

# NEWCASTLE CITY BIA INC.

INC ID NUMBER: 1901584

## CONSTITUTION

9 December 2019

**Under the *Associations Incorporation Act 2009***

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# Part 1 Preliminary

## 1.1 Definitions

In this constitution:

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

**Annual Financial Statement** means the Annual Financial Statement for the Association to be approved by the Members.

**Annual General Meeting** has the meaning given to it in Part 4.

**Association** is a shortened form of the name of the Newcastle City BIA Inc.

**BIA** is an acronym for Business Improvement Association.

**BIA precinct** means the area in which has been specified by City of Newcastle that pays a special rate levy pursuant to Section 495 of the Local Government Act 1993.

**Chairperson or Chair** means the person who must ensure that the board/board functions properly - that there is full participation during meetings, that all relevant matters are discussed and that effective decisions are made and carried out in the best interests of the Association.

**City of Newcastle** means the Newcastle City Council.

**Deliverables Plan** is the plan developed by the Association to manage and disperse funding provided for the beautification, promotion and economic development of the precinct.

**Deputy Chairperson or Deputy** means a member of the Association to exercise functions of the Chairperson when required by the Association.

**Director's Handbook** is a number of documents provided to each director or board members of the Association and includes information that will assist them in their duties.

**Executive Board** means the board of the Association referred to in Part 3.

**General Meetings** means the Annual General Meeting and Special General Meetings of the Association.

**Insurance** means the Association insurance cover being not less than public liability and professional indemnity.

**Member** means a member of the Association in terms of Part 2.1 and 2.2.

**Officers** means the office bearers which includes the Chair, Vice Chair, Secretary and Treasurer of the Association referred to in Part 3.

**Ordinary board member** means a member of the board who is not an office-bearer of the Association.

**Public Officer** is the person that nominated to be the Association's contact point with the NSW Department of Fair Trading as part of the Association's incorporation applications.

**Regulation** means the *Associations Incorporation Regulation 2016*. In this constitution:

- a. a reference to a function includes a reference to a power, authority and duty, and
- b. a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.
  - i. The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

**SBR Levy** means the special business rates levy that the members of the Association pay as part of rates paid to City of Newcastle in accordance of the Local Government Act 1993.

**Secretary** means:

- a. the person holding office under this constitution as secretary of the Association, or
- b. if no person holds that office - the public officer of the Association,
- c. means the Secretary of the Association referred to in Part 3.4;
- d. the Association public officer is both the official point of contact for an incorporated Association and one of the authorised signatories.

**Special General Meeting** means a general meeting of the Association other than an annual general meeting and has the meaning given to it in Part 4.3.

**Special Resolution** has the meaning given to it in Part 4.9.

**Treasurer** means the Treasurer of the Association referred to in Part 3.4.

## **1.2. Objects**

- 1.2.1. The goals of the Association are:
- a. To promote the development, beautification and advancement of the commercial interests of businesses within the Newcastle City BIA Inc. precinct through a coordinated and structured promotion, advocacy and planning program
  - b. For the purposes and objects stated in this constitution, to administer funds provided to the Association by the City of Newcastle for the purposes for which the Special Rate is levied and from time to time, ensure that any other income, funding or grants received by the Association, deliver services, programs and outcomes that add value to the precinct
  - c. To do all things as are, or may be incidental to, or conducive to, the attainment of these objects.
- 1.2.2. The assets and income of the Association shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the Association except as bona fide compensation for services rendered or expenses incurred on behalf of the Association as may be otherwise permitted under this constitution.

## **1.3. Scope of the Association's Powers**

- 1.3.1 The Association has the widest possible powers to do all things which may be necessary to pursue the Association's goals and objects including the following powers:
- a. To use funds of the Association to pay the costs and expenses of the Association in accordance with any funding agreement entered into by the Association.
  - b. Subject to any funding agreement, to engage in prosecuting, defending or otherwise taking any legal action or legal proceedings on behalf of the Association and for that purpose, to expend such moneys and employ such solicitors, counsel and other advisors as the Association may think fit
  - c. To apply for and acquire any licences or permits deemed necessary by the Association
  - d. To open and operate bank accounts subject to such conditions as the Association any funding agreement entered into by the Association.

