

# **Constitution of Pennant Hills War Memorial Children's Centre Association Incorporated**

*Under the Associations Incorporated Act 2009*

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# Part 1 Preliminary

## 1 Definitions

(1) In this constitution:

**association** means Pennant Hills War Memorial Children's Centre Association Incorporated, established under the Act (as defined in the constitution) with registration number Y 02 18842, and ABN 85 129 536 459.

**association member** means a person entered on the register of member of the association, in accordance with clause 5.

**committee member** means an officer-bearer or ordinary committee member.

**committee code of conduct** means the associations' code of conduct that is provided to every office-bearer or ordinary committee member.

**families code of conduct** means the code of conduct that is provided to all members.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**office-bearer** means a committee member who is elected to an office referred to in clause 15.

**ordinary committee member** means a committee member who is not an office-bearer.

**register of members** means the register of members maintained under clause 5.

**secretary**, of the associations, means:

- a) The person holding office under this constitution as secretary, or
- b) If no person holds that office- the public officer of the association.

**special general meeting**, of the association, means a general meeting of the association other than an annual general meeting.

**subcommittee** means a subcommittee established under clause 22.

**the Act** means the *Associations Incorporation Act 2009*.

**the Regulation** means the *Associations Incorporation Regulation 2022*.

**Note:** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this constitution.

(2) The *Interpretation Act 1987* applies to this constitution as if it were an instrument made under the Act.

**Note:** The Act, Part 4 deals with various matters relating to the management of associations.

## 2 Object

The object of Pennant Hills War Memorial Children's Centre Association Incorporated is to be a charity whose purposes are:

- (1) To advance education by operating a preschool to service Pennant Hills and the surrounding district.
- (2) To establish and maintain a public fund to be used solely for the acquisition, construction and maintenance of the Association's preschool building.

- (3) To do such other things as are incidental or conducive to the attainment of these objects.

## **Part 2 Members of association**

### **3 Membership generally**

- (1) An individual is taken to be a member of the association if:
  - (a) the person applied to be a member under clause 4(1) and the application has been approved, or
  - (b) the person was 1 of the individuals on whose behalf an application for registration of the association was made under the Act, section 6(1)(a), or
  - (c) the person was:
    - (i) for an unincorporated body registered as the association - a member of the body immediately before the registration, or
    - (ii) for a registrable corporation registered as the association - a member of the corporation immediately before the registration, or
    - (iii) for an association that was amalgamated to form the relevant association - a member of the existing association immediately before the amalgamation.
- (2) A person who is not an individual is not eligible to be a member of the association.
- (3) One (1) parent or guardian per family enrolled at the association will be required to become members of the association on enrolment of their children.
- (4) Members of the Pennant Hills and surrounding districts community are eligible to apply to become members of the association.

### **4 Membership applications**

- (1) An application by a person to be a member of the association must be:
  - (a) made in writing, and
  - (b) in the form determined by the committee, and
  - (c) lodged with the secretary.
- (2) The committee may determine that an application may be made or lodged by email or other electronic means.
- (3) The secretary must refer an application to the committee as soon as practicable after receiving the application.
- (4) The committee must approve or reject the application.
- (5) As soon as practicable after the committee has decided the application, the secretary must:
  - (a) give the applicant written notice of the decision, including by email or other electronic means if determined by the committee, and
  - (b) if the application is approved - inform the applicant that the applicant is required to pay the entrance fee and annual subscription fee payable under clause 6 within 28 days of the day the applicant received the

notice.

- (6) The secretary must enter the applicant's name in the register of members as soon as practicable after the applicant pays the entrance fee and annual subscription fee in accordance with clause 6.
- (7) The applicant becomes a member once the applicant's name is entered in the register.

