

SYDNEY MARITIME MUSEUM LTD

trading as Sydney Heritage Fleet

A company limited by guarantee

ACN: 000 519 246 / ABN: 70 000 519 246

CONSTITUTION

23 March 2021

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1. Name of the company

The name of the **company** is Sydney Maritime Museum Ltd.

2. Type of company

The **company** is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members

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

4. The guarantee

Each member must contribute an amount not more than \$20 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

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

5. Definitions

In this Constitution, words and phrases have the meaning set out in clauses 78 and 79.

CHARITABLE PURPOSES AND POWERS

6. Object

Sydney Maritime Museum Ltd is a member-based charity which recognises the important role of its volunteers in achieving its purpose, namely to advance culture by:

- (a) being a living museum that conserves, restores, operates, interprets and presents Australia's maritime heritage, with particular focus on Sydney and its harbour, utilising a unique collection of historic vessels and associated artefacts and preserving a skills base in activities related to vessel construction, operation and maintenance; and
- (b) providing a shared purpose that brings together a diverse community of individuals, to give them an opportunity to volunteer their time and skills and to be active and connected while learning and contributing as an integral part of the living museum.

7. Powers

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

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

8. Not-for-profit

8.1 The **company** must not distribute any income or assets directly or indirectly to its members, directors or **Governors**, except as provided in clauses 8.2, 8.3 and 76.

- 8.2 Clause 8.1 does not stop the **company** from paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, provided such transactions are done transparently, in good faith, and for sums not exceeding 3.5% of annual budgeted expense and with the explicit approval of the **board**.
- 8.3 Clause 8.1 does not apply to the payment of salaries to staff who are also members of the **company**.

9. Amending this Constitution

- 9.1 Subject to clause 9.2, the members may amend this Constitution by passing a **special resolution**.
- 9.2 A **special resolution** passed by members will be null and void if it seeks to amend this Constitution in a way that causes the **company** to no longer qualify as a **registered charity**.

MEMBERS

10. Membership and register of members

- 10.1 The members of the **company** are:
- (a) the members at the time this Constitution was adopted, and
 - (b) any other person whom the directors allow to be a member, in accordance with this Constitution.
- 10.2 The **company** will establish and maintain a **register of members**. The **register of members** must be kept by the secretary and must contain:
- (a) for each current member:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. the date the member was entered on to the **register of members**
 - v. the category of membership, including sub-category if applicable.
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices
 - iv. the dates the membership started and ended, and
 - v. the category of membership, including sub-category if applicable.
- 10.3 The **company** must give current members access to the **register of members** at no cost and in the format requested (paper or electronic) provided that the only information that is released is that which is legally required to be released.
- 10.4 The **company** and any member may only use information accessed from the **register of members** in a manner and for purposes that are directly relevant to the interests or rights of members.

11. Who can be a member?

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

- 11.3 There are three categories of members:
- (a) Individual Members (in sub-categories including but not limited to volunteer, concession and junior, and any other subcategory the **board** may choose in accordance with this Constitution)
 - (b) Corporate Members
 - (c) Honorary Life Members appointed by the board in recognition of substantial contributions to the company.
- 11.4 The **board** may choose, from amongst its members, individuals to be **Governors** as set out in Clause 59.

12. Applying for membership

A person (as defined in clause 11.2) may apply to become a member of the **company** by completing and submitting the application form in which they confirm that they:

- (a) want to become a member
- (b) support the Object of the **company**,
- (c) agree to comply with this **company's** Constitution, including paying the guarantee under clause 4 if required, and
- (d) agree to pay fees as determined by the **board**.

13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application and no later than the second **board** meeting after the date the application is received.
- 13.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the **register of members**, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a) to 12(d). In that case, by applying to be a member, the applicant agrees to those four matters.
- 13.5 For the avoidance of doubt, an application for membership from someone who ceased being a member under clauses 16.1(c), 16.1(d) and 16.1(e) is subject to explicit **board** approval, whereas the renewal of membership of current members is not subject to review by the **board**.

14. When a person becomes a member

Other than those who were members at the time this Constitution was adopted, an applicant will become a member from the date their name is entered into the **register of members**.

