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Constitution

Riding for the Disabled of the ACT Incorporated

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Constitution of Riding for the Disabled of the ACT Incorporated

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1. Preliminary

1.1 Defined terms

(a) In this Constitution unless the contrary intention appears:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), or any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework for the not-for-profit sector, as modified or amended from time to time and includes any regulations made under that Act or any other such legislation and any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Association.

Alternate Director means a person appointed as an alternate Director under clause 20.

Applicable Not-for-Profit Law means any law relating to the regulation of charities or not-for-profit entities applicable to the Association, including each Charitable Fundraising Act, the Tax Act and the ACNC Act.

Association means Pegasus Riding for the Disabled of the ACT Incorporated ABN 85 460 683 554.

Associations Incorporation Act means the *Associations Incorporation Act 1991* (ACT) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Association.

Auditor means the Association's auditor.

Board means all or some of the Directors acting as the board of the Association.

Charitable Fundraising Act means the legislation of any State or Territory of Australia, or the Commonwealth of Australia, regulating the raising of funds for charitable purposes and applicable to the Association, which may, for example, include the *Charitable Collections Act 2003* (ACT) and the *Fundraising Appeals Act 1998* (Vic).

Commissioner of Taxation means the Commissioner of Taxation appointed under section 4 of the *Taxation Administration Act 1953* (Cth).

Constitution means the constitution of the Association as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Deductible Contribution means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held in furtherance of the objects described in clause 4.

Director includes any person occupying the position of Director of the Association and, where appropriate, includes an Alternate Director.

Donations mean:

- (i) gifts of money or property for the principal purpose of the Association;
- (ii) contributions made in relation to an eligible fundraising event held for the principal purpose of the Association; and
- (iii) money received by the Association because of such gifts and contributions.

Eligible Entity means a fund, authority or institution gifts to which are deductible under item 1 of the table in section 30-15 of the Tax Act.

Member means a member under clause 8.1.

RDAA means Riding for the Disabled Association of Australia Limited ABN 99 116 408 587 and any and all of its successors.

Register means the register of Members of the Association.

Responsible Person means an individual who:

- (i) performs a significant public function;
- (ii) is a member of a professional body having a code of ethics or rules of conduct;
- (iii) is officially charged with spiritual functions by a religious institution;
- (iv) is a director of a company whose shares are listed on the Australian Securities Exchange;
- (v) has received formal recognition from government for services to the community; or

(vi) is approved as a Responsible Person by the Commissioner of Taxation.

Seal means the Association's common seal (if any).

Secretary means any person appointed in accordance with clause 15.4 to perform the duties of a secretary of the Association and if there are joint secretaries, any one or more of those joint secretaries.

Subcommittee means a Working Committee or Advisory Committee, whichever is applicable, established in accordance with clause 23(a).

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) as applicable, as modified or amended from time to time and includes any regulations made under the Tax Act and any applicable rulings guidelines or other requirements of the Commissioner of Taxation having application to the Association.

- (b) In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Associations Incorporation Act. Where the expression has more than one meaning in the Associations Incorporation Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

- (a) In this Constitution, except where the context otherwise requires:
- (i) the singular includes the plural and vice versa;
 - (ii) another grammatical form of a defined word or expression has a corresponding meaning;
 - (iii) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (iv) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (v) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
 - (vi) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

- (b) Headings are for the ease of reference only and do not affect interpretation.
- (c) The Associations Incorporation Act prevails over any inconsistency with this Constitution.

3. Model rules

To the extent permitted by law, the provisions of the Associations Incorporations Act that apply to associations as Model Rules contained in the *Associations Incorporation Regulation 1991 (ACT)* do not apply to the Association.

4. Objects

- (a) The Association is established as a not-for-profit, non-political charitable entity to raise and administer funds for the following objects:
 - (i) to provide, promote, support and encourage riding sport, recreation, training, therapy and safety programs for people with disabilities;
 - (ii) to seek to influence the integration of people with disabilities into riding programs available from other bodies in the Australian Capital Territory and surrounding district, and into the community generally;
 - (iii) to liaise and exchange ideas and information with other bodies, both national and international, having similar objectives;
 - (iv) to liaise with other bodies, both national and international, having an interest in the wellbeing and treatment of persons with disabilities;
 - (v) to develop and maintain standards in safety, coaching, training, horse riding and management activities to RDAA standards;
 - (vi) to provide and maintain such facilities and equipment as may be required for the purposes of the Association; and
 - (vii) to do all such things as are incidental or conducive to that attainment of the above objectives or any of them.
- (b) In furtherance of the objects specified in clause 4(a), the Association will:
 - (i) accept and receive money, gifts or other contributions, whether through membership fees, public or private donations or government assistance; and
 - (ii) administer and maintain the Pegasus accounts.

- (c) The Association may only exercise the powers in section 24 of the Associations Incorporation Act to:
 - (i) carry out the objects in this clause; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under clause 4(c)(i).