## **5 Register of Members**

- (1) The secretary must establish and maintain a register of members of the association.
- (2) The register:
  - (a) may be in written or electronic form, and
  - (b) must include, for each member:
    - (i) the member's full name, and
    - (ii) a residential, postal or email address, and
    - (iii) the date on which the person became a member, and
    - (iv) if the person ceases to be a member - the date on which the person ceased to be a member, and
  - (c) must be kept in New South Wales:
    - (i) at the association's main premises, or
    - (ii) if the association has no premises - at the association's official address, and
  - (d) must be available for inspection, free of charge, by members at a reasonable time, and
  - (e) if kept in electronic form - must be able to be converted to hard copy.
- (3) If the register is kept in electronic form, the requirements in subclause (2)(c) and (d) apply as if a reference to the register is a reference to a current hard copy of the register.
- (4) A member may obtain a hard copy of the register, or a part of the register, on payment of a fee of not more than \$1, as determined by the committee, for each page copied.
- (5) Information about a member, other than the member's name, must not be made available for inspection if the member requests that the information not be made available.
- (6) A member must not use information about a member obtained from the register to contact or send material to the member, unless:
  - (a) the information is used to send the member:
    - (i) a newsletter, or
    - (ii) a notice for a meeting or other event relating to the association, or
    - (iii) other material relating to the association, or
  - (b) it is necessary to comply with a requirement of the Act or the Regulation.

## **6 Fees and Subscriptions**

A member must pay to the association an annual subscription fee, of an amount determined by the committee from time to time, in term 1 of the association.

## **7 Members Liabilities**

The liability of a member of the association to contribute to the payment of either of the following is limited to the amount of any outstanding fees for the member under clause 6:

- (a) the debts and liabilities of the association,
- (b) the costs, charges and expenses of the winding up of the association.

## **8 Disciplinary action against members**

- (1) A person may make a complaint to the committee that a member of the association has:
  - (a) failed to comply with a provision of this constitution, the committee code of conduct, or the family code of conduct, or
  - (b) wilfully acted in a way prejudicial to the interests of the association.
- (2) The committee may refuse to deal with a complaint if the committee considers the complaint is trivial or vexatious.
- (3) If the committee decides to deal with the complaint, the committee must:
  - (a) serve notice of the complaint on the member, and
  - (b) give the member at least 14 days from the day the notice is served on the member within which to make submissions to the committee about the complaint, and
  - (c) consider any submissions made by the member.
- (4) The committee may, by resolution, expel the member from the association or suspend the member's membership if, after considering the complaint, the committee is satisfied that:
  - (a) the facts alleged in the complaint have been proved, and
  - (b) the expulsion or suspension is warranted.
- (5) If the committee expels or suspends the member, the secretary must, within 7 days of that action being taken, give the member written notice of:
  - (a) the action taken, and
  - (b) the reasons given by the committee for taking the action, and
  - (c) the member's right of appeal under clause 9.
- (6) The expulsion or suspension does not take effect until the later of the following:
  - (a) the day the period within which the member is entitled to exercise the member's right of appeal expires, or
  - (b) if the member exercises the member's right of appeal within the period - the day the association confirms the resolution under clause 27.
- (7) During the pendency of disciplinary proceedings against a member of the association, the member will be restricted from attending any meetings, unless otherwise determined by the committee.

## **9 Right of appeal against disciplinary action**

- (1) A member may appeal against a resolution of the committee under clause 27 by lodging a notice of appeal with the secretary within 7 days of being served notice of the resolution.
- (2) The member may include, with the notice of appeal, a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) The secretary must notify the committee that the secretary has received a notice of appeal.
- (4) If notified that a notice has been received, the committee must call a general meeting of the association to be held within 28 days of the day the notice was received.
- (5) At the general meeting:
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the member must be given an opportunity to state the member's case orally or in writing, or both, and
  - (c) the committee must be given the opportunity to state the committee's case orally or in writing, or both, and
  - (d) the members present must vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (6) The appeal is to be determined by a simple majority of votes cast by the members.

