



**CONSTITUTION  
OF THE  
Australian Animal Protection  
Society Ltd**

2023

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## Preliminary

### 1. Name of the company

The name of the company is:

**The Australian Animal Protection Society Ltd** (hereafter “the Society”).

Australian Company Number (ACN) **004 948 716**  
Australian Business Number (ABN) **51 004 948 716**

### 2. Type of company

The Society is a not-for-profit public company limited by guarantee, established as such on the 18 August 1972, and registered with the **Australian Charities and Not-for-profits Commission** (hereafter "ACNC") on 3 December 2012.

### 3. Limited liability of members

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

### 4. The guarantee

Each member must contribute an amount not more than \$10.00 (the guarantee) to the property of the Society if the Society is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Society incurred before the member stopped being a member, or
- (b) costs of winding up.

### 5. Reading this constitution with the Corporations Act

- 5.1 The replaceable rules set out in the **Corporations Act** are displaced by the Constitution and do not apply to the Society.
- 5.2 While the Society is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this Constitution which are inconsistent with those Acts.
- 5.3 If the Society is not a **registered charity** (even if it remains a charity under section 5 of the Charities Act), the **Corporations Act** overrides any clause in this Constitution which is inconsistent with the **ACNC Act**.
- 5.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning in this Constitution.

### 6. Definitions and interpretations

In this Constitution, words and phrases in **bold** have the meaning set out in *clause 70*.

## Charitable Purposes and Powers

### 7. Society objectives

The Society's objectives are to pursue the following charitable purposes:

- 7.1 To provide shelter and safety for any animal requiring the Society's protection and care.
- 7.2 To strive against all forms of cruelty to animals and to actively work towards the prevention of same.
- 7.3 To educate the community in the humane handling and treatment of animals.
- 7.4 To promote the advantages of desexing animals.
- 7.5 To humanely euthanise animals in the care of the Society, when such animals are deemed beyond veterinary assistance, or a danger to the public.
- 7.6 To advocate for humane methods of euthanasia of animals in any enterprise involved in animal management.
- 7.7 To advocate for the banning and cessation of experiments on animals for all purposes (save for when such experimentation is of direct benefit to animals).
- 7.8 To advocate for environmental awareness and the protection of wildlife.
- 7.9 To exist for the benefit of the community by providing animal welfare and support.
- 7.10 To strive for the continued improvement and/or development of the Society's shelter buildings and facilities for the purpose of increasing the Society's assistance to animals in need.
- 7.11 To provide affordable veterinary services to all animals that require the Society's protection and care as well as the general public in order to:
  - (a) provide affordable care to animals, and
  - (b) generate profit to exclusively fund the Society's charitable purposes.
- 7.12 To abide by and conform to the ACNC rules and guidelines where applicable to the Society.
- 7.13 Solely for the purpose of carrying out the aforesaid objects, the Society shall have the power to do all or any of the following:
  - (a) the bringing to the notice of notifying the Police or other proper authorities of any acts of cruelty to or neglect of animals, to investigate all complaints thereof and to aid in the prosecution of offenders where necessary;
  - (b) the collection of subscriptions, donations and legacies to be used for the benefit of animals in general, and for the purpose of these objectives;
  - (c) the purchase and sale of products for the direct benefit of the Society (provided that said purchase/sale is in furtherance of the objectives of the Society);
  - (d) to supply full, authorised veterinary services to all shelter animals and to the public, and where necessary, contract outside veterinary services of persons who are legally qualified to render such services;
  - (e) the purchase or leasing of property including motor vehicles and plant and equipment for the maintenance of any property belonging to the Society;
  - (f) to purchase, lease, use, develop and occupy land for the exclusive purpose of furthering and conducting the charitable purposes set out in this clause being *clause 7*;

- (g) raising income for Society purposes from fundraising activities, donations, grooming services, boarding services, bequests, government grants and the like;
- (h) raising income from opportunity shops for Society purposes and to assist the disadvantaged in our community;
- (i) the borrowing of money or the mortgaging of any of the Society's property or equipment for the attainment or furtherance of any of these objects (by way of **special resolution** at a **general meeting**);
- (j) promoting, supporting, or proposing legislative or other measures affecting the purposes of the Society;
- (k) applying the assets and income of the Society exclusively to the promotion of its purposes wherein no portion shall be paid or distributed directly or indirectly to the members except as bona fide remuneration for services rendered or reimbursement of expenses incurred on behalf of the Society;
- (l) to seek public assistance, including applying for government subsidies and grants in furtherance of these objects;
- (m) to do all such things as are incidental to the attainment of these objects.