5. Income and property of Association

- (a) The funds of the Association will be derived from sources as the Board determines from time to time.
- (b) The income and property of the Association will only be applied towards the promotion of the objects of the Association set out in clause 4, and the Association will not be carried on for the profit or gain of the Members, neither while it is operating nor on a winding up.
- (c) No income or property (whether in money, property or other benefits) will be paid or transferred directly or indirectly to any Member of the Association except, subject to clause 18.1, for payments to a Member as genuine compensation for services provided to, or reasonable expenses incurred on behalf of, the Association, or such other payments, distributions or transfers as may be permitted by the Applicable Not-for-Profit Laws.

6. Receipts

If the Association accepts a Donation, the Association must give the donor a receipt, and otherwise comply with all applicable laws in relation to any such gift, contribution or donation, including without limitation the Applicable Not-for-Profit Laws.

7. Deductible gift recipient status

- (a) Notwithstanding any other clauses of this Constitution, if the Association is endorsed as a deductible gift recipient under Subdivision 30 BA of the Tax Act (**Endorsement**), then the following provisions of this clause will apply.
- (b) The Association must comply with any conditions or requirements of or relating to its Endorsement, including where applicable:
 - (i) ensuring the majority of the Directors of the Association are Responsible Persons; and

- (ii) maintaining a management account (**'Gift Fund'**):
 - (A) to identify and record Donations and Deductible Contributions;
 - (B) to identify and record any money received by the Association because of those Donations and Deductible Contributions; and
 - (C) that does not identify and record any other money or property,and using the Gift Fund only in compliance with its Endorsement.
- (c) Upon the winding up of the Association, or the revocation of the Association's Endorsement, whichever is earlier, any surplus Donations and Deductible Contributions and money received by the Association because of those Donations and Deductible Contributions must be transferred to one or more Eligible Entities as the Association decides. When gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30B of the Tax Act are satisfied, a transfer under this clause 7(c) must be made in accordance with those conditions.

8. Membership

8.1 Admission

- (a) The number of Members with which the Association proposes to be registered is unlimited.
- (b) The Members of the Association are:
 - (i) each member of the Association listed in the Register at 9am on the date this Constitution becomes effective; and
 - (ii) any other persons, corporations or organisations whom or which the Board admits to membership in accordance with this Constitution.
- (c) Applications for membership of the Association must be in writing and signed by the applicant.
- (d) An applicant for membership becomes a Member when the applicant's first annual membership fee is paid.
- (e) The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

8.2 Life Membership

The Board will, from time to time in its absolute discretion, bestow Life Membership on individuals that it deems to have made a profound and greatly valued contribution to the Association over a significant period.

8.3 Membership fees

- (a) The Board may determine the entrance fee and annual membership fee payable by each Member or each category of Member.
- (b) The annual membership fee period will commence on 1 July of each year, and the annual membership fee will be due in advance within 30 days of this date.
- (c) If a Member does not pay a membership fee within 30 days after it becomes due the Association:
 - (i) will give the Member notice of that fact; and
 - (ii) if the membership fee remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

8.4 Ceasing to be a Member

- (a) A Member's membership of the Association will cease:
 - (i) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (ii) if a majority of three-quarters of the Board present and voting at a meeting of the Board by resolution terminate the membership of a Member:
 - (A) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Association or has acted or behaved in a manner prejudicial to the best interests of the Association, and
 - (B) only after the Member has been given at least 21 days' notice of the proposed resolution setting out the grounds for the expulsion and has had the opportunity to be heard at the meeting at which the resolution is proposed;
 - (iii) if membership is forfeited under clause 8.3(c)(ii); or
 - (iv) where the Member is an individual, if the Member:
 - (A) dies;

- (B) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (C) is convicted of an indictable offence.
- (b) A Member who has ceased to be a Member under clause 8.3(a)(ii) may within 14 days of the resolution appeal to a general meeting of the Association by delivering a notice of appeal to the Public Officer of the Association. The Public Officer must then call a general meeting to hear the appeal. A general meeting convened for the purpose of hearing a Member's appeal may conduct no other business and must provide the opportunity for the Member to be heard at the meeting. All Members at such a general meeting will vote by secret ballot on whether the expulsion is to be lifted.
- (c) Any Member ceasing to be a Member:
 - (i) will not be entitled to any refund (or part refund) of a membership fee; and
 - (ii) will remain liable for and will pay to the Association all membership fees and moneys which were due at the date of ceasing to be a Member.

8.5 Members' Liability

- (a) A Member is 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 (other than any amount of the annual membership fee (if any) unpaid by the Member as required by clause 8.3).