## **10 Resolution of internal disputes**

- (1) The following disputes must be referred to a Community Justice Centre within the meaning of the *Community Justice Centres Act 1983* for mediation:
  - (a) a dispute between 2 or more members of the association, but only if the dispute is between the members in their capacity as members, or
  - (b) a dispute between 1 or more members and the association.
- (2) If the dispute is not resolved by mediation within 3 months of being referred to the Community Justice Centre, the dispute must be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

## **11 Membership entitlements not transferable**

A right, privilege or obligation that a person has because the person is a member of the association:

- (a) cannot be transferred to another person, and
- (b) terminates once the person ceases to be a member of the association.

## **12 Member resignation**

- (1) A member of the association may resign from being a member by giving the secretary written notice of at least 1 month, or another period determined by the committee, of the member's intention to resign.
- (2) The member ceases to be a member on the expiration of the notice period.
- (3) If a member of the association ceases to be a member under subclause (1) or



(2), and in every other case where a member ceases to hold membership, the secretary must make, or cause to be made, an appropriate entry in the register of members recording the date on which the member ceased to be a member.

### **13 Cessation of membership**

A person ceases to be a member of the association if the person:

- (a) dies, or
- (b) the relevant child of the member is no longer enrolled in the association (unless such member is part of the management committee or granted an exception by the committee), or
- (c) resigns from being a member, or
- (d) is expelled from the association, or
- (e) fails to pay the annual subscription fee payable under clause 6 within 2 months of the due date.

## **Part 3 Committee**

### ***Division 1 Constitution***

#### **14 Functions of committee**

Subject to the Act, the Regulation, this constitution and any resolution passed by the association in general meeting, the committee:

- (a) is to control and manage the affairs of the association, and
- (b) make decisions around the management of the committee, the board of the association and overall governance of the association, and
- (c) may exercise all the functions that may be exercised by the association, other than a function that is required to be exercised by the association in general meeting, and
- (d) has power to do all things that are necessary or convenient to be done for the proper management of the affairs of the association.

For the avoidance of doubt, this clause does not grant the committee any powers to remove committee members. Such powers are described in clause 19.

#### **15 Composition of committee**

- (1) The committee is to consist of up to 10 committee members being:
  - (a) 8 elected committee members, each of whom is to be elected at an annual general meeting of the association under clause 16 (elected committee members), and
  - (b) up to 2 appointed committee members appointed in accordance with subclause (2) (appointed committee members).
- (2) In order to ensure the necessary skills are available to the committee, the elected committee members may appoint up to 2 additional committee members.

**Note** - The Act, section 28 contains requirements relating to membership eligibility and composition of the committee.

- (3) The Association's preschool director will be invited to attend all committee meetings and be a member of any subcommittees of the association.
- (4) The Association's preschool president must have held office of a committee member for a minimum term of one (1) year unless otherwise agreed by the majority of committee members.
- (5) The office-bearers of the association are to be elected by the committee from among their number at the first committee meeting held after each annual general meeting of the association.
- (6) The office-bearers of the association are as follows:
  - (a) the president,
  - (b) the vice-president,
  - (c) the treasurer,
  - (d) the secretary.
- (7) A committee member may hold up to 2 offices (other than both the offices of president and vice-president).
- (8) To be eligible to hold the office of a committee member, the member, at the time of election or appointment:
  - (a) must be a member of the association,
  - (b) must not be an employee or contractor of the association, and
  - (c) must have obtained a valid NSW Working With Children Check within 60 days.

## **16 Election of committee members**

- (1) Nominations of candidates for election as committee members:
  - (a) must be made in writing and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
  - (b) must be delivered to the secretary of the association or their nominee at least 24 hours before the date and time fixed for the holding of the annual general meeting at which the election is to take place.
- (2) Any nomination of candidates for election as committee members under clause 16(1) may be rejected by a vote of the majority of existing committee members.
- (3) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting in a manner directed by the members presiding at the meeting.
- (4) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (5) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (6) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (7) The ballot for the election of committee members of the committee is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.