- e. To engage with its stakeholders and community
- f. To raise money by other means and upon such conditions as the Association thinks fit and in accordance with any funding agreement entered into by the Association
- g. To engage contractors or consultants for such purposes and for such periods that are subject to any funding agreement entered into by the Association. subject to such conditions as the Association thinks fit **provided that** the Association shall not give money or lend money to;
  - i. A member or director of any company by which any business of the Association is carried on, or
  - ii. A person or entity who is a settlor or trustee of a trust that is a shareholder of any company by which any business of the Association is to be carried on.

## **Part 2 Membership**

### **2.1. Membership generally**

A person is taken to be an eligible member of the Association if:

- a. They are the owner or delegate of one or more commercially rated properties within BIA precinct and pay the levy as applied by City of Newcastle, or;
- b. They lawfully occupy, or are the tenant (or delegate) of one or more commercially rated premises within the BIA precinct, and operate a business from those premises, or;
- c. They are appointed as a member of the Association by the board/sub-committee, on the basis the Association considers the person holds a specific interest or skill. Such individuals may or may not currently work within the BIA precinct but have the ability to significantly contribute to the objectives of the Association.

### **2.2. Membership**

Membership of the Association is available automatically for those taken to be a 'member' within the BIA precinct and choose to be a member.

### **2.3. Cessation of membership**

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

- a. Dies, or
- b. Resigns membership, or
- c. Is expelled from the Association, or
- d. Ceases to pay the SBR levy, or
- e. Not operating a business in the precinct.

### **2.4. Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being a member of the Association:

- a. Is not capable of being transferred or transmitted to another person, and
- b. Terminates on cessation of the person's membership.

### **2.5. Resignation of membership**

- a. A member may resign from, or opt out, of membership of the Association by giving written notice of at least one month (or any other period that the board may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.

- b. If a member of the Association ceases to be a member under Part 2.3, and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## **2.6. Register of members**

- a. The Association must establish and maintain a register of members (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is a member of the Association together with the date on which the person became a member.
- b. The register of members must be kept in New South Wales:
  - i. at the main premises of the Association, or
  - ii. if the Association has no premises, at the Association's official address.
- c. The register of members must be open for inspection, free of charge, by any member of the Association at any reasonable hour.
- d. A member of the Association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- e. If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- f. A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
  - i. the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the Association or other material relating to the Association, or
  - ii. any other purpose necessary to comply with a requirement of the Act or the Regulation.
- g. If the register of members is kept in electronic form:
  - i. it must be convertible into hard copy, and
  - ii. the requirements in parts (b) and (c) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

## **2.7. Fees and subscriptions**

- a. Membership fees are included in the funding provided by the City of Newcastle as collected in accordance with section 495 of the Local Government Act 1993.
- b. No other payment is necessary.

## **2.8. Members' liabilities**

The liability of a member of the Association to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the member in respect of membership of the Association as required by Part 2.7 but will not exceed \$10.00.

## **2.9. Resolution of disputes**

- a. A dispute between a member and another member (in their capacity as members) of the Association, or a dispute between a member or members and the Association, are to be referred to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983*.
- b. If a dispute is not resolved by mediation within three months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration.
- c. The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

## **2.8. Disciplining of members**

- a. A complaint may be made to the board by any person that a member of the Association:
  - i. has refused or neglected to comply with a provision or provisions of this constitution, or
  - ii. has wilfully acted in a manner prejudicial to the interests of the Association.
- b. The board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- c. If the board decides to deal with the complaint, the board:
  - i. must cause notice of the complaint to be served on the member concerned, and
  - ii. must give the member at least 14 days from the time the notice is served within which to make submissions to the board in connection with the complaint, and
  - iii. must take into consideration any submissions made by the member in connection with the complaint.
- d. The board may, by resolution, expel the member from the Association or suspend the member from membership of the Association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- e. If the board expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be

given to the member of the action taken, of the reasons given by the board for having taken that action and of the member's right of appeal under Part 2.9.