15. Rights of members

- 15.1 Members of the **company** have the right to attend **general meetings**.
- 15.2 Members of the **company** over the age of 18 have the right to attend **general meetings** and:
- (a) vote on matters put to the members for a vote, including at **general meetings**
 - (b) stand for election to the **board**

- (c) propose or second the nomination of a member standing for election as a director (in accordance with clause 41.3), and
- (d) propose a resolution for consideration at a **general meeting** (in accordance with clause 30).

16. When a person stops being a member

- 16.1. A person immediately stops being a member if they:
- (a) die,
 - (b) are wound up or otherwise dissolved or deregistered (for an incorporated member),
 - (c) resign, by writing to the secretary,
 - (d) upon reaching the age of 18, do not consent to becoming a member in their own right,
 - (e) are expelled under clause 17, or
 - (f) have not responded within two months to a written request from the secretary that they pay their fees and confirm in writing that they want to remain a member.
- 16.2. When membership ceases, the former member is not entitled to any refund of fees and they cannot reapply for membership unless they have paid any arrears.

DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

17. Dispute resolution

- 17.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a member or director and:
- (a) one or more members
 - (b) one or more directors, or
 - (c) the **company**.
- 17.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 17.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 17.4 If those involved in the dispute do not resolve it under clause 17.3, they must within 10 days:
- (a) tell the directors about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 17.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the **board**, or
 - ii. for other disputes, or any dispute involving one or more directors, a person chosen by the NSW Community Justice Centre.
- 17.6 A mediator chosen by the **board** under clause 17.5(b)(i):
- (a) may be a member or former member of the **company**
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.

- 17.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.

18. Disciplining members

- 18.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:
- (a) the member has breached this Constitution, or
 - (b) the member's behaviour is causing, has caused, or is likely to cause significant harm to the **company** and/or is contrary to the interests of the **company** or its members
 - (c) the member has breached an appropriately endorsed code of conduct they have signed or acted in a way that is likely to endanger themselves or others.
- 18.2 At least 14 days before the directors' meeting at which a resolution under clause 18.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 18.3 Before the directors pass any resolution under clause 18.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
 - (b) speaking at the meeting either in person or via electronic means.
- 18.4 After considering any explanation under clause 18.3, the directors may decide that the member:
- a) may remain;
 - b) may remain if they give an apology and/or an undertaking as to their conduct in future and/or any other condition the directors may reasonably impose; or
 - c) is to be suspended for a period of no more than 12 months or expelled.
- 18.5 Should a member subject to disciplinary action wish to appeal the **board's** decision, they can do so using the procedures set out in Clause 17.
- 18.6 The directors cannot fine a member.
- 18.7 The secretary must give written notice to the member of the decision under clause 18.4 as soon as possible.
- 18.8 Disciplinary procedures must be completed as soon as reasonably practical.
- 18.9 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

GENERAL MEETINGS OF MEMBERS

19. General meetings called by directors

- 19.1 The directors (in accordance with clause 56) may call a **general meeting**.

- 19.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 19.3 The percentage of votes that members have (in clause 19.2) is to be worked out as at midnight before the members request the meeting.
- 19.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **company**.
- 19.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

20. General meetings called by members

- 20.1 If the directors do not call the meeting within 21 days of being requested under clause 19.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 20.2 To call and hold a meeting under clause 20.1 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this Constitution
 - (b) call the meeting using the list of members on the **company's register of members**, which the **company** must provide to the members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 20.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

21. Annual general meeting

- 21.1 A **general meeting**, called the **annual general meeting**, must be held at least once in every calendar year.
- 21.2 Even if these items are not set out in the notice of meeting, the business of an **annual general meeting** may include:
- (a) a review of the **company's** activities
 - (b) a review of the **company's** finances
 - (c) the auditor's report
 - (d) the election of directors, and
 - (e) the appointment and payment of auditors.
- 21.3 Before or at the **annual general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last **annual general meeting**.
- 21.4 The chairperson of the **annual general meeting** must give members a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

22. Notice of general meetings

- 22.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting

- (b) each director, and
 - (c) the auditor of the **company**.
- 22.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 22.3 Subject to clause 22.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an **annual general meeting**, all the members entitled to attend and vote at the **annual general meeting** agree beforehand, or
 - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 22.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
 - (b) appoint a director in order to replace a director who was removed, or
 - (c) remove an auditor.
- 22.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business
 - (c) if applicable, that one or more **special resolutions** are to be proposed and the words of the proposed resolution(s)
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - ii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 22.6 If a **general meeting** is adjourned for one month or more, the members must be given new notice of the resumed meeting.