- (8) A person nominated as a candidate for election as a committee member of the association must be a member of the association.

## **17 Terms of office**

- (1) Each elected member of the committee will hold office until the conclusion of the next annual general meeting following the date of the member's election.
- (2) A member is eligible, if otherwise qualified, for re-election.
- (3) There is a limit of 5 consecutive terms. The committee must reach a majority consensus to allow each additional year of re-election.
- (4) Each appointed member of the committee is, subject to this constitution, to hold office until the conclusion of the annual general meeting next following the date of the member's appointment and is eligible for re-appointment.

## **18 Vacancies in office**

- (1) A casual vacancy in the office of a committee member arises if the member:
- (a) dies, or
  - (b) ceases to be a member of the association, or
  - (c) resigns from office by written notice given to the secretary, or
  - (d) is removed from office by the association under clause 19, or
  - (e) is absent from 3 consecutive meetings of the committee without the consent of the committee, or
  - (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (g) is prohibited from being a director of a company under the *Corporations Act 2001* of the Commonwealth, Part 2D.6, or
  - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty is imprisonment for at least 3 months, or
  - (i) becomes a mentally incapacitated person, or
  - (j) if they cease to meet the eligibility as outlined in clause 15(8), or
  - (k) is prohibited from being a responsible person under the Australian Charities and Not for Profits Commission Act 2012 of the Commonwealth, or
  - (l) is a prescribed ineligible person under the Children (Education and Care Services) National Law 2010.
- (2) The association in general meeting may, by resolution:
- (a) remove a committee member from office at any time, and
  - (b) appoint another member of the association to hold office for the balance of the committee member's term of office.
- (3) A committee member to whom a proposed resolution referred to in subclause (2) relates may:
- (a) give a written statement, of a reasonable length, to the president or secretary, and
  - (b) request that the committee send a copy of the statement to each member of the association at least 7 days before the general meeting at which the

proposed resolution will be considered.

- (4) If the committee fails to send a copy of a statement received under subclause (3)(a) to each member in accordance with a request made under subclause (3)(b), the statement must be read aloud by the member presiding at the general meeting at which the proposed resolution will be considered.
- (5) The committee may appoint a member of the association to fill a casual vacancy other than a vacancy arising from the removal from office of a committee member.
- (6) Subject to this constitution, a member appointed to fill a casual vacancy holds office until the next annual general meeting.

## **19 Removal of committee members**

- (1) The association, in a committee meeting, may by majority resolution remove any member of the committee from the role of committee member before the expiration of the committee member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) For the avoidance of doubt, in the event that a committee member is alleged to have breached the established committee code of conduct, subclause (1) will apply and the committee members may initiate the removal process.
- (3) Any committee member may bring forth allegations of a breach of any clause of this constitution or the committee code of conduct by submitting a complaint to the committee president or another designated officer. The complaint should include a detailed description of the alleged breach, supporting evidence, and the specific section(s) of the code of conduct that are believed to have been violated.
- (4) Upon receipt of a complaint, the committee shall convene to review the allegations and assess their validity.
- (5) The committee member accused of the breach shall be provided with a fair and impartial opportunity to respond to the allegations.
- (6) If a member of the committee to whom a resolution referred to in subclause (1) relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the committee, the secretary or the president may send a copy of the representations to each member of the committee or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.
- (7) If, after thorough review and consideration, a majority resolution among the committee members is reached regarding the validity of the breach, the committee may proceed with the removal process.
- (8) The committee shall adopt appropriate measures, which may include, but are not limited to, a formal resolution of removal, suspension, or other relevant actions.
- (9) The committee retains the authority to initiate the removal process against any committee member found to be in repeated or serious violation of the code of conduct, as determined by a majority agreement among the committee members.

- (10) The committee may refuse to deal with a complaint if the committee considers the complaint is trivial or vexatious.