9. Powers of attorney

- (a) If a Member executes or proposes to execute any document or do any act by or through an attorney that affects the Association or the Member's membership in the Association, that Member must deliver the instrument appointing the attorney to the Association for notation.
- (b) The Association may require the Member to lodge a certified copy of the instrument for retention by the Association, and ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.
- (c) Any power of attorney granted by a Member will, as between the Association and the Member who granted the power of attorney:

(i) continue in force; and

(ii) may be acted on,

unless express notice in writing of its revocation or, where the Member is a natural person, of the death of the Member who granted it is lodged with the Association.

(d) Where a Member proposes that an attorney represent the Member at a general meeting or adjourned meeting, the Member must comply with clause 14.6(a) of this Constitution.

(e) If an attorney is to vote at a meeting of Members, the instrument conferring the power of attorney (or a certified copy of the instrument) must be produced to the Association at least 48 hours before the meeting in the same way as the appointment of a proxy.

10. General meetings

10.1 Calling general meeting

(a) The Board may, whenever it considers appropriate, call a meeting of the Association.

(b) The Board must hold the annual general meeting of the Association:

(i) at least once in each calendar year and within five months after the end of each financial year of the Association;

(ii) on the date and at the place and time determined by the Board; and

(iii) in accordance with the Associations Incorporation Act.

(c) Subject to clause 10.1(d), the Board must, on the requisition in writing of not less than 5% of the total number of members, call a general meeting of the Association. The percentage of votes that Members have is to be worked out as at the midnight before the requisition is made.

(d) A requisition of Members for a general meeting:

(i) must state the purpose or purposes of the meeting;

(ii) must be signed by the Members making the requisition; and

(iii) must be lodged with the Secretary; and

- (iv) may consist of several documents in a similar form, each signed by one or more of the Members making the requisition.
- (e) If the Board fails to call a general meeting within one month after the date when a requisition of members for the meeting is lodged with the Secretary, any one or more of the Members who made the requisition may call a general meeting to be held not later than three months after that date.
- (f) A general meeting called by one or more Members pursuant to clause 10.1(e) must be notified as nearly as is practicable in the same way as clause 10.2.
- (g) A general meeting may be held at two or more venues simultaneously using any technology that gives the Members as a whole a reasonable opportunity to participate.

10.2 Notice of general meeting

- (a) Notice of a general meeting must be given to the persons referred to in clause 36.2(a).
- (b) Subject to clause 10.2 and except as permitted by the Associations Incorporation Act, a general meeting must be called:
 - (i) at least 14 days before the date fixed for the holding of the general meeting, if the nature of the business proposed to be dealt with at the meeting does not require a special resolution; or
 - (ii) at least 21 days before the date fixed for the holding of the general meeting, if the nature of the business proposed to be dealt with at the meeting requires a special resolution.
- (c) A notice calling a general meeting must:
 - (i) specify the place, date and time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the business to be transacted at the meeting;
 - (iii) if a special resolution is to be proposed at the meeting state the resolution;
 - (iv) specify a place, facsimile number and electronic address for the purposes of proxy appointments; and
 - (v) comply with any other requirements of the Associations Incorporation Act.

10.3 Business

- (a) The business of an annual general meeting may include:
 - (i) any of the following matters, even if not referred to in the notice of meeting:
 - (A) confirming the minutes of the last annual general meeting and of any general meeting held since that meeting;
 - (B) receiving from the Board reports on the activities of the Association during the last financial year;
 - (C) receiving and considering the statement of accounts and reports that are required to be submitted to Members under the Associations Incorporation Act;
 - (D) election of Directors;
 - (E) appointment of the Auditor; and
 - (F) fixing the Auditor's remuneration;
 - (ii) any business which under this Constitution or the Associations Incorporation Act is required to be transacted at an annual general meeting; and
 - (iii) any other business which may lawfully be transacted at a general meeting.
- (b) The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
 - (i) ask questions about or make comments on the management of the Association; and
 - (ii) ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report for the Association.
- (c) The Board may postpone or cancel any general meeting (other than a meeting called as the result of a request under clause 10.1(e)) at any time before the day of the meeting. The Board must give notice of the postponement or cancellation to all persons entitled to receive notices of a general meeting.
- (d) An accidental omission to send a notice of a general meeting (including a proxy appointment form) or the postponement of a general meeting to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings, or any resolution passed, at, the general meeting.

11. Proceedings at general meetings

11.1 Member

In clauses 11.2, 11.3, 11.5 and 14.1, **Member** includes a Member present in person or by proxy, attorney or Representative.

11.2 Quorum

- (a) No business may be transacted at a general meeting unless a quorum of Members is present at the commencement of business.
- (b) A quorum of Members is five Members.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) the general meeting is automatically dissolved if it was requested or called by Members under clause 10.1(e); or
 - (ii) in any other case:
 - (A) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Board; and
 - (B) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

11.3 Chairperson

- (a) The chairperson, or in the chairperson's absence the deputy chairperson, of Board meetings appointed under clause 22 will be the chairperson at every general meeting of the Association.
- (b) If:
 - (i) there is no chairperson or deputy chairperson; or
 - (ii) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (iii) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,the Directors present may elect a chairperson of the general meeting.
- (c) If no chairperson is elected in accordance with clause 11.3(b), then:

- (i) the Members may elect one of the Directors present as chairperson; or
 - (ii) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- (d) At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- (e) If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.
- (f) The general conduct of each general meeting of the Association and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.