## 8. Powers

Subject to *clause 9*, the Society has the following powers, which may only be used to carry out its purposes set out in Society Objectives, *clause 7*:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the **Corporations Act**.

## 9. Not-for-profit

- 9.1 The Society must not distribute any income or assets directly or indirectly to its members, except as provided in *clauses 9.2* and *70*.
- 9.2 The income and assets of the Society shall be applied solely to further its purpose(s) in Society Objectives *clause 7*.
- 9.3 *Clause 9.1* does not stop the Society from doing the following, 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 Society.

## 10. Amending the constitution

- 10.1 Subject to *clause 10.3*, the members may amend this Constitution by passing a **special resolution**.
- 10.2 Any amendment to this Constitution will take effect from the date of the **special resolution**, or from any later date specified in the resolution passing the amendment.
- 10.3 The members must not pass a **special resolution** that amends this Constitution if passing it causes the Society to no longer be a charity.

## Members

### 11. Membership and register of members

11.1 The members of the Society are:

- (a) **existing members** as at the date of the adoption of this amended Constitution,
- (b) any other person that the Directors allow to be a member, in accordance with this Constitution.

11.2 The Society must establish and maintain a Register of Members. 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, and
  - iv. 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, and
  - iv. dates the membership started and ended.

11.3 The Society must give current members access to the Register of Members subject to *clause 11.4*.

11.4 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of members.

11.5 The Society reserves the right to classify members according to Full Membership, Concessional Membership, Life Membership, Junior Membership, Associate Membership or other. Classification may be determined according to:

- (a) the amount of membership fee that is paid by the given member, and
- (b) other policies that may apply from time to time as determined by the Society.

### 12. Who can be a member

12.1 A person who supports the purposes of the Society is eligible to apply to be a member of the Society under *clause 13*.

12.2 In this clause, 'person' means an individual.

### 13. How to apply to become a member

A person (as defined in *clause 12.2*) may apply to become a member of the Society by writing to the Secretary stating that they:

- (a) want to become a member, and
- (b) support the purpose(s) of the Society, and
- (c) agree to comply with the Society's Constitution, including paying the guarantee under *clause 4* if required, and

- (d) have completed the requisite membership application process including payment of the applicable membership fee.

#### **14. Directors decide whether to approve membership**

- 14.1 The Directors must consider an application for membership within a reasonable time after the Secretary receives the application.
- 14.2 If the Directors reject an application, the Secretary must write to the applicant as soon as possible to tell them that their application has been rejected. The Directors are not required to give reasons.
- 14.3 If the Directors 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, the date that their membership started and enclose a copy of the current AAPS Constitution.
- 14.4 For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in *clause 13*. In that case, by applying to be a member, the applicant agrees to those matters stated therein.

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

Other than **existing members**, an applicant will become a member when they are entered on the Register of Members in accordance with *clause 13*.

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

- 16.1 A person immediately stops being a member if they:
  - (a) die,
  - (b) resign, by giving written notice to the Secretary,
  - (c) are expelled under *clause 20*,
  - (d) their subscription has expired,
  - (e) they 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.

#### **17. Life memberships to the Society**

- 17.1 The Directors may appoint any person whom the Directors deem appropriate and suitable because of services rendered by that person to the Society to be an Honorary Life Member of the Society.
- 17.2 Honorary life membership shall carry the same privileges and responsibilities as are applicable to subscription-paying members. Rules applying to general members (with the exception of the requirement to pay ongoing subscriptions) shall equally apply to Honorary Life Members.