23. Quorum at general meetings (including annual general meetings)

- 23.1 For a **general meeting** to be held, at least 5% of current members (a quorum) must be present (in person or by proxy) for the whole meeting.
- 23.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 23.3 If a quorum is not present by 30 minutes after the time the meeting was supposed to start, then the meeting stands adjourned to the same time, same place, seven days later.
- 23.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

24. Auditor's right to attend meetings

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

25. Representatives of members

- 25.1 A Corporate Member may appoint a representative:
- (a) to represent the member at meetings, and

- (b) to be available for the purpose of being appointed or elected as a director.
- 25.2 The appointment of a representative by a member must:
 - (a) be in writing
 - (b) include the name of the representative
 - (c) be signed on behalf of the member, and
 - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 25.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 25.4 The appointment may be standing.

26. Using technology to hold meetings

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

27. Chairperson for General Meetings

- 27.1 The **President** of the **company** is entitled to chair **general meetings**.
- 27.2. If there is no **President**, or the **President** is not present within 30 minutes after the starting time set for the meeting, or the **President** elects not to chair the meeting, the Vice President or a director nominated by the directors present will chair the **general meeting**.
- 27.3. If the **President** arrives after the commencement of the **general meeting**, the **President** can determine whether to allow the current chairperson to continue chairing the meeting or assume the role of chairperson.
- 27.4. At a **general meeting** called by members, if there are no directors present, then the chairperson will be a member elected by a majority of members present (subject to clause 27.3).

28. Role of the chairperson

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

29. Adjournment of meetings

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

MEMBERS' RESOLUTIONS AND STATEMENTS

30. Members' resolutions and statements

- 30.1 Members with at least 5% of the votes that may be cast on a resolution may give:
 - (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or

- (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 30.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 30.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 30.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 30.5 The percentage of votes that members have (as described in clause 30.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 30.6 If the **company** has been given notice of a members' resolution under clause 30.1(a), the resolution must be considered at the next **general meeting** held no more than two months after the notice is given.
- 30.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

31. Company must give notice of proposed resolution or distribute statement

- 31.1 If the **company** has been given a notice or request under clause 30:
 - (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 31.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
 - (a) it is more than 1,000 words long, or
 - (b) the directors consider that it may be defamatory.

32. Circular resolutions of members

Circular resolutions are not to be used to pass a resolution which would normally be put to members at a **general meeting** including:

- (a) a resolution to remove an auditor, appoint a director or remove a director
- (b) for passing a **special resolution**, or
- (c) where the **Corporations Act** or this Constitution requires a meeting to be held.

VOTING BY MEMBERS

33. How many votes a member has

Each member has one vote.

34. Challenge to member's right to vote

- 34.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.

- 34.2 If a challenge is made under clause 34.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

35. How voting is carried out

- 35.1 Voting must be conducted and decided by:
- (a) a show of hands, or
 - (b) a vote in writing, or
 - (c) direct electronic means conducted in accordance with clause 35.5.
- 35.2 Before a vote is taken, the chairperson must state whether any proxy or direct votes have been received and, if so, how the votes will be cast.
- 35.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 35.4 Except when voted on a show of hands, the chairperson and the meeting minutes shall state the number or proportion of the votes recorded in favour or against and the number of abstentions.
- 35.5 When the **board** determines that electronic means may be used for a vote, it is to be done in such a way that:
- (a) the voting identifies when a member has voted but not how they voted,
 - (b) a member who has voted electronically cannot withdraw or change their vote,
 - (c) a member who has voted electronically must not then vote in person or by proxy on the same matter at the related general meeting,,
 - (d) when offering a direct (electronic) vote, the **board** must advise members whether the decision will be determined by direct voting alone or by the combined result of the direct voting plus voting at the related general meeting,
 - (e) when the direct voting is for a **special resolution** there must also be voting at the related **general meeting**, and
 - (f) if the voting combines direct voting and voting at the related **general meeting**, the voting at the **general meeting** must be a vote in writing and not a show of hands.