11.4 Adjournment

- (a) The chairperson of a general meeting at which a quorum is present:
- (i) in his or her discretion may adjourn the general meeting; and
 - (ii) must adjourn the general meeting if the meeting directs him or her to do so.
- (b) An adjourned general meeting may take place at a different venue to the initial general meeting.
- (c) The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- (d) Notice of an adjourned general meeting must only be given in accordance with clause 10.2(a) if a general meeting has been adjourned for more than 21 days.

11.5 Decisions on questions

- (a) Subject to the Associations Incorporation Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded.

- (c) Unless a poll is demanded:
 - (i) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (ii) an entry to that effect in the minutes of the meeting,are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (d) The demand for a poll may be withdrawn.
- (e) A decision of a general meeting may not be invalidated on the ground that a person voting at the general meeting was not entitled to do so.

11.6 Taking a poll

- (a) Subject to clause 11.6(d), a poll will be taken when and in the manner that the chairperson directs. No notice need be given of any poll.
- (b) The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.
- (c) The chairperson may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.
- (d) A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- (e) After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

11.7 Casting vote of chairperson

The chairperson has a casting vote (in addition to the chairperson's votes as a Member, proxy, attorney or Representative) on a show of hands or on a poll.

12. Admission to general meetings

The chairperson of a general meeting may refuse admission to a person, or require a person to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;

- (ii) placard or banner; or
- (iii) other article,
which the chairperson considers to be dangerous, offensive or liable to cause disruption; or
- (c) causes any disruption to the meeting.

13. Auditor's right to be heard

The Auditor is entitled to:

- (a) attend any general meeting of the Association;
- (b) be heard at any general meeting of the Association on any part of the business of the meeting that concerns the Auditor in their capacity as auditor, even if:
 - (i) the Auditor retires at the general meeting; or
 - (ii) Members pass a resolution to remove the Auditor from office; and
- (c) authorise a person in writing to attend and speak at any general meeting as the Auditor's representative.

14. Votes of Members

14.1 Entitlement to vote

A Member entitled to vote has one vote.

14.2 Objections

- (a) An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- (b) An objection must be referred to the chairperson of the general meeting, whose decision is final.
- (c) A vote which the chairperson does not disallow because of an objection is valid for all purposes.

14.3 Votes by proxy

- (a) Each Member is entitled to appoint another person as proxy in accordance with clause 14.4.

- (b) If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- (c) A proxy need not be a Member.
- (d) A proxy may demand or join in demanding a poll.
- (e) A proxy or attorney may vote on a poll.
- (f) A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.
- (g) If:
 - (i) a Member nominates the chairperson of the meeting as the Member's proxy; or
 - (ii) the chairperson is to act as proxy under clause 14.5 or otherwise under a default appointment according to the terms of the proxy form,then the person acting as chairperson in respect of an item of business at the meeting must act as proxy under the appointment in respect of that item of business.

14.4 Document appointing proxy

- (a) Subject to clause 14.4(b), an appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
 - (i) the Member's name and address;
 - (ii) the Association's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used, noting that an appointment may be a standing one.
- (b) The Board may determine that an appointment of a proxy is valid even if it only contains some of the information required by clause 14.4(a).
- (c) A proxy's appointment is valid at an adjourned general meeting.
- (d) A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.

- (e) Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
 - (i) to vote on:
 - (A) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (B) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (ii) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

14.5 Proxy in blank

If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

14.6 Lodgment of proxy

- (a) Subject to clause 14.6(c), the appointment of a proxy or attorney must be received by the Association, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- (b) If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be received by the Association at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).
- (c) The Association receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
 - (i) the Association's registered office (if any);
 - (ii) a facsimile number at the Association's registered office (if any); or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

14.7 Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, mental incapacity or revocation was received by the Association before the relevant general meeting or adjourned general meeting.

15. Appointment and removal of Directors

15.1 Number of Directors

- (a) The Association may by resolution passed at a general meeting increase the minimum number of Directors or increase or reduce the maximum number of Directors.
- (b) Until the Association resolves otherwise in accordance with clause 15.1(a), there will be:
 - (i) a minimum of five Directors; and
 - (ii) a maximum of eight Directors,whose number comprises the following:
 - (iii) a President;
 - (iv) a Vice President;
 - (v) a Secretary;
 - (vi) a Treasurer; and
 - (vii) no more than four ordinary Directors.
- (c) Subject to clause 15.1(b) and any resolution of the Members determining the minimum and maximum numbers of Directors, the Board may from time to time determine the respective numbers of Directors.