#### **18. Membership subscriptions**

- 18.1 The subscription payable by members of the Society shall be such as the Society in a **general meeting** shall from time to time prescribe.
- 18.2 Provided that until the Society otherwise resolves, the subscription shall be determined and set by the Directors.
- 18.3 All subscriptions shall become due and payable in advance on the first day of January in every year.



- 18.4 Any member of the Society whose subscription is unpaid in accordance with *clause 18.3* shall cease to be a member in accordance with *clause 16.1(d)* until their subscription is paid.
- 18.5 Any member whose subscription remains unpaid shall not be entitled to vote at a **general meeting**. Any member whose subscription remains unpaid as at the 31st March in any year shall not be entitled to vote at an Annual General Meeting.

## Dispute resolution and disciplinary procedures

### 19. Dispute resolution

- 19.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a member or Director and:
- (a) one or more members,
  - (b) one or more Directors, or
  - (c) the Society.
- 19.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under *clause 20* until the disciplinary procedure is completed.
- 19.3 Those involved in the dispute must try to resolve it between themselves within fourteen days of knowing about it.
- 19.4 If those involved in the dispute do not resolve it under *clause 19.3*, they must within 10 days:
- (a) tell the Directors 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.
- 19.5 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 Directors, or
    - ii. for other disputes, a person chosen by either the Commissioner of the ACNC or the President of the Law Institute or Law Society in the state or territory in which the Society has its registered office.
- 19.6 A mediator chosen by the Directors under *clause 19.5(b)i*:
- (a) may be a member or former member of the Society,
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 19.7 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.

## 20. Disciplining members

- 20.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a member from the Society if the Directors 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 Society.
- 20.2 At least 14 days before the Directors' meeting at which a resolution under *clause 20.1* will be considered, the Secretary must notify the member in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the member,
  - (b) that this resolution will be considered at a Directors 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 Directors, and details of how to do so.
- 20.3 Before the Directors pass any resolution under *clause 20.1*, the member must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Directors meeting, and/or
  - (b) speaking at the meeting.
- 20.4 After considering any explanation under *clause 20.3*, the Directors 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 Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause), or
  - (f) require the matter to be determined at a **general meeting**.
- 20.5 The Directors cannot fine a member.
- 20.6 The Secretary must give written notice to the member of the decision under *clause 20.4* as soon as possible.
- 20.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 20.8 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.

## General meetings of members

### 21. General meetings called by Directors

- 21.1 The Directors may call a **general meeting**.
- 21.2 Directors may also call a **general meeting** if members with at least 5 percent of the votes that may be cast at a **general meeting** make a written request to the Society for a **general meeting** to be held, the Directors 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.
- 21.3 The percentage of votes that members have (in *clause 21.2*) is to be worked out as at midnight on the day before the date of the members' requested meeting.
- 21.4 The members who make the request for a **general meeting** (in *clause 21.2*) 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 Society.
- 21.5 Separate copies of a document setting out the request (in *clause 21.2*) may be signed by members if the wording of the request is the same in each copy.
- 21.6 The reason for calling a **general meeting** shall be stated in the notice of **general meeting** and no other business shall be transacted at such a meeting except that for which it was called, other than the confirmation of the minutes of any previous **general meeting**.

### 22. General meetings called by members

- 22.1 If the Directors do not call the meeting within twenty one days of being requested under *clause 21.2*, fifty percent or more of the members who made the request may call and arrange to hold a **general meeting**.
- 22.2 To call and hold a meeting under *clause 22.1* 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 Society's member register, which the Society 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 Society.
- 22.3 The Society must pay the members who request the **general meeting** any reasonable expenses they incur because the Directors did not call and hold the meeting.
- 22.4 The reason for calling a **general meeting** shall be stated in the notice of **general meeting** and no other business shall be transacted at such a meeting except that for which it was called, other than the confirmation of the minutes of any previous **general meeting**.