## 20 Secretary

- (1) As soon as practicable after being elected as secretary, the secretary must lodge a notice with the association specifying the secretary's address.
- (2) The secretary must keep minutes of:
- (a) all elections of committee members, and
  - (b) the names of committee members present at a meeting of the committee or a general meeting, and
  - (c) all proceedings at committee meetings and general meetings.
- (3) The minutes must be:
- (a) kept in written or electronic form, and
  - (b) be approved by the committee at the subsequent meeting.

## 21 Treasurer

The treasurer, supported by the management committee of the association must ensure—

- (a) all money owed to the association is collected, and
- (b) all payments authorised by the association are made, and
- (c) correct books and accounts are kept showing the financial affairs of the association, including full details of receipts and expenditure relating to the association's activities.

## 22 Delegation to subcommittees

- (1) The committee may:
- (a) establish 1 or more subcommittees to assist the committee to exercise the committee's functions, and
  - (b) appoint 1 or more members of the association to be the members of the subcommittee, and
  - (c) appoint the preschool director to the subcommittee as required.
- (2) The committee may delegate to the subcommittee the exercise of the committee's functions specified in the instrument, other than:
- (a) this power of delegation, or
  - (b) a duty imposed on the committee by the Act or another law.
- Note:** The *Interpretation Act 1987*, section 49 deals with various matters relating to delegations.
- (3) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (4) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances, that may be specified in the instrument of delegation.

- (5) Despite any delegation under this clause, the committee may continue to exercise any function delegated.
- (6) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the committee.
- (7) The committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (8) A sub-committee may meet and adjourn as it thinks proper.

## **Division 2      Procedure**

### **23      Committee meetings**

- (1) The committee must meet at least 8 times in each 12-month period at the place and time determined by the committee.
- (2) Additional meetings of the committee may be called by any committee member.
- (3) The procedure for calling and conducting business at a meeting of a subcommittee is to be as determined by the subcommittee.

**Note:** The Act, section 30(1) provides that committee meetings may be held as and when the association's constitution requires.

### **24      Notice of committee meetings**

- (1) The secretary must give each committee member oral or written notice of a meeting of the committee at least 48 hours, or another period on which a majority of the committee members agree, before the time the meeting is due to commence.
- (2) The notice must describe the general nature of the business to be transacted at the meeting.
- (3) The only business that may be transacted at the meeting is:
  - (a) the business described in the notice, and
  - (b) business that the committee members present at the meeting unanimously agree is urgent business.

### **25      Quorum**

- (1) A majority of committee members holding office will constitute a quorum for the transaction of the business of a meeting of the committee.
- (2) No business may be transacted by the committee unless a quorum is present.
- (3) If a quorum is not present within half an hour of the time the meeting commences, the meeting is adjourned:
  - (a) to the same place, and
  - (b) to the same time of the same day in the following week, unless another day, time and place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to committee members given before the day to which the meeting is adjourned.

- (4) If at adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (5) If the number of committee members is less than the number required to constitute a quorum for a committee meeting, the committee members may appoint 1 or more members of the association as committee members to enable the quorum to be constituted.
- (6) A committee member appointed under subclause (5) holds office, subject to this constitution, until the next annual general meeting.
- (7) This clause does not apply to the filling of a casual vacancy to which clause 18 applies.

**Note:** The Act, section 28A provides for the filling of vacancies on the committee to constitute a quorum.

## **26 Presiding committee members**

- (1) The following committee member presides at a meeting of the committee:
  - (a) the president,
  - (b) if the president is absent - the vice-president,
  - (c) if both the president and vice-president are absent - 1 of the members present at the meeting, as elected by the other members.
- (2) The member presiding at the meeting has:
  - (a) a deliberative vote, and
  - (b) in the event of an equality of votes - a second or casting vote.

## **27 Voting**

A decision supported by a majority of the votes cast at a meeting of the committee or a subcommittee at which a quorum is present is the decision of the committee or subcommittee.

