

DATED

2021



**CONSTITUTION OF
THE PRIMARY CLUB OF AUSTRALIA INC
ABN 88 136 792 377**

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Part 1 Preliminary

1 Name

The name of the Association is The Primary Club of Australia Inc (the "**Association**").

2 Definitions

(1) In this Constitution:

Act means the *Associations Incorporation Act 2009* (NSW) (and, as applicable, includes the subordinate legislation made under the Act).

By-Laws has the meaning set out in **Clause 13**.

Charitable means Charitable within:

- (a) the Governing Law; and
- (b) the laws of the Commonwealth.

Committee means the committee of the Association described in clause 15(1).

Committee member means each of the office bearers and the Ordinary Committee Members.

Corporate Member means a member who is an incorporated entity or an unincorporated entity.

Deductible Contributions means a contribution of money or property as described in Item 7 or Item 8 of the table in Section 30-15 of the ITAA 97 in relation to a fundraising event held for the purpose of the Trust.

Deputy-President means the person who is appointed to that position from time to time by the Committee. Such person must be a member of the Committee and such person shall cease to be the Deputy-President as and when the Committee so decides.

Eligible Entity means a fund, authority or institution:

- (a) which is Charitable or would be a 'charity' within the meaning of the Charities Act 2013 (Cth) if it were not a 'government entity' as defined in that Act; and
- (b) to which gifts are deductible under item 1 of the table in section 30-15 of ITAA 97.

Gifts means a gift described in Item 2 of the table in Section 30-15 of the ITAA 97.

Governing Law means the law of New South Wales.

Individual Member means a member who is not a Corporate Member.

ITAA 97 means the *Income Tax Assessment Act 1997*.

Member means a person or incorporated entity recorded in the Association's Register of Members as a member.

Objects means the Objects set out in clause 3.

Ordinary Committee Member means a member of the committee who is not an office-bearer of the Association.

Public Ancillary Fund means a trust that is a public ancillary fund as described in section 426-102 of schedule 1 to the *Taxation Administration Act 1953 (Commonwealth)* and endorsed by the Commissioner as a deductible gift recipient under Subdivision 30-BA of ITAA 97.

Public Ancillary Fund Guidelines means the Public ancillary fund guidelines, as in force from time to time, made under section 426-103 of Schedule 1 to the *Taxation Administration Act 1953 (Commonwealth)*.

Public Officer means the person holding office under this Constitution as Secretary of the Association.

Purposes means the purposes set out in clauses 3(b) and 3(c).

Registered Charities means charities registered with the Australian Charities and Not-for-Profits Commission.

Register of Members means the register of Members of the Association.

Regulation means the *Associations Incorporation Regulation 2016*.

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.

Special General Meeting means a general meeting of the Association other than an Annual General Meeting.

Special Resolution means a resolution of which notice has been given in accordance with section 39 of the Act and that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

Trust Fund means the Public Ancillary Fund known as the PRIMARY CLUB OF AUSTRALIA INC TRUST ACCOUNT:

- (a) together with all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund including all Gifts and Deductible Contributions;
- (b) all income of the Trust Fund including income earned or to which it is entitled;
- (c) all accretions to the Trust Fund;
- (d) all accumulations of income;
- (e) all money, investments and property from time to time representing the above or into which they are converted;

and includes any part of the Trust Fund.

(2) In this Constitution, unless the context otherwise indicates:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty; and
- (c) a reference to the law means any act of parliament, regulation, and requirement of any body appointed under any act of parliament or regulation to regulate the conduct of associations and/or charities and/or Public Ancillary Funds and a reference to any law shall include any such law as amended and where any such law is repealed and a law is passed in substitution for, or to regulate matters the subject of the repealed law, a reference to any law includes the amended law or that substitute law, as the case may be;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other genders;
- (f) references to persons include corporations and bodies politic; and
- (g) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

- (3) 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.

3 Establishment and Objects

- (2) The Association is established as and must operate as a not-for-profit entity.
- (3) The Trust Fund is established in, and must operate only in, Australia and the public must be invited to contribute to the Trust Fund.
- (4) The objects of the Association are:
- (a) to act as the trustee of, and operate, the public ancillary fund known as the PRIMARY CLUB OF AUSTRALIAN INC TRUST ACCOUNT;
 - (b) as the trustee to pay or apply the Trust Fund solely for the purpose of providing money, property or benefits to or for Eligible Entities or the establishment of Eligible Entities as the Trustee decides, in accordance with the Public ancillary fund guidelines;
 - (c) for the purpose referred to in subclause (b), to raise and receive funds for the purpose of contributing to, and improving the, wellbeing of people with disabilities (under the care and administration of Eligible Entities) and to pay such funds to any such Eligible Entity for the purpose of each such Eligible Entity providing and maintaining sporting, recreational, and rehabilitative infrastructure, facilities, equipment and other related items of personal property for such people;
- (5) Where gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of ITAA 97 are satisfied, a payment or application of the Trust Fund must be made in accordance with those conditions.