### 23. Annual General Meeting

- 23.1 A **general meeting**, called the Annual General Meeting (AGM), must be held once in every calendar year.
- 23.2 Even if these items are not set out in the notice of the AGM, the business of an Annual General Meeting include:
- (a) a review of the Society's activities,

- (b) a review of the Society's finances,
  - (c) any auditor's report,
  - (d) the election of Directors, and
  - (e) the appointment and payment of auditors, if any.
- 23.3 Before or at the Annual General Meeting, the Directors must give information to the members on the Society's activities and finances during the period since the last Annual General Meeting.
- 23.4 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 Society.

#### **24. Notice of general meetings**

- 24.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting under *clauses 18.4 and 18.5*,
  - (b) each Director, and
  - (c) the auditor (if any).
- 24.2 Notice of a **general meeting** must be provided in writing at least twenty one days before the meeting. Members may elect to receive notice:
- (a) by post,
  - (b) by electronic means
- 24.3 Subject to *clause 24.4*, notice of a meeting may be provided less than twenty one days before the meeting if:
- (a) for an Annual General Meeting, all the members entitled to attend (under *clauses 18.4 and 18.5*) and vote at the Annual General Meeting agree beforehand, or
  - (b) for any other **general meeting**, members (under *clauses 18.4 and 18.5*) with at least ninety five percent of the votes that may be cast at the meeting agree beforehand.
- 24.4 Notice of a meeting cannot be provided less than twenty one days before the meeting if a resolution will be moved to:
- (a) remove a Director,
  - (b) appoint a Director in order to replace a Director who was removed, or
  - (c) remove an auditor.
- 24.5 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 Society,
    - ii. the proxy form must be delivered to the Society 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 Society at least forty eight hours before the meeting.

- 24.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed **general meeting**.

### 25. Quorum at general meetings

- 25.1 5 percent of all members entitled to attend (under *clauses 18.4 and 18.5*).
- 25.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 25.3 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.
- 25.4 If no quorum is present at the resumed meeting within thirty minutes after the starting time set for that meeting, the meeting is cancelled.

### 26. Auditor's right to attend meetings

- 26.1 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.
- 26.2 The Society must give the auditor (if any) any communications relating to the **general meeting** that a member of the Society is entitled to receive.

### 27. Using technology to hold meetings

- 27.1 The Society 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.
- 27.2 Anyone using this technology is taken to be present in person at the meeting.

### 28. Chairperson for general meetings

- 28.1 The **Chairperson** is entitled to chair **general meetings**.
- 28.2 The members present and entitled to vote (under *clauses 18.4 and 18.5*) at a **general meeting** may choose a Director or member to be the **Chairperson** for that meeting if:
- (a) there is no **Chairperson**, or
  - (b) the **Chairperson** is not present within thirty minutes after the starting time set for the meeting, or
  - (c) the **Chairperson** is present but says they do not wish to act as **Chairperson** of the meeting.

### 29. Role of the Chairperson

- 29.1 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)).
- 29.2 The **Chairperson** does not have a casting vote.

### 30. Adjournment of meetings

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

## Members' resolutions and statements

### 31. Members' resolutions and statements

- 31.1 Members with at least 5 percent of the votes that may be cast on a resolution may give:
  - (a) written notice to the Society of a resolution they propose to move at a **general meeting** (members' resolution), and/or
  - (b) a written request to the Society that the Society 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).
- 31.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 31.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 31.4 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.
- 31.5 The percentage of votes that members have (as described in *clause 31.1*) is to be worked out as at midnight on the day before the request or notice is given to the Society.
- 31.6 If the Society has been given notice of a members' resolution under *clause 31.1(a)*, the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 31.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

### 32. The Society must give notice of proposed resolution

- 32.1 If the Society has been given a notice or request, under *clause 31.1*:
  - (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 Society'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 Society 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 Society will pay these expenses.
- 32.2 The Society 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 one thousand words long,
  - (b) the Directors consider it may be defamatory,
  - (c) *clause 32.1(b)* applies, and the members who proposed the resolution or made the request have not paid the Society 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.