- f. The expulsion or suspension does not take effect:
  - i. until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
  - ii. if within that period the member exercises the right of appeal, unless and until the Association confirms the resolution under Part 2.9.
- g. whichever is the later.

## **2.9. Right of appeal of disciplined member**

- a. A member may appeal to the Association in general meeting against a resolution of the board within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- b. The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- c. On receipt of a notice from a member under Part 2.9, the secretary must notify the board, which is to convene a general meeting of the Association to be held within 28 days after the date on which the secretary received the notice.
- d. At a general meeting of the Association convened under Part 2.9:
  - i. no business other than the question of the appeal is to be transacted, and
  - ii. the board and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
  - iii. the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- e. The appeal is to be determined by a simple majority of votes cast by members of the Association.

## Part 3 The board

### 3.1. Powers of the board

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

- a. Is to control and manage the affairs of the Association, and
- b. May exercise all the functions that may be exercised by the Association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the Association, and
- c. Has power to perform all the acts and do all things that appear to the board to be necessary or desirable for the proper management of the affairs of the Association.

### 3.2. Composition and membership of board

- a. The board is to consist of no less than five (5) and up to nine (9) which will include:
  - i. the office-bearers of the Association
  - ii. ordinary board members.
- b. Each of whom is to be elected at the annual general meeting of the Association.

**Note.** Section 28 of the Act contains further requirements concerning eligibility for membership and composition of the board.
- c. A person can be appointed or elected to the board of the Association on the basis the Association considers the person holds a specific interest or skill. Such individuals may or may not currently work within the BIA precinct but have the ability to significantly contribute to the objectives of the Association and its members.
- d. The office-bearers are as follows:
  - i. the chair
  - ii. the deputy-chair
  - iii. the treasurer
  - iv. the secretary
- e. The Association's public officer would also sit onto the board. The public officer may or may not hold another office bearer position
- f. A board member may hold up to two offices (other than both the offices of president and vice-president).
- g. Each board member cannot hold more than a maximum of four consecutive 12 month terms.

**Note.** Schedule 1 to the Act provides that an Association's constitution is to address the maximum number of consecutive terms of office of any office-bearers on the board.
- h. Each member of the board is, subject to this constitution, to hold office until immediately before the election of board members at

the annual general meeting next following the date of the member's election and is eligible for re-election.

- i. The board will determine a succession plan for the Association that ensures that collective intellectual property of the Association is protected.

### **3.3. Election of board members**

- a. Nominations of candidates for election as office-bearers of the Association or as ordinary board members:
  - i. must be made in writing, signed by 2 members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
  - ii. must be delivered to the secretary of the Association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- b. If insufficient nominations are received to fill all vacancies on the board, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- c. If insufficient further nominations are received, any vacant positions remaining on the board are taken to be casual vacancies.
- d. If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- e. If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- f. The ballot for the election of office-bearers and ordinary board members of the board is to be conducted at the annual general meeting in any usual and proper manner that the board directs.
- g. A person nominated as a candidate for election as an office-bearer or as an ordinary board member of the Association must be a member of the Association.

### **3.4. Office bearers and roles**

#### **a. Chairperson or Chair**

The Association Chairperson or Chair is to provide leadership by:

- i. Ensuring the board functions properly by ensuring that each meeting and activity of the Association is planned effectively, conducted according to the constitution and that matters are dealt with in an orderly, efficient manner.
- ii. To ensure the Association is managed effectively by co-ordinating the board to ensure that appropriate policies and

procedures are in place for the effective management of the organisation

- iii. to provide support and supervision to the chief officer and senior team
- iv. To represent the Association as its figurehead or delegate this responsibility to other board members as required

#### **a. Deputy Chairperson**

The Deputy Chairperson of the Association to support the Chairperson or Chair and to manage the responsibilities of this role when and where required or delegated to.