4 Powers

- (1) The Association has, in the exercise of its affairs, all the powers of an individual.
- (2) The Association may, for example:
- (a) enter into contracts;
 - (b) acquire, hold, deal with and dispose of property;
 - (c) make charges for services and facilities it supplies;
 - (d) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that is consistent with the Objects of the Association; and
 - (e) do other things necessary or convenient to be done in achieving its Objects and/or carrying out its affairs and, without limitation, organise and conduct events that promote the Association and its Purposes.

Part 2 Membership

5 Membership generally

- (1) The members of the Association are:
- (a) those persons who are members of the Association at the time of the adoption of this Constitution;
 - (b) those natural persons not less than 18 years of age, admitted to membership of the Association by a resolution of the Committee; or
 - (c) those incorporated entities or unincorporated entities admitted to membership of the Association by a resolution of the Committee.

- (2) The Committee may admit as a Member of the Association any person:
 - (a) who is a natural person at least 18 years old; or
 - (b) which is an incorporated entity or unincorporated entity that:
 - (i) applies in writing to be a Member in a form approved by the Committee; and
 - (ii) meets such other criteria as may be prescribed in the By-Laws from time to time.
- (3) As soon as practicable after the Committee admits a person or incorporated entity or unincorporated entity as a Member, the Secretary must:
 - (a) send to the person or incorporated entity written notice of their admission to membership; and
 - (b) enter or cause to be entered the person's name in the Register of Members.
- (4) The Committee may accept or reject an applicant for membership without giving a reason for its decision.
- (5) Any unincorporated entity must have a formal constitution and must have not less than ten (10) active members.

6 Cessation of membership

A Member:

- (a) who is a person ceases to be a Member of the Association if the person:
 - (i) dies;
 - (ii) resigns membership;
 - (iii) fails to pay the Member's annual membership fee; or
 - (iv) is expelled as a Member of the Association;
- (b) which is an incorporated entity ceases to be a Member of the Association:
 - (i) if the incorporated entity is wound up or ceases to exist; or
 - (ii) if a liquidator, receiver, or administrator is appointed to the incorporated entity;
 - (iii) if the incorporated entity resigns membership;
 - (iv) if the incorporated entity fails to pay the Member's annual membership fee; or
 - (v) if the incorporated entity is expelled as a Member of the Association; and
- (c) which is an unincorporated entity ceases to be a Member of the Association:
 - (i) if the unincorporated entity is wound up or ceases to exist; or
 - (ii) if the incorporated entity ceases to meet the qualifications set out in clause 5(5);
 - (iii) if the incorporated entity resigns membership;
 - (iv) if the incorporated entity fails to pay the Member's annual membership fee; or
 - (v) if the incorporated entity is expelled as a Member of the Association.

7 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.

8 Resignation of membership

- (1) A Member of the Association may resign from membership of the Association by first giving to the Secretary written notice of at least 1 month (or any lesser period that the Committee 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.
- (2) If a Member of the Association ceases to be a Member under subclause (1), 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.

9 Register of Members

- (1) The Secretary must establish and maintain a Register of Members of the Association (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.
- (2) The Register of Members must identify the Individual Members and the Corporate Members.
- (3) The Register of Members must be open for inspection, free of charge, by any Member of the Association at any reasonable hour.
- (4) If a Member requests that any information contained on the Register of Members about the Member (other than the Member's name) not be available for inspection, that information must not be made available for inspection.
- (5) A Member must not use information about a person obtained from the Register of Members to contact or send material to the person, other than for:
 - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the Association or communications concerning the raising of funds for the Purposes or other material relating to the Association, or
 - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (6) If the Register of Members is kept in electronic form:
 - (a) it must be convertible into hard copy, and
 - (b) the requirements in subclauses (2) and (3) apply as if a reference to the Register of Members is a reference to a current hard copy of the Register of Members.