## Voting at general meetings

### 33. How many votes a member has

Each member entitled to vote (*under clauses 18.4 and 18.5*) has one vote.

### 34. Challenge to member's right to vote

- 34.1 A member or the **Chairperson** may only challenge a person's right to vote at a **general meeting** at that meeting.
- 34.2 If a challenge is made under *clause 34.1*, the **Chairperson** must decide whether or not the person may vote. The **Chairperson's** decision is final.

### 35. How voting is carried out

- 35.1 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.
- 35.2 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.
- 35.3 On a show of hands, the **Chairperson's** decision is conclusive evidence of the result of the vote.
- 35.4 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.

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

- 36.1 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 percent of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight on the day before the vote in writing is demanded), or
  - (c) the **Chairperson**.
- 36.2 A vote in writing must be taken when and how the **Chairperson** directs, unless *clause 36.3* applies.
- 36.3 A vote in writing must be held immediately if it is demanded under *clause 36.1*:
  - (a) for the election of a **Chairperson** under *clause 28.2*, or
  - (b) to decide whether to adjourn the meeting.
- 36.4 A demand for a vote in writing may be withdrawn.

### 37. Appointment of proxy

- 37.1 A member entitled to vote (under *clauses 18.4 and 18.5*) may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 37.2 A proxy does not need to be a member.
- 37.3 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 36.1*.
- 37.4 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 Society's name,
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 37.5 A proxy appointment may be standing (ongoing).
- 37.6 Proxy forms must be received by the Society at the address stated in the notice under *clause 24.5(d)* or at the Society's registered address at least 48 hours before a meeting.
- 37.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 37.8 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.
- 37.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **38. Voting by proxy**

- 38.1 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).
- 38.2 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.



## Directors

### 39. Number of Directors

The Society must have at least five and no more than eleven Directors.

### 40. Election and appointment of Directors

- 40.1 The existing Directors are the people who have agreed to act as Directors and who are named as such in the current **ASIC** registry as at **19 January 2023**.
- 40.2 Apart from the existing Directors and the Directors appointed under *clause 40.5*, the members may elect a Director by a resolution passed in a **general meeting**.
- 40.3 Each of the Directors 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.
- 40.4 A person is eligible for election as a Director of the Society if they:
- (a) have been a member of the Society for a minimum of twelve months since their approval of membership,
  - (b) are nominated by two members entitled to vote (unless the person was previously elected as a Director at a **general meeting** and has been a Director since that meeting),
  - (c) give the Society their signed consent to act as a Director of the Society, and
  - (d) are not ineligible to be a Director under the **Corporations Act** or the **ACNC Act**, and
  - (e) are not related to a Director or to an employee of the Society. For the purposes of this clause “related” means an immediate family member (being any relative by blood or marriage or any domestic partner) who is living in the same household as the Director or employee,
  - (f) are not employed by the Society.
- 40.5 The Directors may appoint a person as a Director to fill a casual vacancy or as an additional Director if that person:
- (a) has been a member of the Society for a minimum of twelve months since their approval of membership,
  - (b) give the Society their signed consent to act as a Director of the Society, and
  - (c) are not ineligible to be a Director under the **Corporations Act** or the **ACNC Act**, and
  - (d) is not related to a Director or to an employee of the Society. For the purposes of this clause “related” means an immediate family member (being any relative by blood or marriage or any domestic partner) who is living in the same household as the Director or employee,
  - (e) are not employed by the Society.
- 40.6 If the number of Directors is reduced to fewer than five or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

#### **41. Election of Chairperson**

The Directors must elect a Director as the Society's **Chairperson**.

#### **42. Term of office**

42.1 At each Annual General Meeting:

- (a) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire, and
- (b) at least one-third of the remaining Directors must retire.

42.2 The Directors who must retire at each Annual General Meeting under *clause 42.1(b)* will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.

42.3 Other than a Director appointed under *clause 40.5*, a Director'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.