#### **b. Secretary**

It is the duty of the secretary of the Association to ensure:

- i. The secretary of the Association must, as soon as practicable after being appointed as secretary, lodge notice with the Association of his or her address.
- ii. It is the duty of the secretary to keep minutes (whether in written or electronic form) of:
  - iii. all appointments of office-bearers and members of the board, and
  - iv. the names of members of the board present at any executive board meeting and/or general meeting, and
  - v. all proceedings at board meetings and general meetings.
- vi. Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.
- vii. The signature of the chairperson may be transmitted by electronic means for the purposes of subclause (3).

#### **c. Treasurer**

It is the duty of the Treasurer of the Association to ensure:

- i. that all money due to the Association is collected and received and that all payments authorised by the Association are made, and
- ii. that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.

#### **d. Public Officer**

It is the duty of the Public Officer of the Association to ensure:

- i. notifying Fair Trading of any change in the Association's official address within 28 days
- ii. collecting all association documents from former board members and delivering the documents to the new board member
- iii. returning all association documents to a board member within 14 days, upon vacating office

- iv. acting as the official contact for the association, including taking delivery of documents served on the association and bringing them to the attention of the board as soon as practicable
- v. custody of any documents as required by the constitution.

### **3.5. Casual vacancies**

- a. In the event of a casual vacancy occurring in the membership of the board, the board may appoint a member of the Association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- b. A casual vacancy in the office of a member of the board occurs if the member:
  - I. dies, or
  - II. ceases to be a member of the Association, or
  - III. is or becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - IV. resigns office by notice in writing given to the secretary, or
  - V. is removed from office, or
  - VI. becomes a mentally incapacitated person, or
  - VII. is absent without the consent of the board from 3 consecutive meetings of the board, or
  - VIII. is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
  - IX. is prohibited from being a director of a company by being (disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth, or
  - X. Moves from the precinct.

### **3.6. Removal of board members**

- a. The Association in general meeting may by resolution remove any member of the board from the office of member before the expiration of the 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.
- b. If a member of the board to whom a proposed resolution 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 Association, the secretary or the president may send a copy of the representations to each member of the Association 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.

### **3.7. Board meetings and quorum**

- a. The board must meet at least three times in each period of 12 months at the place and time that the board may determine.
- b. Additional meetings of the board may be convened by the chair or by any member of the board.
- c. Oral or written notice of a meeting of the board must be given by the secretary or BIA Support Services Provider to each member of the board at least 48 hours (or any other period that may be unanimously agreed on by the members of the board) before the time appointed for the holding of the meeting.
- d. Notice of a meeting given under Part (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the board members present at the meeting unanimously agree to treat as urgent business.
- e. Board quorum requires half the number of board members plus one. For example, if the board includes nine members then the quorum must be five people.
- f. No business is to be transacted by the board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- g. If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- h. At a meeting of the board:
  - I. the chair or, in the chair's absence, the vice-chair is to preside, or
  - II. if the president and the vice-chair are absent or unwilling to act, one of the remaining members of the board chosen by the members present at the meeting is to preside.

### **3.8. Appointment of Association members as board members to constitute quorum**

- a. If at any time the number of board members is less than the number required to constitute a quorum for a board meeting, the existing board members may appoint a sufficient number of members of the Association as board members to enable the quorum to be constituted.
- b. A member of the board so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.

- c. This clause does not apply to the filling of a casual vacancy to which clause 18 applies.

### **3.9. Use of technology at board meetings**

- a. A board meeting may be held at two or more venues using any technology approved by the board that gives each of the board's members a reasonable opportunity to participate.
- b. A board member who participates in a board 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.