10 Fees and subscriptions

- (1) The Members of the Association shall pay such fees as the Committee may determine from time to time including, but not limited to:
 - (a) fees on being admitted to membership; and
 - (b) annual membership fees.
- (2) The Committee may in its discretion determine:
 - (a) such fees as are described in (1)(a) and (1)(b) in respect of natural persons; and
 - (b) such fees as are described in (1)(a) and (1)(b) in respect of incorporated entities and unincorporated entities.
- (3) The fees determined in respect of natural persons may be different to the fees determined in respect of incorporated entities and unincorporated entities.

11 Members' liabilities

Members of the Association are not liable 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, except to the extent that Members owe debts to the Association.

Part 3 The Committee

12 Powers of the 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;
- (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 Committee to be necessary or desirable for the proper management of the affairs of the Association.

13 By-Laws

13.1 Committee to Formulate By-Laws

The Committee may formulate, issue and adopt By-Laws, and amend such By-Laws, for the proper advancement, management and administration of the Association and the advancement of the Objects and Purposes of the Association as it thinks necessary or desirable. Such By-Laws must be consistent with the Constitution and the Act. Any By-Laws may be set aside by a resolution of a general meeting of the Members

13.2 By-Laws Binding

All By-Laws are binding on the Association and the Members.

13.3 Bulletins Binding on Members

By-Laws made by the Committee, and all amendments and other changes to By-Laws shall be advised to Members by means of bulletins, newsletters or notices approved by the Committee. The contents of such bulletins, newsletters and notices shall be binding on all Members.

14 Particular By-Laws

Without limiting clause 13 the Committee may make By-Laws with respect to the following matters:

- (1) Life Membership;
- (2) the role and the appointment of the 12th Man/Patron of the Association;
- (3) the role of the President;
- (4) the role and the appointment of Deputy Presidents;
- (5) the qualifications of Golden Duck donors;
- (6) the qualifications of Corporate Golden Duck donors;
- (7) different classifications of Membership;
- (8) the role and the appointment of Ambassadors;
- (9) the distinction between Members who are natural persons and/or Members who are incorporated, or unincorporated, bodies; and
- (10) the role of the Secretary and the Treasurer.

15 Composition and membership of Committee

- (1) The Committee is to consist of:
 - (a) the office-bearers of the Association; and
 - (b) not less than 8 Ordinary Committee Members and not more than such number as the Committee may from time to time determine and in the absence of such a determination not more than 12 Ordinary Committee Members.
- (2) Each person to be elected must be a member of the Association and, subject to the Constitution, is to be elected at the Annual General Meeting of the Association under clause 17.
- (3) There is no maximum number of consecutive terms for which a Committee member may hold office.
- (4) Each Committee member is, subject to this Constitution, to hold office until the end of each Annual General Meeting following the time of their appointment and is then eligible for re-election.
- (5) At each Annual General Meeting of the Association the office bearers and the Ordinary Committee Members are each to be elected for a term of office, commencing at the time of their respective appointments, and subject to this Constitution and the Act, concluding at the end of the Annual General Meeting following the Annual General Meeting at which they are respectively elected.
- (6) In relation to the time of the appointment of any Member, where a Member is elected at a meeting of the Members, they will be deemed to be appointed at the end of the relevant meeting.

16 Office Bearers

- (1) The office-bearers of the Association are as follows:
 - (a) the President;
 - (b) the Deputy-President;
 - (c) the Treasurer; and
 - (d) the Secretary.

17 Election of Committee members

- (1) Nominations of candidates for election as office bearers and Ordinary Committee members:
 - (a) 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
 - (b) must be delivered to the Secretary of the Association at least 14 days before the date fixed for the holding of the Annual General Meeting at which the election is to take place.
- (2) Notice of the nomination of persons for election as office bearers and Ordinary Committee members is to be given to the Members of the Association not less than 5 days prior to the date of the relevant Annual General Meeting. Such notice shall be given by email.
- (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.
- (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 is to be conducted at the Annual General Meeting in the manner that the Committee determines. Any such ballot must be conducted in a fair and reasonable manner.

18 Secretary

- (1) 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 and advise all relevant government entities of such appointment in compliance with any relevant Law.
- (2) It is the duty of the Secretary to keep minutes (whether in written or electronic form) of:
 - (a) all appointments of office-bearers and members of the Committee;
 - (b) the names of Committee members present at a Committee meeting or a general meeting; and
 - (c) all proceedings at Committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chair of the meeting or by the chair of the next succeeding meeting.
- (4) The signature of the chair may be transmitted by electronic means for the purposes of subclause (3).
- (5) The Secretary shall be the public officer of the Association and must discharge the obligations of the public officer under the Act.