42.4 Each Director must retire at least once every three years.

42.5 A Director who retires under *clause 42.1* may nominate for election or re-election.

#### **43. When a Director stops being a Director**

A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the Society,
- (b) die,
- (c) are removed as a Director by a resolution of the members,
- (d) stop being a member of the Society,
- (e) are absent for 3 consecutive Directors' meetings without approval from the Directors, or
- (f) become ineligible to be a Director of the Society under the **Corporations Act** or the **ACNC Act**.

## Powers of Directors

### 44. Powers of Directors

- 44.1 The Directors are responsible for managing and directing the activities of the Society to achieve the purpose(s) set out in *clause 7*.
- 44.2 The Directors may use all the powers of the Society except for powers that, under the **Corporations Act** or this **Constitution**, may only be used by members.
- 44.3 The Directors must decide on the responsible financial management of the Society including:
- (a) any suitable written delegations of power under *clause 45*, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 44.4 The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

### 45. Delegation of Directors powers

- 45.1 The Directors may delegate any of their powers and functions to a **committee**, a Director, an employee of the Society (such as a chief executive officer) or any other person, as they consider appropriate. Such delegations are accountable to the Board.
- 45.2 The delegation and reason for it must be recorded in the Society's minute book.
- 45.3 The exercise of the power by the delegate is as effective as if the directors had exercised it.

### 46. Payments to Directors

- 46.1 The Society must not pay fees to a Director for acting as a Director.
- 46.2 The Society may reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Society.
- 46.3 Any payment made under *clause 46.2* must be approved by the Directors.
- 46.4 The Society may pay premiums for insurance indemnifying Directors, as allowed for by law (including the **Corporations Act**) and this **Constitution**.

### 47. Execution of documents

- 47.1 The Society may execute a document without using a common seal if the document is signed by 2 Directors of the Society.
- 47.2 A person may sign a document:
- (a) by signing a physical form of the document by hand, or
  - (b) by signing an electronic form of the document using electronic means.

## Duties of Directors

### 48. Duties of Directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Society;
- (b) to act in good faith in the best interests of the Society and to further the charitable purpose(s) of the Society set out in *clause 7*;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in *clause 49*;
- (f) to ensure that the financial affairs of the Society are managed responsibly; and
- (g) not to allow the Society to operate while it is insolvent.

### 49. Conflicts of interest

49.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors:

- (a) to the other Directors, or
- (b) if all of the Directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.

49.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

49.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not, except as provided under *clauses 49.4*:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

49.4 A Director may still be present and vote if:

- (a) their interest arises because they are a member of the Society, and the other members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Society (see *clause 66*);
- (c) their interest relates to a payment by the Society under *clause 65*, or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- (d) **ASIC** makes an order allowing the Director to vote on the matter; or
- (e) the Directors who do not have a material personal interest in the matter pass a resolution that:

- (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Society, and
- (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## Directors meetings

### 50. When the Directors meet

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

### 51. Calling Directors meetings

- 51.1 A Director may call a Directors meeting by giving reasonable notice to all of the other Directors.
- 51.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

### 52. Chairperson for Directors meetings

- 52.1 The **Chairperson** is entitled to chair Directors meetings.
- 52.2 The Directors at a Directors meeting may choose a Director to be the **Chairperson** for that meeting if the **Chairperson** is:
  - (a) not present within thirty minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as **Chairperson** of the meeting.

### 53. Quorum at Directors meetings

- 53.1 Unless the Directors determine otherwise, the quorum for a Directors meeting is a majority (more than fifty percent) of Directors.
- 53.2 A quorum must be present for the whole Directors meeting.

### 54. Using technology to hold Directors meetings

- 54.1 The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 54.2 The Directors agreement may be an ongoing one.
- 54.3 A Director may only withdraw their consent within a reasonable period before the meeting.