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

- 36.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five of the **members present**, or
 - (b) the chairperson.
- 36.2 A vote in writing must be taken when and how the chairperson directs, unless clause 36.3 applies.
- 36.3 A vote in writing must be held immediately if it is demanded under clause 36.1:
- (a) for the election of a chairperson under clause 27.2, or
 - (b) to decide whether to adjourn the meeting.
- 36.4 A demand for a vote in writing may be withdrawn.

37. Appointment of proxy

- 37.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 37.2 A proxy must be a member.
- 37.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting

- (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 36.1.
- 37.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **company's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting at which the appointment may be used.
- 37.5 Proxy forms must be received by the **company** at the address stated in the notice under clause 22.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 37.6 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 37.7 A proxy appointment may specify the way the proxy must vote on a particular resolution.

38. Voting by proxy

- 38.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 38.2 When a vote in writing is held, a proxy holder:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) must vote that way specified on the proxy form (if it is specified), and
 - (c) may cast the votes held in different ways if the proxy holder holds more than one proxy.
- 38.3. If the proxy form specifies the way the proxy holder is to vote on a particular resolution, and the proxy holder is not chairing the meeting, and they do not vote for any reason then:
- (a) before the vote in writing closes, the chair of the meeting is taken to have been appointed as the proxy holder for that particular resolution, and
 - (b) the chair of the meeting must vote as directed by the member.

DIRECTORS

39. Number of directors

- 39.1 The **company** must have no fewer than seven and no more than nine directors.
- 39.2 Up to two of these directors will be appointed by the **Governors** under clauses 59.6 and 59.7.
- 39.3 The remaining directors, including the director who will fill the role of **President**, will be elected by the members in accordance with clause 41.
- 39.4 If the number of directors is reduced to fewer than seven, the continuing directors may act for the purpose of increasing the number of directors to seven by appointing a person or persons who meet the criteria set out in clause 41.5 to fill a casual vacancy to last until the time of the next **general meeting** (as per clause 43.3(a)) or by calling a **general meeting**, but for no other purpose.

40. Transition Provision

The directors in office at the time of the adoption of this Constitution will remain in office for the remainder of their term of office as defined under clause 43.

41. Election and appointment of directors

- 41.1 The members may elect a director by a resolution passed in a **general meeting** to fill positions other than the positions to be appointed by the **Governors** under clause 59.
- 41.2 Each of these directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 41.3 One of the directors' positions for which the members will vote will be that of the **President**.
- 41.4 A person is eligible for election as a director of the **company** if they:
- (a) are a member of the **company**, or a representative of a member of the **company** (appointed under clause 25)
 - (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),
 - (c) give the **company** their signed consent to act as a director of the **company**, and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 41.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the **company**, or a representative of a member of the **company** (appointed under clause 25)
 - (b) gives the **company** their signed consent to act as a director of the **company**, and
 - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

42. Appointment of office bearers

- 42.1 Following elections held in accordance with clause 41, the directors will appoint from their number people to fill the following designated positions:
- (a) Vice President
 - (b) Manager of Board Business (who may be the **President**)
 - (c) Chair of the Audit Committee (who cannot also be the **President**).
- 42.2 The **President**, who is to be elected by the members in accordance with clause 41.3, is also an office bearer.

43. Term of office

- 43.1 The elected directors may serve for a term of up to two years, commencing at the conclusion of the AGM when they are elected.
- 43.2 An elected director may serve for up to three consecutive terms (or part thereof) after which they may not stand again until at least one full term has passed.
- 43.3 At each **annual general meeting**:
- (a) any director appointed by the directors to fill a casual vacancy must retire, and
 - (b) at least one-third of the remaining directors must retire.
- 43.4 The directors who must retire at each **annual general meeting** under clause 43.3(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

- 43.5 A director who has held office for a continuous period of six years or more, and who would normally be prevented from continuing in office by clause 43.2, may only be re-appointed or re-elected by a **special resolution**.

44. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of the **company**
- (e) are a representative of a member, and that member stops being a member
- (f) are a representative of a member, and the member notifies the **company** that the representative is no longer a representative
- (g) are absent from three consecutive directors' meetings without the consent of the **board**, unless at its next meeting the **board** resolves otherwise, or
- (h) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

POWERS OF DIRECTORS

45. Powers of directors

- 45.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 45.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this Constitution, may only be used by members.
- 45.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 46, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 45.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

46. Delegation of directors' powers

- 46.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** or any other person, as they consider will exercise the power in conformity with the duties imposed on directors of the **company** under the **Corporations Act** and under this Constitution.
- 46.2 The delegation must be recorded in the **company's** minute book.
- 46.3 Standing delegations must be set out in a delegations policy which outlines the scope and quantum of delegations determined by the **board**.

47. Payments to directors

- 47.1 The **company** must not pay fees to a director for acting as a director.
- 47.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.

- 47.3 Any payment made under clause 47.2(a) must be approved by the directors and, if it relates to the director assuming an executive role within the **company**, the director must stand down from **board** duties for the term of the engagement.
- 47.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this Constitution.

48. Execution of documents

- 48.1 The **company** may execute a document only if authorised by the directors.
- 48.2 The **company** may execute a document without using a common seal if the document is signed by:
- (a) two directors of the **company**, or
 - (b) a director and the secretary.
- 48.3 The **board** may at any time determine that the **company** will have a common seal and if so:
- (a) the **board** must provide for its safe custody, and
 - (b) it may only be used as authorised by a resolution of the directors.

DUTIES OF DIRECTORS

49. Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purposes of the **company** set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 50
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and
- (g) not to allow the **company** to operate while it is insolvent.

50. Conflicts of interest

- 50.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors, or
 - (b) if the majority of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 50.2 The disclosure of a conflict of interest by a director must be consistent with their obligations under applicable law and recorded in the minutes of the meeting.
- 50.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 50.4:
- (a) be present at the meeting while the matter is being discussed, or

- (b) vote on the matter.
- 50.4 A director may still be present and vote if:
 - (a) their interest arises because they are a member of the **company**, and the other members have the same interest
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 73)
 - (c) their interest relates to a payment by the **company** under clause 72 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

DIRECTORS' MEETINGS

51. When the directors meet

The directors will meet no less than 6 times each year.

52. Calling directors' meetings

- 52.1 The **President** or any three directors may call a directors' meeting by giving reasonable notice to all of the other directors.
- 52.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.
- 52.3 A notice of a meeting of directors will:
 - a) be sent to all directors in the most suitable form
 - b) specify the time and place of the meeting
 - c) state the nature of the business to be transacted at the meeting
 - d) be given at least 7 days before the meeting, unless special circumstances apply
 - e) give details of technological connection if relevant.
- 52.4 Notice of a directors' meeting will be given to each director, other than a director on leave of absence approved by the directors, or a director who has notified the **secretary** that they will not be contactable.

53. Chairperson for directors' meetings

- 53.1 The **President** is entitled to chair directors' meetings.
- 53.2 If the **President** is not present within 30 minutes after the starting time set for the meeting, or present but unwilling to chair the meeting, the Vice President will chair the meeting.
- 53.3 If the Vice President is also not present within 30 minutes after the starting time set for the meeting, or present but unwilling to chair the meeting, the directors will appoint one of their number present to chair the meeting.

54. Quorum at directors' meetings

- 54.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors in office.
- 54.2 A quorum must be present for the whole directors' meeting.
- 54.3 For the purposes of this clause, a director present but excluded from a matter due to a conflict of interest is counted as present throughout the meeting.
- 54.4 If a quorum is not present within 15 minutes of the time fixed for a meeting of the **board**, the meeting will stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the members present will be a quorum.

55. Using technology to hold directors' meetings

The directors may hold their meetings by using any technology (such as video or teleconferencing) in accordance with relevant provisions within the **Corporations Act**.

56. Passing directors' resolutions

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

57. Circular resolutions of directors

- 57.1 The directors may pass a **circular resolution** without a directors' meeting being held.
- 57.2 A **circular resolution** is passed if all the directors entitled to vote on the resolution or respond to the resolution in the manner set out in clause 57.3 or clause 57.4 and the majority agree.
- 57.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to or disagree with the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 57.4 The **company** may send a **circular resolution** by email to the directors and the directors may agree to or disagree with the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 57.5 A **circular resolution** is passed when the last director signs or otherwise respond to the resolution in the manner set out in clause 57.3 or clause 57.4.