19 Treasurer

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

- (a) that all money due to the Association is collected, received and deposited to the Association's bank account and that all payments authorised by the Association are made;
- (b) that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association; and
- (c) that those books and accounts are capable of being audited, conveniently.

20 Casual vacancies

- (1) In the event of a casual vacancy occurring in the membership of the Committee, the Committee 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 end of the Annual General Meeting next following the time of their appointment. Where any office-bearer ceases to be a Member of the Association or resigns as an office-bearer such as to cause a vacancy the Committee may appoint a Member of the Committee to fill the vacancy.
- (2) A casual vacancy in the office of a Committee member occurs if the Committee member:
 - (a) dies;
 - (b) ceases to be a Member of the Association;
 - (c) becomes bankrupt or, as the debtor, becomes a party to a personal insolvency agreement;
 - (d) resigns office by notice in writing given to the Secretary;
 - (e) is removed from office under clause 21;
 - (f) becomes a mentally incapacitated person;
 - (g) is absent without the consent of the Committee from three consecutive meetings of the Committee;
 - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than three months;

- (i) is prohibited from being a director under the Corporations Act or a responsible entity under the Australian Charities and Not-For-Profits Commission Act; or
- (j) is the subject of a resolution of the Committee, of which not less than 75% of the Members of the Committee vote in favour of the resolution, to the effect that the relevant Committee Members has acted in a manner which is likely to bring the Association into disrepute.

21 Removal of Committee members

- (1) The Association in general meeting may by resolution remove any elected Committee member from the office 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 Committee member so removed. Notice of any proposed resolution to remove any elected Committee member from the office of Committee member before the expiration of the Committee member's term of office shall be given to the relevant Committee Member, and to the members of the Association, not less than 14 days prior to the date for the relevant general meeting of the Association.
- (2) If a Committee member to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the Secretary or the 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.

22 Committee meetings and quorum

- (1) The Committee must meet at least 8 times in each calendar year at the place and time that the Committee may determine.
- (2) Additional meetings of the Committee may be convened by the President or by any Committee member.
- (3) Oral or written notice of a meeting of the Committee must be given by the Secretary to each Committee member at least 48 hours (or any other period that may be unanimously agreed on by the Committee members) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (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 a majority of the Committee members present at the meeting agree to treat as urgent business.
- (5) At meeting of the Committee the number of Committee Members whose presence is required to constitute a quorum is half the number of the members of the Committee plus one (1).
- (6) No business is to be transacted by the Committee 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.
- (7) 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.
- (8) At a meeting of the Committee:
 - (a) the President or, in the President's absence, the Deputy-President is to preside; or
 - (b) if the President and the Deputy-President are absent or unwilling to act, one of the remaining Committee members chosen by the Committee members present at the meeting is to preside.

23 Appointment of Association Members as Committee members to constitute quorum

- (1) Despite any other provisions of the Constitution, if at any time the number of Committee members is less than the number required to constitute a quorum for a Committee meeting, the existing Committee members may appoint a sufficient number of Members of the Association as Committee members to enable the quorum to be constituted.
- (2) A member of the Committee so appointed is to hold office, subject to this Constitution, until the end of the Annual General Meeting next following the time of their appointment.

- (3) This clause does not apply to the filling of a casual vacancy to which clause 20 applies.

24 Use of technology at Committee meetings

- (1) A Committee meeting may be held at two or more venues using any technology approved by the Committee that gives each of the Committee's members a reasonable opportunity to participate.
- (2) A Committee member 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.

25 Committee resolutions without a meeting

- (1) If all the Committee members, who are eligible to vote on a resolution, have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Committee meeting held on the day on which the Secretary, or other officer authorised by the Committee to collect such documents, received the document signed by all the Committee members.
- (2) For the purposes of paragraph (1):
 - (a) two or more identical documents, each of which is signed by one or more Committee members, together constitute one document signed by those Committee members; and
 - (b) the reference to all the Committee members excludes any Committee member who, at the time the statement is provided or sent, is on leave of absence formally approved by the Committee.
- (3) Any document referred to in this clause may be in the form of electronic mail or facsimile transmission.
- (4) The minutes of Committee meetings must record that a meeting was held in accordance with this clause.