### 55. Passing Directors resolutions

- 55.1 A Directors resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

## Certain Officers of the Society

### 56. Specific rules for select officers of the Society

#### 56.1 Appointment and role of the Secretary

- (a) The Society must have one Secretary, who is a Director.
- (b) A Secretary must be appointed by the Directors (after giving the Society their signed consent to act as Secretary of the Society) and may be removed by the Directors.
  - (i) A decision on the part of the Directors to appoint or remove a Secretary must be actioned by way of a seventy five percent vote in favour thereof.
- (c) The Directors must decide the terms and conditions under which the Secretary is appointed.
- (d) The role of the Secretary includes:
  - (i) maintaining a register of the Society's members, and
  - (ii) maintaining the minutes and other records of **general meetings** (including notices of meetings), Directors meetings.

#### 56.2 President and Vice President

The Directors may resolve to appoint, by way of a seventy five percent majority-vote at a Directors meeting, a President and/or Vice President(s) in accordance with the following guidelines:

- (a) President and Vice President(s) must be Directors;
- (b) President and Vice President(s) roles, responsibilities and duties will be determined by the Directors ("the determined duties"), and these determined duties must not conflict with the purposes of the Society, or the appointee's Director duties at law and in this Constitution;
- (c) A President or Vice President can also be the **Chairperson**;
- (d) A President and Vice President must be prepared to represent the Society in an official capacity;
- (e) The term of office for a President and Vice President(s) is to be determined by the Directors by unanimous vote, (save for those votes which pertain to President or Vice President candidate(s));
- (f) A President or Vice President can resign from their role by advising the Secretary in writing.

#### 56.3 Appointment and role of the Treasurer

- (a) The Society must have at least one Treasurer, who may also be a Director.
- (b) A Treasurer must be appointed by the Directors (after giving the Society their signed consent to act as Treasurer of the Society) and may be removed by the Directors.
  - (i) A decision on the part of the Directors to appoint or remove a Treasurer must be actioned by way of a seventy five percent vote in favour thereof.
- (c) The Directors must decide the terms and conditions under which the Treasurer is appointed, including any remuneration where the Treasurer is not a Director.
- (d) The role of the Treasurer includes:

- (i) to oversee the accounting of the Society (including the maintenance of a ledger), to properly account for all monies received and spent by the Society,
- (ii) to oversee all of the banking requirements of the Society and to ensure that all monies received by the Society are paid into the appropriate bank account(s) opened on behalf of the Society,
- (iii) to furnish financial statements to the Directors, and to **general meetings** of the Society as required.

## Minutes and records

### 57. Minutes and records

57.1 The Society must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of **general meetings**,
- (b) a copy of a notice of each **general meeting**, and
- (c) a copy of a members' statement distributed to members under *clause 32*.

57.2 The Society must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any **committees**).

57.3 To allow members to inspect the Society's records:

- (a) the Society must give a member access to the records set out in *clause 57.1*, and
- (b) the Directors may authorise a member to inspect other records of the Society, including records referred to in *clause 57.2* and *clause 58.1*.

57.4 The Directors must ensure that minutes of a **general meeting** or a Directors 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. Financial and related records

58.1 The Society 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.

58.2 The Society must also keep written records that correctly record its operations.

58.3 The Society must retain its records for at least 7 years.

58.4 The Directors must take reasonable steps to ensure that the Society's records are kept safe.

## By-laws

### 59. By-laws

- 59.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution.
- 59.2 Members and Directors must comply with by-laws as if they were part of this Constitution.

## Notice

### 60. What is notice

- 60.1 Anything written to or from the Society under any clause in this Constitution is a written notice and is subject to *clauses 61, 62, 63*, unless specified otherwise.
- 60.2 *Clauses 61, 62, 63* do not apply to a notice of proxy under *clause 37.6*.

### 61. Notice to the Society

Written notice or any communication under this Constitution may be given to the Society, the Directors or the Secretary by:

- (a) delivering it to the Society's registered office,
- (b) posting it to the Society's registered office or to another address chosen by the Society for notice to be provided,
- (c) sending it to an email address or other electronic address notified by the Society to the members as the Society's email address or other electronic address.

### 62. Notice to members

- 62.1 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) 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).
- 62.2 If the Society does not have an address for the member, the Society is not required to give notice in person.