### **3.10. Delegation by board to sub-committee**

- a. The board may, by instrument in writing, delegate to one or more sub-committee (consisting of the member or members of the Association that the board thinks fit) the exercise of any of the functions of the board that are specified in the instrument, other than:
  - I. this power of delegation, and
  - II. a function which is a duty imposed on the board by the Act or by any other law.
- b. 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.
- c. 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.
- d. Despite any delegation under this clause, the board may continue to exercise any function delegated.
- e. 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 board.
- f. The board may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- g. A sub-committee may meet and adjourn as it thinks proper and is in accordance with this constitution.

### **3.11. Voting and decisions**

- a. Questions arising at a meeting of the board or of any sub-committee appointed by the board are to be determined by a majority of the votes of members of the board or sub-committee present at the meeting.

- b. Each member present at a meeting of the board or of any sub-committee appointed by the board (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- c. The board may act despite any vacancy on the board.
- d. Any act or thing done or suffered, or purporting to have been done or suffered, by the board or by a sub-committee appointed by the board, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the board or sub-committee.

## **Part 4 General meetings**

### **4.1. Annual General Meetings - holding of**

- a. The Association must hold its first annual general meeting within 18 months after its registration under the Act.
- b. The Association must hold its annual general meetings:
  - I. within 6 months after the close of the Association's financial year, or
  - II. within any later time that may be allowed or prescribed under section 37 (2) (b) of the Act.

### **4.2. Annual General Meetings - calling of and business at**

- a. The annual general meeting of the Association is, subject to the Act, to be convened on the date and at the place and time that the board thinks fit.
- b. In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - I. to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
  - II. to receive from the board reports on the activities of the Association during the last preceding financial year,
  - III. to elect office-bearers of the Association and ordinary board members,
  - IV. to receive and consider any financial statement or report required to be submitted to members under the Act.
- c. An annual general meeting must be specified as that type of meeting in the notice convening it.

### **4.3. Special General Meetings - calling of**

- a. The board may, whenever it thinks fit, convene a special general meeting of the Association.
- b. The board must, on the requisition of at least 5% of the total number of members, convene a special general meeting of the Association.
- c. A requisition of members for a special general meeting:
  - I. must be in writing, and
  - II. must state the purpose or purposes of the meeting, and
  - III. must be signed by the members making the requisition, and
  - IV. must be lodged with the secretary, and
  - V. may consist of several documents in a similar form, each signed by one or more of the members making the requisition.

- d. If the board fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- e. A special general meeting convened by a member or members must be convened as nearly as is practicable in the same manner as general meetings are convened by the board.
- f. For the purposes of:
  - i. a requisition may be in electronic form, and
  - ii. a signature may be transmitted, and a requisition may be lodged, by electronic means.

#### **4.4. Notice**

- a. Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- b. If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.
- c. **Note.** A special resolution must be passed in accordance with section 39 of the Act.
- d. No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 26 (2).
- e. A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

#### **4.5. Quorum for general meetings**

- a. No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- b. 11 members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.

- c. If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - I. if convened on the requisition of members—is to be dissolved, and
  - II. in any other case—is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- d. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

#### **4.6. Presiding member**

- a. The president or, in the chair's absence, the vice-chair, is to preside as chairperson at each general meeting of the Association.
- b. If the chair and the vice-chair are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

#### **4.7. Adjournment**

- a. The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- b. If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the Association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- c. Except as provided in Part 4.7, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

#### **4.8. Making of decisions**

- a. A question arising at a general meeting of the Association is to be determined by:
  - I. a show of hands or, if the meeting is one to which the Act applies, any appropriate corresponding method that the board may determine, or

- ii. if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- b. If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- c. Applies to a method determined by the board in the same way as it applies to a show of hands.
- d. If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

#### **4.9. Special resolutions**

A special resolution may only be passed by the Association in accordance with section 39 of the Act.