BOARD COMMITTEES

58. Board Committees

- 58.1 The directors may, when they see fit, delegate certain powers to one or more committees. Such committees must:
- (a) comprise at least one director
 - (b) operate under Terms of Reference approved by the **board**
 - (c) follow any directions from the **board**
 - (d) keep minutes of their meetings and submit these to the **board**
 - (e) refer all material matters to the **board** for decision unless the **board** has delegated specific powers to the Committee.
- 58.2 A Committee may determine the quorum for its meetings and will otherwise follow relevant provisions of this Constitution concerning **board** meetings.

- 58.3 The Terms of Reference for each committee, the members of the committee, the term of their appointment and the procedure for nomination to the committee, must be displayed in the member's section of the **company's** website.

GOVERNORS AND PATRON

59. Governors

- 59.1 The board may appoint as a **Governor** any individual who has been outstandingly generous in donating money, property or personal services to the **company**.
- 59.2 Any person holding the position of **Governor** at the time of the adoption of this Constitution will remain as **Governor** until they relinquish this role through resignation or death.
- 59.3 Any person appointed to the role of **Governor** after the adoption of this Constitution will automatically become an Honorary Life Member and their appointment to the role of **Governor** will be for a period of five years, renewable by a resolution of the **board**.
- 59.4 The **Governors** will meet with the Board at least twice a year under the chairmanship of the **President** for the purpose of reviewing and discussing the affairs of the **company**.
- 59.5 **Governors** who are not appointed or elected to the **board** are not officers or directors of the **company**.
- 59.6 Each year prior to the **annual general meeting** of the **company** a quorum comprising at least 30% of **Governors** in office may elect up to two of their number to be directors of the company. Subject to this Constitution, any person so elected shall hold office from the conclusion of the forthcoming **annual general meeting** until conclusion of the **annual general meeting** following it. If a director elected by the **Governors** ceases to be a director before expiry of their normal term of office, the **Governors** may elect another **Governor** to be a director for the remaining period of office.
- 59.7 If a **Governor** is elected by the members as a director, that appointment shall be counted towards the entitlement of **Governors** to appoint directors.

60. Patron

- 60.1 The Members in a **general meeting** may appoint a patron or patrons. A patron should be prominent in the field of maritime heritage. A patron must be a member.
- 60.2 The resolution appointing a patron may specify a term of office or may be until a further resolution of the **board** or a decision by the patron to step down. A patron may be removed by resolution at a **general meeting**.
- 60.3 A director or other officer cannot be appointed patron and a patron is not an officer or director.
- 60.4 A patron has such rights, privileges and duties as may be agreed from time to time by the **board**.

SECRETARY

61. Appointment and role of secretary

- 61.1 The **company** must have at least one secretary, who may also be a director.
- 61.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.

- 61.3 The directors must decide the terms and conditions under which the secretary is appointed.
- 61.4 The role of the secretary includes:
- (a) maintaining a **register of members**, and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

MINUTES AND RECORDS

62. Minutes and records

- 62.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) a copy of a notice of each **general meeting**, and
 - (c) a copy of a members' statement distributed to members under clause 30.
- 62.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 62.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 62.1 free of charge and at reasonable times, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 62.1 and clause 62.2.
- 62.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 62.5 The **company** must, within six weeks, post on the members' area of the **company's** website:
- (a) the draft minutes of any **general meeting**;
 - (b) the minutes of directors' meetings, with confidential material redacted.
- 62.6 The directors must ensure that minutes of the passing of a **circular resolution** of directors are signed by the **President** (or designate) at the next directors' meeting.

63. Financial and related records

- 63.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 63.2 The **company** must also keep written records that correctly record its operations.
- 63.3 The **company** must retain financial and employee records for at least 7 years and minute books indefinitely.
- 63.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

BY-LAWS

64. By-laws

- 64.1 The directors may pass a resolution to make by-laws to give effect to this Constitution.

- 64.2 By-laws also include policies and regulations.
- 64.3 Members and directors must comply with by-laws as if they were part of this Constitution.

NOTICE

65. What is notice?

- 65.1 Anything written to or from the **company** under any clause in this Constitution is written notice and is subject to clauses 67 and 68, unless specified otherwise.
- 65.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 37.6.