## **28 Acts valid despite vacancies or defects**

- (1) Subject to clause 23(1), the committee may act despite there being a casual vacancy in the office of a committee member.
- (2) An act done by a committee or subcommittee is not invalidated because of a defect relating to the qualifications or appointment of a member of the committee or subcommittee.

## **29 Transaction of business outside meetings or by telephone or other means**

- (1) The committee may transact its business by the circulation of papers, including by electronic means, among all committee members.
- (2) The committee may pass a resolution without a committee meeting being held if all committee members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
  - (a) Separate copies of a document may be used for signing by committee members if the wording of the resolution and statement is identical in

each copy.

- (b) Singing of the resolution may be effected by using any technology consented to by all the committee members. The consent may be a standing one.
  - (c) The resolution is passed when the last committee member signs.
  - (d) Passage of a resolution under this subclause must be recorded by the Secretary in the association's minute books.
- (3) The member presiding at the meeting and each other member have the same voting rights as they would have at an ordinary meeting of the committee for the purpose of the approval of a resolution under subclause (2).
  - (4) A resolution approved under subclause (2) must be recorded in the minutes of the meetings of the committee.

**Note:** The Act, section 30(2) and (3) contains requirements relating to meetings held at 2 or more venues using technology.

### **30 Use of technology at committee meetings**

- (1) A committee meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the association's members a reasonable opportunity to participate.
- (2) A member of an association who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **Part 4 General meetings of the association**

### **31 Annual general meetings**

- (1) The association must hold subsequent annual general meetings within:
  - (a) 6 months of the last day of the association's financial year, or
  - (b) the later period allowed or prescribed in accordance with the Act, section 37(2)(b).
- (2) Subject to the Act and subclauses (1) and (2), the annual general meeting is to be held at the place and time determined by the committee.
- (3) The business that may be transacted at an annual general meeting includes the following:
  - (a) confirming the minutes of the previous annual general meeting and any special general meetings held since the previous annual general meeting,
  - (b) receiving reports from the committee on the association's activities during the previous financial year,
  - (c) electing office-bearers and ordinary committee members,
  - (d) receiving and considering financial statements or reports required to be submitted to members of the association under the Act.

**Note:** The Act, section 37(1) and (2) provides for when annual general meetings must be held.



## **32 Special general meetings**

- (1) The committee may call a special general meeting whenever the committee thinks fit.
- (2) The committee must call a special general meeting if the committee receives a request made by at least 5% of the total number of members.
- (3) The request:
  - (a) must be in writing, and
  - (b) must state the purpose of the meeting, and
  - (c) must be signed by the members making the request, and
  - (d) may consist of more than 1 document in a similar form signed by 1 or more members, and
  - (e) must be lodged with the secretary, and
  - (f) may be in electronic form and signed and lodged by electronic means.
- (4) If the committee fails to call a special general meeting within 1 month of the request being lodged, 1 or more of the members who made the request may call a special general meeting to be held within 3 months of the date the request was lodged.
- (5) A special general meeting held under subclause (4) must be conducted, as far as practicable, in the same way as a general meeting called by the committee.

## **33 Notice of general meeting**

- (1) The secretary must give each member notice of a general meeting:
  - (a) if a matter to be determined at the meeting requires a special resolution - at least 21 days before the meeting, or
  - (b) otherwise - at least 14 days before the meeting.
- (2) The notice must specify:
  - (a) the place and time at which the meeting will be held, and
  - (b) the nature of the business to be transacted at the meeting, and
  - (c) if a matter to be determined at the meeting requires a special resolution - that a special resolution will be proposed, and
  - (d) for an annual general meeting - that the meeting to be held is an annual general meeting.
- (3) The only business that may be transacted at the meeting is:
  - (a) the business specified in the notice, and
  - (b) for an annual general meeting - business referred to in clause 31.
- (4) A member may give written notice to the secretary of business the member wishes to raise at a general meeting.
- (5) If the secretary receives a notice under subclause (4), the secretary must specify the nature of the business in the next notice calling a general meeting.