26 Delegation by Committee to Sub-Committee

- (1) The Committee may, by instrument in writing, delegate to one or more sub-committees (consisting of at least 4 Members of the Association and such other persons as the Committee thinks fit) the exercise of any of the functions of the Committee that are specified in the instrument, other than:
 - (a) this power of delegation; and
 - (b) a function which is a duty imposed on the Committee by the Act or by any other law.
- (2) 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.
- (3) 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.
- (4) Despite any delegation under this clause, the Committee may continue to exercise any function delegated.
- (5) 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 (other than for matters involving the expenditure, or the making of any donation, or the incurring of any financial expenditure, in excess of any amount specified by the Committee in the relevant delegation. Where any such delegation does not specify any such amount the amount of \$7,500) shall be deemed to have been specified. When a Sub-Committee seeks to do anything involving the expenditure, or the making of any donation, or the incurring of any financial expenditure, in excess of the amount specified, it must obtain the approval of the Committee to do so.
- (6) The Committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (7) Subject to clause 26(1) the members of any Sub-Committee shall be such persons who the Committee from time to time appoints provided that the majority of the members of any such Sub-Committee are Members of the Association.

- (8) The chair of any Sub-Committee shall be the person who the Committee from time to time appoints. In the absence of that person at any meeting of the Sub-Committee the members of the relevant Sub-Committee must appoint a person to chair the relevant meeting. The Chair must be a person who is a Member of the Association.
- (9) The Committee may from time to time revoke any appointment under this clause 26.
- (10) A Sub-Committee may meet and adjourn as it thinks proper.
- (11) Unless the Committee resolves otherwise, the provisions of the following clauses of the Constitution shall apply (with such changes made as need to be made to so far as possible make the clause appropriate) to Sub-Committees appointed under this Constitution:
 - (a) 20(2) (with "Committee" replaced by "Sub-Committee") [except in clause 20(2)(j)];
 - (b) 22 (with "Committee" replaced by "Sub-Committee") [except subclauses (1), (2) and (8)];
 - (c) 24 (with "Committee" replaced by "Sub-Committee");
 - (d) 25 (with "Committee" replaced by "Sub-Committee");
 - (e) 28 (with "Committee" replaced by "Sub-Committee");
 - (f) 29 (with "Committee" replaced by "Sub-Committee");
 - (g) 30 (with "Committee" replaced by "Sub-Committee").

27 Voting and decisions

- (1) Subject to a quorum being present, questions arising at a meeting of the Committee or of any Sub-Committee appointed by the Committee are to be determined by a majority of the votes of members of the Committee or Sub-Committee present at the meeting.
- (2) Each member present at a meeting of the Committee or of any Sub-Committee appointed by the Committee (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 as chair may exercise a second or casting vote.
- (3) Subject to clause 22(5), the Committee may act despite any vacancy on the Committee.
- (4) Any act or thing done, or purporting to have been done, by the Committee or by a Sub-Committee appointed by the Committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Committee or Sub-Committee.

28 Duties

The Committee members must comply with their duties as Committee members under legislation and the common law and with the duties described in Governance Standard 5 of the regulations made under the *Australian Charities and Not-For-Profits Commission Act* which are:

- (1) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Committee member of the Association;
- (2) to act in good faith in the best interests of the Association and to further the Objects of the Association;
- (3) not to misuse their position as a Committee member;
- (4) not to misuse information they gain in their role as a Committee member;
- (5) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 29;
- (6) to ensure that the financial affairs of the Association are managed responsibly; and
- (7) not to allow the Association to operate while it is insolvent.

29 Conflicts of interests and material personal interest

- (1) A Committee member must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Committee (or that is proposed in a circular resolution):
 - (a) to the other Committee members, or
 - (b) if all of the Committee members have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.
- (2) The disclosure of a conflict of interest by a Committee member must be recorded in the minutes of the meeting.
- (3) Each Committee member who has a material personal interest in a matter that is being considered at a Committee meeting (or that is proposed in a circular resolution) must not, except as provided under paragraph (4):
 - (a) be present at the meeting while the matter is being discussed;
 - (b) be counted in a quorum in relation to that matter; or
 - (c) vote on the matter.
- (4) Committee members may still be present and vote if:
 - (a) their interest arises because they are a Member of the Association, and the other Members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the Committee member against liabilities that the Committee member incurs as a Committee member of the Association;
 - (c) their interest relates to a payment by the Association under an indemnity; or
 - (d) the Committee members who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Committee member, the nature and extent of the Committee member's interest in the matter and how it relates to the affairs of the Association, and
 - (ii) says that those Committee members are satisfied that the interest should not stop the Committee member from voting or being present.
- (5) The quorum for consideration at a Committee meeting of a matter in which one or more Directors have a material personal interest is three Committee members who are entitled to vote on any resolution that may be considered at the meeting in relation to that matter.
- (6) Each Committee member must disclose to the Association any material contract in which the Committee member is interested, and must provide the Association with the names of the parties to the contract, particulars of the contract, and the Committee member's interest in the contract. A Committee member's failure to make such disclosure does not render void or voidable a contract in which the Committee member has an interest.