15.2 Initial Directors

The Directors in office on the date this Constitution becomes effective, continue in office subject to this Constitution.

15.3 Qualification

In addition to the circumstances which disqualify a person from managing a corporation according to the Associations Incorporation Act, no person who has been an insolvent under administration within the previous five years is eligible to become a Director.

15.4 Power to remove and appoint

- (a) The Association may by resolution passed in general meeting remove any Director before the end of the Director's term of office.

- (b) Subject to clause 15.7(a), the Association may appoint a Member as a Director by resolution passed in general meeting.
- (c) At each annual general meeting of the Association, the Members will elect one or more Members to be appointed to the roles of:
 - (i) President;
 - (ii) Vice President;
 - (iii) Secretary; and
 - (iv) Treasurer.
- (d) The President, Vice President, Secretary and Treasurer of the Association will only hold office for a period of one year (from annual general meeting to the following annual general meeting) and new appointments to these posts shall be made at each annual general meeting in accordance with clause 15.4(b).
- (e) For the avoidance of doubt, the Members may re-elect the immediate past President, Vice President, Secretary and Treasurer.
- (f) A Director appointed or elected at a general meeting is taken to have been appointed or elected with effect from immediately after the end of that general meeting unless the resolution by which the Director was appointed or elected specifies a different time.
- (g) If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Association, a majority of Directors at a meeting of the Board specifically called for that purpose may suspend that Director.
- (h) A suspended Director may not take any part in the business or affairs of the Association until the suspension has been terminated.
- (i) Within 14 days of the suspension, the Board must call a general meeting, at which the Members may consider a motion to remove the Director from office in accordance with clause 15.4(a).
- (j) If a motion to remove a suspended Director from office is not carried at the general meeting called to consider the matter, the suspension of the Director is terminated and the Director is reinstated.

15.5 Additional and casual Directors

- (a) Subject to clause 15.1 only, the Board may appoint any Member as a Director to fill a casual vacancy or as an addition to the existing Board.
- (b) A Director appointed under clause 15.5(a) will hold office until the next general meeting of the Association when the Director may be re-elected.

15.6 Retirement by rotation

- (a) A Director must retire from office at the conclusion of the third annual general meeting after the Director was last elected or appointed.
- (b) A retiring Director remains in office until the end of the meeting and will be eligible for re-election at the meeting.
- (c) When a Director retires at a general meeting, the Association may by ordinary resolution elect a Member to fill the vacated office.
- (d) If the vacated office is not filled and the retiring Director has offered himself or herself for re-election, the retiring Director will be deemed to have been re-elected unless, at the meeting at which he or she retires it is resolved not to fill the vacated office.

15.7 Nomination of Director

- (a) Subject to clause 15.7(b), any two Members may nominate candidates for election. Only Members are eligible for election to the Board.
- (b) A person nominated, other than a Director retiring under clause 15.6(a) who seeks re-election, is not eligible for election as a Director at a general meeting unless the nominated person consents to become a Director:
 - (i) in person at the general meeting, or
 - (ii) by giving written notice.
- (c) A written notice referring to all Director vacancies and each nominated candidate for election, must be sent to all Members at least seven days before every general meeting at which an election of a Director will take place.

15.8 Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) ceases to be a Member of the Association;
- (b) ceases to be a Director by virtue of the Associations Incorporation Act;

- (c) is prohibited by the Associations Incorporation Act from holding office or continuing as a Director;
- (d) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (e) cannot fully participate in the management of the Association because of his or her mental incapacity or is a person whose estate is liable to have a person appointed, under the law relating to the administration of estates of persons who through mental or physical infirmity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Board incapable of performing his or her duties;
- (f) resigns from his or her office of Director by notice in writing to the Association;
- (g) is removed by a resolution of the Association;
- (h) is resident in Australia and not being engaged abroad on the business of the Association, is absent from Board meetings for three consecutive months without the leave of absence from the Board;
- (i) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of the interest as required by the Associations Incorporation Act; or
- (j) dies.

16. Powers and duties of the Board

- (a) The business of the Association is managed by or under the direction of the Board who may exercise all powers of the Association that this Constitution and the Associations Incorporation Act do not require to be exercised by the Association in general meeting.
- (b) Without limiting the generality of clause 16(a), the Board may exercise all the powers of the Association to:
 - (i) borrow, expend or use money;
 - (ii) charge any property or business of the Association; and
 - (iii) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