## **34 Quorum**

- (1) The quorum for a general meeting is 5 members of the association entitled to

vote under this constitution.

- (2) No business may be transacted at a general meeting unless a quorum is present.
- (3) If a quorum is not present within half an hour of the time the meeting commences, the meeting:
  - (a) if called on the request of members - is dissolved, or
  - (b) otherwise - is adjourned:
    - (i) to the same time of the same day in the following week, and
    - (ii) to the same place, unless another place is specified by the member presiding at the meeting at the time of the adjournment or in a written notice given to members at least 1 day before the adjourned meeting.
- (4) If a quorum is not present within half an hour of the time an adjourned meeting commences, but there are at least 3 members present, the members present constitute a quorum.

### **35 Adjourned meetings**

- (1) The member presiding at a general meeting may, with the consent of the majority of the members present, adjourn the meeting to another time and place.
- (2) The only business that may be transacted at the adjourned meeting is the business remaining from the meeting at which the adjournment took place.
- (3) If a meeting is adjourned for at least 14 days, the secretary must give each member oral or written notice, at least 1 day before the adjourned meeting, of:
  - (a) the time and place at which the adjourned meeting will be held, and
  - (b) the nature of the business to be transacted at the adjourned meeting.

### **36 Presiding member**

- (1) The following member presides at a general meeting:
  - (a) the president,
  - (b) if the president is absent - the vice-president,
  - (c) if both the president and vice-president are absent - 1 of the members present at the meeting, as elected by the other members.
- (2) The member presiding at the meeting has:
  - (a) a deliberative vote, and
  - (b) in the event of an equality of votes - a second or casting vote.

### **37 Voting**

- (1) A member is not entitled to vote at a general meeting unless the member:
  - (a) is at least 18 years of age, and
  - (b) has paid all money owed by the member to the association.
- (2) Each member has 1 vote, except as provided by clause 36(2)(b).
- (3) A question raised at the meeting must be decided by:

- (a) a show of hands, or
  - (b) if clause 35 applies - an appropriate method as determined by the committee, or
  - (c) a written ballot, but only if:
    - (i) the member presiding at the meeting moves that the question be decided by ballot, or
    - (ii) at least 5 members agree the question should be determined by ballot.
- (4) If a question is decided using a method referred to in subclause (3)(a) or (b), either of the following is sufficient evidence that a resolution has been carried, whether unanimously or by a majority, or lost, using the method:
- (a) a declaration by the member presiding at the meeting,
  - (b) an entry in the association's minute book.
- (5) A written ballot must be conducted in accordance with the directions of the member presiding.
- (6) A member cannot cast a vote by proxy.

### **38 Postal or electronic ballots**

- (1) The association may hold a postal or electronic ballot, as determined by the committee, to decide any matter other than an appeal under clause 8.
- (2) The ballot must be conducted in accordance with Schedule 2 of the Regulation.

### **39 Use of technology at general meetings**

- (1) A general meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the association's members a reasonable opportunity to participate.
- (2) A member of an association who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **Part 5 Administration**

### **40 Change of name, objects or constitution**

An application for registration of a change in the association's name, objects or constitution made under the Act, section 10 must be made by:

- (a) the public officer, or
- (b) a committee member.

### **41 Funds**

- (1) Subject to a resolution passed by the association, the association's funds may be derived from the following sources only:
  - (a) the entrance fees and annual subscription fees payable by members,
  - (b) donations,

- (c) parent fees and government subsidies for the provision of early childhood services, government grants,
  - (d) other sources as determined by the committee.
- (2) Subject to a resolution passed by the association, the association's funds and assets must be used to pursue the association's objects in the way that the committee determines.
- (3) As soon as practicable after receiving money, the association must:
- (a) deposit the money, without deduction, to the credit of the association's authorised deposit-taking institution account, and
  - (b) issue a receipt for the amount of money received to the person from whom the money was received.
- (4) All cheques, drafts, bills of exchange, promissory notes, other negotiable instruments and electronic funds transfers must be signed by 2 authorised signatories.