30 Register of Committee members and disclosure of interests

- (1) The Association must keep a register of Committee members, which must contain:
 - (a) the Committee member's name, date of birth and residential address;
 - (b) the date on which the Committee member took office;
 - (c) the date on which the Committee member vacates office; and
 - (d) if the Committee member held or holds the position of the President, Deputy-President, Secretary or Treasurer, the date on which the Committee member was elected (or appointed) to such position and the date on which the Committee member ceases to hold the position.

- (2) Any change in the Committee's membership must be recorded in the register of Committee members within one month after the change occurs.
- (3) The register of Committee members must, at all reasonable hours, be kept available for inspection, free of charge, by any person.
- (4) The Association must keep, with the register of Committee members, a record of interests disclosed by Committee members under section 31 of the Act.
- (5) The record of interests must, at all reasonable hours, be kept available for inspection, free of charge, by any Member.

Part 4 General meetings

31 Annual General Meetings - holding of

The Association must hold its Annual General Meetings:

- (1) within 6 months after the close of the Association's financial year; or
- (2) within any later time that may be allowed or prescribed under section 37 (2) (b) of the Act.

32 Annual General Meetings - calling of and business at

- (1) The Annual General Meeting of the Association is, subject to the Act and to clause 31, to be convened on the date and at the place and time that the Committee thinks fit.
- (2) 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:
 - (a) to confirm the minutes of the last preceding Annual General Meeting and of any Special General Meeting held since that meeting,
 - (b) to receive from the Committee reports on the activities of the Association during the last preceding financial year,
 - (c) to elect office-bearers of the Association and Ordinary Committee Members,
 - (d) to receive and consider any financial statement or report required to be submitted to Members under the Act.
- (3) An Annual General Meeting must be specified as that type of meeting in the notice convening it.

33 Special General Meetings - calling of

- (1) The Committee may, whenever it thinks fit, convene a Special General Meeting of the Association.
- (2) The Committee must, on the requisition of six (6) Members, convene a Special General Meeting of the Association.
- (3) A requisition of Members for a Special General Meeting:
 - (a) must be in writing;
 - (b) must state the purpose or purposes of the meeting;
 - (c) must be signed by the Members making the requisition;
 - (d) must be lodged with the Secretary; and
 - (e) may consist of several documents in a similar form, each signed by one or more of the Members making the requisition.
- (4) If the Committee fails to convene a Special General Meeting to be held within one 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 three months after that date.

- (5) A Special General Meeting convened by a Member or Members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Committee.
- (6) For the purposes of subclause (3):
 - (a) a requisition may be in electronic form; and
 - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

34 Notice

- (1) 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.
- (2) 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.
- (3) 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 32(2).
- (4) 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.

35 Quorum for general meetings

- (1) No item of business is to be transacted at a general meeting unless a quorum of five (5) of the Members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- (2) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
 - (a) if convened on the requisition of Members—is to be dissolved; and
 - (b) 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.
- (3) 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 four [4]) are to constitute a quorum.

36 Presiding President

- (1) The President or, in the President's absence, the Deputy President, is to preside as chair at each general meeting of the Association.
- (2) If the President and the Deputy President are absent or unwilling to act, the Members present must elect one of their number to preside as chair at the meeting.

37 Adjournment

- (1) The chair 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.

- (2) 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.
- (3) Except as provided in subclauses (1) and (2), 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.

38 Making of decisions

- (1) A question arising at a general meeting of the Association is to be determined by:
 - (a) a show of hands or, if the meeting is one to which clause 37 applies, any appropriate corresponding method that the Committee may determine; or
 - (b) if on the motion of the chair or if five (5) or more Members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chair 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.
- (3) Subclause (2) applies to a method determined by the Committee under subclause (1)(a) in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chair.

39 Special resolutions

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

40 Voting

- (1) On any question arising at a general meeting of the Association a Member has one vote only.
- (2) In the case of an equality of votes on a question at a general meeting, the chair of the meeting is entitled to exercise a second or casting vote.
- (3) 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.