66. Notice to the company

Written notice or any communication under this Constitution may be given to the **company**, the directors or the secretary by:

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

67. Notice to members

- 67.1 Written notice or any communication under this Constitution may be given to a member:
- (a) in person
 - (b) by posting it to, or leaving it at the address of the member in the **register of members** or an alternative address (if any) nominated by the member for service of notices
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices, or
 - (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 67.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

68. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered,
- (b) sent by post, is taken to be given on the third business day after it is posted with the correct payment of postage costs,
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 67.1(d) is taken to be given on the business day after the notification is sent.

FINANCIAL YEAR

69. Company's financial year

The **company's** financial year is from 1st July to 30th June, unless the directors pass a resolution to change the financial year.

ACCOUNTS AND AUDIT

70. Accounts

The **company** will prepare and deal with such accounts as are required by the **Corporations Act** and the **ACNC Act**.

71. Audit

The **company** will arrange for the financial records of the **company** to be audited as is required by law.

INDEMNITY, INSURANCE AND ACCESS

72. Indemnity

- 72.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company** except for conduct which was not in good faith, or which involved wilful misconduct, gross negligence, recklessness or fraud.
- 72.2 There is no indemnity for penalties or compensation orders under the **Corporations Act** and the **ACNC Act**.
- 72.3 In this clause, 'officer' is limited to the directors, the secretary and those to whom powers have been delegated by the directors and includes those in these positions after they have ceased to hold that office.
- 72.4 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 72.5 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

73. Insurance

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

74. Directors' access to documents

- 74.1 During their term in office, a director has a right of access to all **company** documents, including financial records.
- 74.2 The **company** must give a former director access to:

- (a) documents provided for or available to the directors during the director's term of office, and
- (b) any other documents referred to in those documents.

WINDING UP

75. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** owned by the **company** must not be distributed to a member or a former member of the **company**, unless that member or former member is a **registered charity** described in clause 76.1.

76. Distribution of surplus assets

- 76.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities or institutions:
- (a) with charitable purposes similar to, or inclusive of, the purpose of the **company** as set out in clause 6, and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- 76.2 Any **surplus assets** acquired by the **company** by way of tax deductible gifts must be given to a charity or institution that has:
- (a) a charitable purpose similar to, or inclusive of, the purposes of the **company** as set out in clause 6, and
 - (b) Deductible Gift Recipient status.
- 76.3 The decision as to the **registered charity** or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

LOSS OF DEDUCTIBLE GIFT RECIPIENT STATUS

77. Distribution of assets if Deductible Gift Recipient Status is lost

- 77.1. If the **company** has been endorsed or duly registered as a deductible gift recipient in accordance with tax law and has this status revoked, any assets it acquired by way of tax deductible gifts must be given to a charity or institution that has:
- (a) a charitable purpose similar to, or inclusive of, the purposes of the **company** as set out in clause 6, and
 - (b) Deductible Gift Recipient status.
- 77.2 The decision as to the **registered charity** or charities to be given the acquired assets must be made by a **special resolution** of members within 3 months of the revocation of status. If the members do not make this decision, the decision reverts to the directors.

DEFINITIONS AND INTERPRETATION

78. Definitions

In this Constitution:

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

annual general meeting means a **general meeting** held in compliance with clause 21 of this Constitution

board means the **board** of directors of the **company**

company means the **company** noted on the cover sheet of this Constitution and referred to in clause 0

circular resolution means a resolution that is circulated electronically to directors or members and which makes provision for them to vote for or against the resolution.

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

general meeting means a meeting of members convened under clauses 19 or 20 and includes the **annual general meeting**, under clause 21.1

Governor means any **member** appointed by the **board** to the role of **Governor** under Clause 59.1, 59.2 and 59.3.

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

President means the person elected by the members under clause 41.3

register of members means the **register of members** and former members to be maintained under Clause 10.2

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

special resolution means a resolution that requires a majority of at least 75% of the votes cast by **members present** and entitled to vote on the resolution and of which notice has been given under clause 22.5(c)

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

79. Reading this Constitution with the Corporations Act

79.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.

79.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this Constitution which are inconsistent with those Acts.

79.3 If the **company** ceases to be a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this Constitution which is inconsistent with that Act.

79.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

80. Interpretation

In this Constitution:

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