#### **4.10. Voting**

- a. On any question arising at a general meeting of the Association a member has one vote only.
- b. In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- c. A member is not entitled to vote at any general meeting of the Association unless all money due and payable by the member to the Association has been paid.
- d. A member is not entitled to vote at any general meeting of the Association if the member is under 18 years of age.

#### **4.11. Proxy votes not permitted**

Proxy voting must not be undertaken at or in respect of a general meeting.

**Note.** Schedule 1 to the Act provides that an Association's constitution is to address whether members of the Association are entitled to vote by proxy at general meetings.

#### **4.12. Postal or electronic ballots**

- a. The Association may hold a postal or electronic ballot (as the board determines) to determine any issue or proposal (other than an appeal under the Act
- b. A postal or electronic ballot is to be conducted in accordance with the Act.

#### **4.13. Use of technology at general meetings**

- a. A general meeting may be held at 2 or more venues using any technology approved by the board that gives each of the Association's members a reasonable opportunity to participate.
- b. 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 Miscellaneous**

### **5.1. Insurance**

The Association must affect and maintain appropriate insurances as required under the Act and any funding agreement entered into by the Association.

### **5.2. Funds**

- a. The funds of the Association are to be derived from any funding agreement entered into by the Association.
- b. All money received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank or other authorised deposit-taking institution account in accordance with any funding or service agreements.
- c. The Association must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **5.2. Funds - management**

- a. Subject to any resolution passed by the Association in general meeting, the funds of the Association are to be used solely in pursuance of the objects of the Association in the manner that the board determines.
- b. All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by two authorised signatories.
- c. In accordance with any funding agreement entered into by the Association.

### **5.3. Association is non-profit**

Subject to the Act and the Regulation, the Association must apply its funds and assets solely in pursuance of the objects of the Association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

**Note.** Section 5 of the Act defines **pecuniary gain** for the purpose of this clause.

### **5.4. Distribution of property on winding up of Association**

- a. Subject to the Act and the Regulations, in a winding up of the Association, any surplus funds are to be transferred to City of Newcastle. Any surplus property of the Association is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members otherwise to the City of Newcastle if such other organisation does not exist.

- b. In this Part, a reference to the surplus property of an Association is a reference to that property of the Association remaining after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of the winding up of the Association.

**Note.** Section 65 of the Act provides for distribution of surplus property on the winding up of an Association.

### **5.5. Change of name, objects and constitution**

An application for registration of a change in the Association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a board member.

### **5.3. Custody of books etc**

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 main premises of the Association, in the custody of the public officer or a member of the Association (as the board determines),  
or
- b. if the Association has no premises, at the Association's official address, in the custody of the public officer.

### **5.3. Inspection of books etc**

- a. The following documents must be open to inspection, free of charge, by a member of the Association at any reasonable hour:
  - I. records, books and other financial documents of the Association,
  - II. this constitution,
  - III. minutes of all board meetings and general meetings of the Association.
- b. A member of the Association may obtain a copy of any of the documents referred to in Part 5.3, on payment of a fee of not more than \$1 for each page copied.
- c. Despite Part 5.3, the board may refuse to permit a member of the Association to inspect or obtain a copy of records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

### **5.4. Service of notices**

- a. For the purpose of this constitution, a notice may be served on or given to a person:
  - I. by delivering it to the person personally, or
  - II. by sending it by pre-paid post to the address of the person,  
or

- III. by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- b. For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - I. in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - II. in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - III. in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

## **5.5. Financial year**

The financial year of the Association is:

- a. the period of time commencing on the date of incorporation of the Association and ending on the following 30 June, and
- b. each period of 12 months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

### **Notes.**

- 1. Schedule 1 to the Act provides that an Association's constitution is to address the Association's financial year.
- 2. Clause 19 of the Regulation contains a substitute clause 47 for certain Associations incorporated under the *Associations Incorporation Act 1984*.