**Note:** The Act, section 36 provides for the appointment of authorised signatories.

## **42 Insurance**

The association may take out and maintain insurance as appropriate for the association's assets and liabilities.

## **43 Non-profit status**

Subject to the Act and the Regulation, the association must not conduct the association's affairs in a way that provides a pecuniary gain for a member of the association.

**Note:** See the Act, section 40.

## **44 Service of notices**

- (1) For the purposes of this constitution, a notice may be given to or served on a person:
- (a) by delivering the notice to the person personally, or
  - (b) by sending the notice by pre-paid post to the address of the person, or
  - (c) by sending the notice by electronic transmission to an address specified by the person for giving or serving the notice.
- (2) A notice is taken to have been given to or served on a person, unless the contrary is proved:
- (a) for a notice given or served personally - on the date on which the notice is received by the person, or
  - (b) for a notice sent by pre-paid post - on the date on which the notice would have been delivered in the ordinary course of post, or
  - (c) for a notice sent by electronic transmission:
    - (i) on the date the notice was sent, or
    - (ii) if the machine from which the transmission was sent produces a report indicating the notice was sent on a later date—on the later date.

## **45 Custody of records and books**

Except as otherwise provided by this constitution, all records, books and other documents relating to the association must be kept in New South Wales:

- (a) at the association's main premises, in the custody of either of the following persons, as determined by the committee:
  - (i) the public officer,
  - (ii) a member of the association, or
- (b) if the association has no premises - at the association's official address, in the custody of the public officer or a member of the association (as the committee determines).

## **46 Inspection of records and books**

- (1) The following documents must be available for inspection, free of charge, by members of the association at a reasonable time:
  - (a) this constitution,
  - (b) minutes of committee meetings and general meetings of the association,
  - (c) records, books and other documents relating to the association.
- (2) A member may inspect a document referred to in subclause (1):
  - (a) in hard copy, or
  - (b) in electronic form, if available.
- (3) A member may obtain a hard copy of a document referred to in subclause (1) on payment of a fee of not more than \$1, as determined by the committee, for each page copied.
- (4) The committee may refuse to allow a member to inspect or obtain a copy of a document under this clause:
  - (a) that relates to confidential, personal, commercial, employment or legal matters, or
  - (b) if the committee considers it would be prejudicial to the interests of the association for the member to do so.

## **47 Financial year**

The financial year of the association is each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 January and ending on the following 31 December.

**Note:** The Regulation, section 21 contains a substitute clause 44 for certain associations incorporated under the *Associations Incorporation Act 1984*.

## **48 Distribution of property on winding up**

- (1) Subject to the Act and the Regulations, in a winding up of the association, any surplus property of the association is to be transferred to another organisation:
  - (a) with charitable purposes similar to, or inclusive of, the objects in clause 2 of this constitution,
  - (b) which is not carried on for the profit or gain of its individual members, and

- (c) which also prohibits the distribution of any surplus assets to its members to at least the same extent as this constitution.
- (2) The decision as to the charity or charities to be given the surplus property 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 association may apply to the Supreme Court of NSW to make this decision.
- (3) In this clause:  
*surplus property* has the same meaning as in the Act, section 65.

#### **49 Common Seal**

- (1) The common seal of the Association is to be kept securely on the Association's main premises, or securely in a location as determined by the committee, but in the control of the public officer.
- (2) The common seal is not to be affixed to any instrument except by the authority of the committee and the affixing of the common seal is to be attested by the signatures either of two members of the committee or of one member of the committee and of the public officer or secretary.

#### **50 Payment of committee members**

- (1) A member of the committee must not be appointed to any salaried office of the association or any office of the association paid by fees, and no remuneration or other benefit in money or monies worth is to be given by the association to any member of the committee except a repayment of pre-approved and reasonable out of pocket expenses.
- (2) A member of the committee is not permitted to loan funds to the association.