under clause 20.1.

**gift funds** mean:

- i. gifts of money or property for the principal purpose of the association;
- ii. contributions made in relation to a fund-raising event held for the principal purpose of the association; and
- iii. money received by the association because of such gifts and contributions.

**initial member** means a person who is named in the application for registration of the association, with their consent, as a proposed member of the association.

**ITAA97** means the *Income Tax Assessment Act 1997* (Cth).

**member present** means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting.

**registered charity** means a charity that is registered under the ACNC Act.

**special resolution** means a resolution:

- iv. of which notice has been given under clause 21.5(c); and
- v. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution.

**surplus assets** means any assets of the association that remain after paying all debts and other liabilities of the association, including the costs of winding up.

### 71. Reading this constitution with the Associations Incorporation Act and ACNC Act

71.1 While the association is a registered charity, the ACNC Act and the Associations Incorporation Act override any clauses in this constitution which are inconsistent with those Acts.

71.2 If the association is not a registered charity (even if it remains a charity), the Associations Incorporation Act overrides any clause in this constitution which is inconsistent with that Act.

71.3 A word or expression that is defined in the Associations Incorporation Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## **72. Interpretation**

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).