41 Proxy votes not permitted

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

42 Postal or electronic ballots

- (1) The Association may hold a postal or electronic ballot (as the Committee determines) to determine any issue or proposal (other than a general meeting of the Association conducted under clause 21).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

43 Use of technology at general meetings

- (1) A general meeting may be held at two 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 Miscellaneous

44 Insurance

The Association must effect and maintain such insurances as the Committee from time to time determines.

45 Funds - source

- (1) The funds of the Association are to be derived from donations, the activities of the Association, the property of the Association and, subject to any resolution passed by the Association in general meeting, any other sources that the Committee determines.
- (2) 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.
- (3) The Association must, as soon as practicable after receiving any money for which the person making the payment is entitled to claim a tax deduction, issue an appropriate receipt.

46 Funds - management

- (1) Any funds which are donated to the Association for a particular purpose which is consistent with the Objects or Purpose of the Association must be held, and applied, for that purpose.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories of the Committee.

47 Association is non-profit

Subject to the Act and the Regulation, the Association must apply its funds and assets solely in a manner that is consistent with the Constitution and must not conduct its affairs so as to provide a pecuniary gain for any of its Members except in genuine compensation for services rendered to, or expenses incurred on behalf of, the Association.

48 Distribution of property on winding up of Association

- (1) Subject to the Act and the Regulations, in a winding up of the Association, any surplus property of the Association must not be paid to or distributed amongst the Members but is to be dealt with in a manner determined by the Members. Any such determination of the Members must satisfy the requirements of the Public Ancillary Fund Guidelines.
- (2) In this clause, a reference to the surplus property of the 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.

49 Act to prevail

Where any provision of this Constitution is inconsistent with a mandatory provision of the Act which cannot be waived or otherwise disregarded any such mandatory provision of the Act shall prevail and have effect.

50 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 Committee member.

51 Custody of books etc

Except as otherwise provided by this Constitution, all registers, records, books and other formal 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 Secretary/Public Officer or a Member of the Association (as the Committee determines); or
- (b) if the Association has no premises, at the Association's official address, in the custody of the Secretary/Public Officer.

52 Inspection of books etc

- (1) The following documents must be open to inspection, free of charge, by a Member of the Association at any reasonable hour:
 - (a) records, books and other financial documents of the Association;

- (b) this Constitution; and
 - (c) minutes of all Committee meetings and general meetings of the Association.
- (2) A Member of the Association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee of not more than \$1 for each page copied.
- (3) Despite subclauses (1) and (2), the Committee 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.

53 Service of notices

- (1) For the purpose of this Constitution, a notice may be served on or given to a person:
- (a) by delivering it to the person personally;
 - (b) by sending it by pre-paid post to the address of the person; or
 - (c) 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. Where a person gives the Association that person's email address that will confer authority on the Association to give notices to that person by email to that email address.
- (2) For the purpose of this Constitution, a notice is taken, unless the contrary is proved, to have been given or served:
- (a) in the case of a notice given or served personally, on the date on which it is received by the addressee;
 - (b) in the case of a notice sent by pre-paid post, on the fifth business day following that on which the notice is posted; and
 - (c) 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.

54 Financial Report

- (1) The Committee must cause the Association to prepare a financial report in accordance with the Act, the *Australian Charities and Not-For-Profits Act* and the *Australian Charities and Not-For-Profits Regulation*.
- (2) If required under the above legislation, the Board must cause the financial report to be:
- (a) audited; and
 - (b) tabled at the Annual General Meeting.
- (3) A copy of the financial report must be sent to all persons entitled to it.
- (4) The financial report when audited (and, if required, approved by a general meeting) is conclusive except as regards any material error discovered in the report within six months next after its approval. Whenever any material error is discovered within that period, the financial report must immediately be corrected and then it is conclusive.

55 Financial year

The financial year of the Association is from 1 July to 30 June.

56 Resolution of disputes

The dispute resolution procedure in this clause applies to disputes under this Constitution (**Dispute**) between Members, Committee members, the Association or any of them. The dispute resolution procedure is as follows:

- (1) The parties to the Dispute must promptly attempt a resolution of the Dispute by discussing the Dispute and seeking to reach a resolution by negotiation that seeks to address both the substantive issues and relational elements of the Dispute. This process may involve one or more meetings. With the consent of the parties to the Dispute, the President may be asked by one of the parties to facilitate those discussions.
- (2) Those involved in the dispute must try to resolve it between themselves within 14 days of the parties becoming aware of it.
- (3) If those involved in the dispute do not resolve it under paragraph (2), they must within 10 days:
 - (a) tell the Board 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.
- (4) 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 Board; or
 - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the President of the Law Society of New South Wales.
- (5) A mediator:
 - (a) may be a Member or former Member of the Association;
 - (b) must not have a personal interest in the Dispute; and
 - (c) must not be biased towards or against anyone involved in the Dispute.
- (6) 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.
- (7) All parties must observe the instructions of the mediator about the conduct of the mediation and must sign a Mediation Agreement with the mediator.
- (8) A party to the Dispute must not commence any form of legal proceedings unless this dispute resolution procedure has been followed without a mutually satisfactory conclusion being reached.