17. Proceedings of the Board

17.1 Board meetings

- (a) A Director may at any time, and the Secretary must on the request of any other Director, call a Directors' meeting.
- (b) A Board meeting must be called by not less than 48 hours notice of a meeting to each Director, unless the Board unanimously agree otherwise. The notice may be in writing or given using any technology consented to by all of the Directors.
- (c) It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- (d) An accidental omission to send a notice of a meeting of the Board to any Director or the non-receipt of such a notice by any Director does not invalidate the proceedings, or any resolution passed, at the meeting.
- (e) A Board meeting may be held by the Board communicating with each other by any technological means consented to by all the Directors. The consent may be a standing one.
- (f) The Board need not all be physically present in the same place for a Board meeting to be held.
- (g) A Director who participates in a meeting held in accordance with clause 17.1(e) is taken to be present and entitled to vote at the meeting.
- (h) A Director can only withdraw his or her consent under clause 17.1(e) to the means of communication between the Board proposed for a Board meeting if the Director does so at least 48 hours before the meeting.
- (i) Clause 17.1(d) applies to meetings of Subcommittees as if all Subcommittee members were Directors.
- (j) The Directors may meet together, adjourn and regulate their meetings as they think fit.
- (k) A quorum for meetings of the Board may be fixed by the Board and unless so fixed, is three Directors. The quorum must be present at all times during the meeting.

- (l) Where a quorum cannot be established for the consideration of a particular matter at a meeting of the Board, one or more of the Directors may call a general meeting to deal with the matter.

17.2 Decision on questions

- (a) Questions arising at a meeting of the Board are to be decided by a majority of votes of the Directors present and voting and each Director has one vote.
- (b) In the case of an equality of votes the chairperson of a meeting has a casting vote in addition to his or her deliberative vote.
- (c) An Alternate Director has one vote for each Director for whom he or she is an alternate.
- (d) If the Alternate Director is a Director, he or she also has a vote as a Director.

18. Payments to Directors

18.1 Payments to Directors

No payment will be made to any Director of the Association other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Association where the amount payable does not exceed an amount previously approved by the Board of the Association;
- (b) for any service rendered to the Association by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board of the Association and where the amount payable is approved by the Board of the Association and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Association where the terms of employment have been approved by the Board of the Association; and
- (d) relating to an indemnity in favour of the Director or a contract of insurance.

19. Directors' interests

- (a) As required by the Associations Incorporation Act, a Director must give the Board notice of any material personal interest in a matter that relates to the affairs of the Association.

- (b) Subject to the provisions of this clause, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (i) enter into any agreement or arrangement with the Association;
 - (ii) hold any office or place of profit other than as auditor in the Association;
and
 - (iii) act in a professional capacity other than as auditor for the Association,
and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Association or from holding an office or place of profit in or acting in a professional capacity with the Association.
- (c) The fact that a Director holds office and has fiduciary obligations arising out of that office:
- (i) will not void or render voidable a contract made by a Director with the Association;
 - (ii) will not void or render voidable a contract or arrangement entered into by or on behalf of the Association and in which the Director may have any interest; and
 - (iii) will not require the Director to account to the Association for any profit realised by or under any contract or arrangement entered into by or on behalf of the Association and in which the Director may have any interest.
- (d) A Director may be or become a director or other officer of, or otherwise be interested in:
- (i) any related body corporate of the Association; or
 - (ii) any other body corporate promoted by the Association or in which the Association may be interested as a vendor, shareholder or otherwise,
- and is not accountable to the Association for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- (e) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:
- (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter,

unless permitted to do so by the Associations Incorporation Act, in which case the Director may:

- (iii) be counted in determining whether or not a quorum is present at any meeting of the Board considering that contract or arrangement or proposed contract or arrangement; and
- (iv) participate in any deliberations of the Board in relation to the contract or arrangement or proposed contract or arrangement.

20. Alternate Directors

- (a) A Director may, with the approval of the Board, appoint any person as his or her alternate for a period determined by that Director (**Alternate Director**).
- (b) An Alternate Director is entitled to notice of Board meetings while he or she is acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- (c) An Alternate Director is an officer of the Association and is not an agent of the appointor.
- (d) The provisions of this Constitution which apply to the Board also apply to Alternate Directors.
- (e) The appointment of an Alternate Director:
 - (i) may be revoked at any time by the appointor or by the Board; and
 - (ii) ends automatically when his or her appointor ceases to be a Director.
- (f) Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.
- (g) An Alternate Director does not have an interest in a contract, arrangement or matter by reason only of the fact that his or her appointor has such an interest.

21. Remaining Directors

- (a) The Board may act even if there are vacancies on the Board.
- (b) If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Board may act only to:
 - (i) appoint a Director or Directors; or

- (ii) call a general meeting.

22. Chairperson

- (a) The Board may elect a Director as chairperson of Board meetings and may determine the period for which the chairperson will hold office.
- (b) If no chairperson is elected or if the chairperson is not present at any Board meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- (c) The Board may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

23. Subcommittees

- (a) The Board may establish either or both of the following:
 - (i) subcommittees with powers delegated by the Directors (**Working Subcommittees**); and
 - (ii) advisory subcommittees, with no delegated powers, to advise the Board on specified matters (**Advisory Subcommittees**).
- (b) Subcommittee members will be appointed by the Board.
- (c) At least one member of each Subcommittee must be a Director.
- (d) Meetings of any Subcommittee will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if each Subcommittee member was a Director.