### 63. 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 or other electronic method (excepting facsimile), is taken to be given on the business day after it is sent, and
- (d) given under *clause 62.1(d)* is taken to be given on the business day after the notification that the notice is available is sent.



## Financial year

### 64. Society's financial year

The Society's financial year is from **1 January** to **31 December**, unless the members pass a resolution to change the financial year.

## Indemnity, insurance and access

### 65. Indemnity

- 65.1 The Society indemnifies each officer of the Society out of the assets of the Society, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Society.
- 65.2 In this clause, 'officer' means a Director and includes a Director after they have ceased to hold that office.
- 65.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the Society is not precluded by law (including the **Corporations 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).
- 65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Society.

### 66. Insurance

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

### 67. Directors access to documents

- 67.1 A Director has a right of access to the financial records of the Society at all reasonable times.
- 67.2 If the Directors agree, the Society must give a Director or former Director access to:
- 67.3 certain documents, including documents provided for or available to the Directors, and
- 67.4 any other documents referred to in those documents.

## Winding up

### 68. Surplus assets not to be distributed to members

If the Society is wound up, any surplus assets must not be distributed to a member or a former member of the Society, but to a charity or charities described in *clause 69*.

### 69. Distribution of surplus assets

- 69.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any surplus assets that remain after the Society is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in *clause 7*, and

- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Society.
- 69.2 The decision as to the charity or charities to be given the surplus assets must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the Society may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 70. Definitions

In this Constitution:

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

**Committee(s)** means committee appointed by the Directors and to which the Directors may delegate power and functions in accordance with this Constitution

**Corporations Act** means the *Corporations Act 2001* (Cth)

**Chairperson** means a person elected by the Directors to be the Society's Chairperson under *clause 41*

**existing member** means the members of the Society as at the date of the adoption of this Constitution

**general meeting** means a meeting of members and includes the Annual General Meeting (under *clause 23.1*).

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

**Society** means the Society referred to in *clause 1*

**special resolution** means a resolution:

- (a) of which notice has been given under *clause 24.5(c)*, and
- (b) that has been passed by at least seventy five percent of the votes cast by members present and entitled to vote on the resolution, and

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

### 71. Reading this Constitution with the Corporations Act

- 71.1 The replaceable rules set out in the **Corporations Act** do not apply to the Society.
- 71.2 While the Society is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this Constitution which are inconsistent with those Acts.
- 71.3 If the Society is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this Constitution which is inconsistent with that Act.
- 71.4 A word or expression that is defined in the **Corporations 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).

## Postscript

### 73. Postscript

- 73.1 The template from which this Constitution has been derived, complies with and reflects the requirements under the **Corporations Act** and **ACNC Act** as at 11 May 2022. The ACNC legislation has ‘switched off’ some requirements of the **Corporations Act** for companies that are registered as charities with the ACNC (such as requirements for holding meetings).
- 73.2 If the **ACNC Act** is amended or repealed (revoked), the requirements under the **Corporations Act** are likely to apply again to charitable companies (that is, the **Corporations Act** requirements will ‘switch’ back on). If this happens, there may be clauses in this Constitution that appear to be inconsistent with the **Corporations Act** (particularly if the template Constitution has been amended). In such a case, the **Corporations Act** provisions will apply, even though this Constitution may say something different. This ensures that the Society does not breach its Constitution if the Society have to follow an inconsistent **Corporations Act** requirement. Clause 4 of the template Constitution specifies that the **Corporations Act** overrides the Constitution if they are inconsistent.
- 73.3 AAPS 2023 Constitution document:
- Compiled by Alan Williams (AAPS)
  - Scrutinised and edited by the AAPS Board of Directors.
  - Edited and checked by KPA Lawyers, 37 Melrose Street, Sandringham VIC 3191.
  - Advice sought and obtained from ACNC
  - Original template (refer to ACNC web site): ACNC Template Constitution for a charitable purpose company limited by guarantee
  - Ratified by AAPS Membership at an extraordinary general meeting: 14<sup>th</sup> October 2023