57 Disciplining of Members

- (1) A complaint may be made to the Committee by any person that a Member of the Association:
 - (a) has refused or neglected to comply with a provision or provisions of this Constitution; or
 - (b) has wilfully acted in a manner prejudicial to the interests of the Association.
- (2) The Committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Committee decides to deal with the complaint, the Committee:
 - (a) must cause notice of the complaint to be served on the Member concerned;

- (b) must give the Member at least 14 days from the time the notice is served within which to make submissions to the Committee in connection with the complaint; and
 - (c) must take into consideration any submissions made by the Member in connection with the complaint.
- (4) The Committee 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.
- (5) If the Committee 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 Committee for having taken that action and of the Member's right of appeal under clause 58.
- (6) The expulsion or suspension does not take effect:
- (a) until the expiration of the period within which the Member is entitled to appeal against the resolution concerned; or
 - (b) if within that period the Member exercises the right of appeal, unless and until the Association confirms the resolution under clause 58,
- whichever is the later.

58 Right of appeal of disciplined Member

- (1) A Member may appeal to the Association in general meeting against a resolution of the Committee under clause 57, within 7 days after notice of the resolution is served on the Member, by lodging with the Secretary a notice to that effect.
- (2) 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.
- (3) On receipt of a notice from a Member under subclause (1), the Secretary must notify the Committee, 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.
- (4) At a general meeting of the Association convened under subclause (3):
- (a) no business other than the question of the appeal is to be transacted;
 - (b) the Committee and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and
 - (c) the Members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of the votes cast by Members of the Association.

59 Amendment of Constitution

This Constitution may only be amended in accordance with the Act and in a manner consistent with the requirements of the Public Ancillary Fund Guidelines.

60 Public Ancillary Fund Guidelines

The Association must comply with the Public Ancillary Fund Guidelines in relation to the administration and operation of the public ancillary fund known as the PRIMARY CLUB OF AUSTRALIA INC TRUST ACCOUNT ("**Fund**").

Without limitation, the following provisions of the Public Ancillary Fund Guidelines must be observed:

- (1) Rules 13 to 16: in relation to the Association in its capacity as the trustee of the Fund;
- (2) Rule 17: in relation to any change of this Constitution;

- (3) Rule 19: in relation to Minimum Amount Distributions;
- (4) Rules 20 to 23: in relation to valuing the assets of the Fund;
- (5) Rules 24 to 27: in relation to the accounts and financial statements of the Fund;
- (6) Rules 28 and 29: concerning the auditing of the Fund;
- (7) Rules 30 to 40: in respect of an investment strategy and investment limitations;
- (8) Rules 41 to 42: concerning uncommercial transactions and benefits to donors;
- (9) Rule 44: concerning donors;
- (10) Rules 47 to 48: concerning compliance with laws.

The provisions of Rule 50 of the Guidelines concerning "Portability" are deemed to form part of this Constitution.

61 Liability of the Association and its personnel

- (1) Subject to subclause (2), the Association and any officer, agent or employee of the Association (the "**Identified Persons**"), where purporting to act in the exercise of the trusts in relation to the Fund or in the exercise of powers or discretions under this Constitution are entitled to be indemnified from the Trust Fund in respect of any loss, liability, costs and expenses relating to:
 - (a) in the case of the Association, it being the Trustee of the Trust Fund;
 - (b) in the case of the Identified Persons, their exercising their respective roles;
 - (c) establishing, operating, administering, amending, terminating and winding up the Trust Fund;
 - (d) all matters incidental to the Trust; and
 - (e) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in (a) to (d) above including, but not limited to, the Association performing its duties and exercising its powers and discretions under this Constitution.
- (2) Notwithstanding subclause (1), the Association is, and any Identified Person is, prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:
 - (a) the dishonesty of the Association or of that Identified Person;
 - (b) gross negligence or recklessness of the Association or of that Identified Person; or
 - (c) a deliberate act or omission known by the Association or of that Identified Person to be a breach of trust.