24. Delegation

- (a) The Board may delegate any of its powers, other than those which by law must be dealt with by the Board, to one or more Working Subcommittees.
- (b) The Board may at any time revoke any delegation of power under clause 24(a).
- (c) At least one member of each Working Subcommittee must be a Director.
- (d) A Working Subcommittee may be authorised by the Board to sub-delegate all or any of the powers for the time being vested in it.

- (e) Meetings of any Working Subcommittee will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if each Working Subcommittee member was a Director.

25. Written resolutions

- (a) If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of the resolution set out in the document, then a resolution in those terms is taken to have been passed by the Board without a meeting. The resolution is passed when the last Director signs.
- (b) For the purposes of clause 25(a), separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.
- (d) If a resolution is taken to have been passed in accordance with this clause 25, the minutes must record that fact.
- (e) Clause 25 applies to meetings of Subcommittees as if all members of the Subcommittee were Directors.
- (f) Any document referred to in clause 25 must be sent to every Director who is entitled to vote on the resolution.

26. Validity of acts of Directors

- (a) An act done by a Director is effective even if his or her appointment, or the continuance of his or her appointment, is invalid because the Association or Director did not comply with this Constitution or any provision of the Associations Incorporation Act.
- (b) Clause 26(a) does not deal with the question whether an effective act by a Director:
 - (i) binds the Association in its dealings with other people; or
 - (ii) makes the Association liable to another person.

27. Minutes and Registers

- (a) The Board must cause minutes to be made of:
 - (i) the names of the Directors present at all Board meetings and meetings of Subcommittees;
 - (ii) all proceedings and resolutions of general meetings, Board meetings and meetings of Subcommittees;
 - (iii) all resolutions passed by the Board in accordance with clause 25;
 - (iv) all appointments of officers; and
 - (v) all disclosures of interests made in accordance with the Associations Incorporation Act.
- (b) Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting, and if so signed will be conclusive evidence of the matters stated in such minutes, unless the contrary is proved.
- (c) The Association must keep all registers required by this Constitution and the Associations Incorporation Act.

28. Local management

- (a) The Board may provide for the management and transaction of the affairs of the Association in any places and in such manner as they think fit, subject to the Associations Incorporation Act and any other applicable legislation.
- (b) Without limiting clause 28(a) the Board may:
 - (i) establish local committees, boards or agencies for managing any of the affairs of the Association in a specified place and appoint any persons to be members of those local committees, boards or agencies; and
 - (ii) delegate to any person appointed under clause 28(b)(i) any of the powers, authorities and discretions which may be exercised by the Board under this Constitution,on any terms and subject to any conditions determined by the Board.
- (c) The Board may at any time revoke or vary any delegation under this clause.

29. Appointment of attorneys and agents

- (a) The Board may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Association:
 - (i) for the purposes;
 - (ii) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);
 - (iii) for the period; and
 - (iv) subject to the conditions, determined by the Board.
- (b) An appointment by the Board of an attorney or agent of the Association may be made in favour of:
 - (i) any member of any local committee or board established under this Constitution;
 - (ii) any company;
 - (iii) the members, directors, nominees or managers of any company or firm; or
 - (iv) any fluctuating body of persons whether nominated directly or indirectly by the Board.
- (c) A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- (d) An attorney or agent appointed under this clause may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

30. Chief Executive Officer

The Board may appoint and remove any person, including a Director, to the position of Chief Executive Officer for the period and on the terms (including as to remuneration) that the Board sees fit.

31. Public Officer

- (a) The public officer in office on the date this Constitution becomes effective continues in office subject to this Constitution.

- (b) The Board may, in accordance with the Associations Incorporation Act, appoint any person to the position of public officer.
- (c) The Association may, by resolution, remove its public officer from office.
- (d) If a vacancy occurs in the office of the public officer of the Association, the Board must, within 14 days after the vacancy occurred, appoint a person to fill the vacancy.

32. Seals

32.1 Common Seal

If the Association has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Board or a Subcommittee authorised to permit use of the Seal; and
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director or another person appointed by the Board to countersign the document.

32.2 Duplicate Seal

If the Association has a Seal, the Association may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal'; and
- (b) must only be used with the authority of the Board.

33. Financial year

The financial year of the Association and The Pegasus Foundation is the period beginning the 1st of July in each year and ending on the 30th June of the next year.

34. Funds

- (a) All money received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank account.

- (b) All cheques, drafts, bills of exchange, promissory notes, withdrawal slips and other negotiable instruments:
 - (i) must only be drawn on the Association's bank account if the expenditure has been authorised by the Board or Chief Executive Officer to whom the Board has specifically delegated authority; and
 - (ii) must be signed by any two Directors or other persons, including employees of the Association, being authorised by the Board or Chief Executive Officer.

35. Inspection and custody of records

35.1 Custody of records

- (a) The accounting and financial records of the Association will be maintained in accordance with the Associations Incorporation Act and kept in the custody of the Treasurer or under his or her control.
- (b) All other documents, records and books of the Association will be maintained in accordance with the Associations Incorporation Act and kept in the custody of the Secretary or under his or her control.

35.2 Inspection of records

- (a) The Association must make:
 - (i) the Register; and
 - (ii) the Auditor's report on the Association's accounts and financial records for a financial year,available for inspection by Members at reasonable times to be determined by the Board.
- (b) The Association must make the Register available for inspection at:
 - (i) the address of the public officer;
 - (ii) the registered office of the Association; or
 - (iii) any other place in the ACT nominated by the Board,and must publish the place where the Register is available for inspection in each annual return.

- (c) Notwithstanding subclauses 35.2(a) and (b) and except as otherwise required by the Associations Incorporation Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents, records and books of the Association will be open for inspection by Members other than Directors.

36. Notices

36.1 Service of notices

- (a) Notice may be given by the Association to any person who is entitled to notice under this Constitution by:
 - (i) serving it on the person; or
 - (ii) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Association for sending notices to the person.
- (b) A notice sent by post is taken to be served:
 - (i) by properly addressing, prepaying and posting or directing the delivery of the notice; and
 - (ii) on the day after the day on which it was posted or given to the courier for delivery.
- (c) A notice sent by facsimile transmission or electronic notification is taken to be served:
 - (i) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (ii) on the day of its transmission except if transmitted after 5.00pm in which case it is taken to be served the next day.
- (d) If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Association's registered office, if any, or such other location to be determined by the Board.
- (e) A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 36.1.

- (f) A document in writing signed by a Director, Secretary or other officer of the Association, or by any person that the Association has engaged to maintain the Register, that a document or its envelope or wrapper was addressed and stamped and was posted or given to a courier is conclusive evidence of posting or delivery by courier.
- (g) The signature to a written notice given by the Association may be written or printed.
- (h) All notices sent by post outside Australia must be sent by prepaid airmail post.

36.2 Persons entitled to notice

- (a) Notice of every general meeting must be given to:
 - (i) every Member;
 - (ii) every Director and Alternate Director; and
 - (iii) the Auditor.
- (b) No other person is entitled to receive notice of a general meeting.

37. Audit and financial records

- (a) The Board must cause the Association to keep written financial records and to prepare financial documents, reports and returns in accordance with the Associations Incorporation Act.
- (b) The Board must cause the financial records and financial documents of the Association to be audited in accordance with the Associations Incorporation Act.

38. Winding up

- (a) If any surplus remains following the winding up of the Association, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another Eligible Entity which, by its constitution, is:
 - (i) required to pursue charitable purposes only;
 - (ii) required to apply its profits (if any) or other income in promoting its objects; and
 - (iii) prohibited from making any distribution to its members or paying fees to its directors,

with such corporation to be determined by the Members (at or before the winding up) or, in default, by application to the Supreme Court of the Australian Capital Territory for determination.

39. Indemnity

- (a) To the extent permitted by law, the Association indemnifies every person who is or has been an officer of the Association against:
 - (i) any liability (other than for legal costs) incurred by that person as an officer of the Association (including liabilities incurred by the officer as an officer of a subsidiary of the Association where the Association requested the officer to accept that appointment); and
 - (ii) reasonable legal costs incurred in defending an action for a liability incurred or allegedly incurred by that person as an officer of the Association (including such legal costs incurred by the officer as an officer of a subsidiary of the Association where the Association requested the officer to accept that appointment).
- (b) Where the Board considers it appropriate, the Association may execute a documentary indemnity in any form in favour of any officer of the Association.
- (c) The amount of any indemnity payable under clauses 39(a)(i) or 39(a)(ii) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Association with a GST tax invoice for the GST Amount.
- (d) The Board may agree to advance to an officer an amount which it might otherwise be liable to pay to the officer under clause 39(a)(i) on such terms as the Board thinks fit but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Association is in fact liable to indemnify the officer under clause 39(a)(i). If after the Association makes the advance, the Board forms the view that the Association is not liable to indemnify the officer, the Association may recover any advance from the officer as a debt due by the officer to the Association.
- (e) For the purposes of this clause 39, **officer** means:

- (i) a Director;
- (ii) a Secretary; or
- (iii) a person who has formerly been a Director or Secretary of the Association.

40. Insurance

- (a) To the extent permitted by law, the Association may pay or agree to pay a premium for a contract insuring a person who is (or has been) an officer of the Association (including a related body corporate) against any liability incurred by the person as an officer of the Association.
- (b) Despite anything in this Constitution, a Director is not precluded from voting on a contract (or proposed contract) of insurance, merely because the contract insures (or would insure) the Director against a liability incurred by the Director as an officer of the Association (or of a related body corporate).