



# Royal Flying Doctor Service

CENTRAL OPERATIONS

## Draft Constitution

referred to for consideration at the

## 86<sup>TH</sup> ANNUAL GENERAL MEETING (AGM)

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The attached document is made available for the reference of Members of the Royal Flying Doctor Service of Australia Central Operations (RFDSCO).

At the 86<sup>th</sup> Annual General Meeting of Members, the RFDSCO Board is recommending various changes to the Constitution of RFDSCO.

The Notice of Meeting issued to the Members sets out the various special resolutions proposed to make changes to the Constitution.

The attached presents the document as if those changes are made, and can be compared to the current position. The changes are shown in “track changes” or “marked up” – new text appears in blue, and deleted text appears in red.

This is an aid for the convenience of Members to be able to see easily the impact of passing the resolutions as put.

If you are a Member and have any queries, please contact the Company Secretary on 08 8238 3333 or by emailing [members@flyingdoctor.net](mailto:members@flyingdoctor.net)



Royal Flying Doctor Service  
CENTRAL OPERATIONS

# CONSTITUTION

of

Royal Flying Doctor Service of  
Australia  
Central Operations

Draft Dated 15 September 2022~~21 October~~  
~~2010~~

Version 12

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# CONSTITUTION

## PART 1 – ABOUT THE COMPANY

### 1. Charitable purposes

The Company may only pursue charitable purposes, predominantly in Australia, associated with the maintenance and advancement of the health of all people, without discrimination, in all areas through the provision of medical, aero-medical and associated health services, including such other activities and undertakings as may be necessary to support these services or which may be incidental to the provision of such services.

The Company may engage in commercial activities to an extent and in circumstances where such activities support the Company's charitable purposes.

### 2. Application of income for objects only

The surplus (if any) or other income and the property of the Company, however derived, must be applied solely towards the promotion of the purposes of the Company as set out in article 1. No part of those surpluses or that income or property may be paid or transferred or otherwise distributed to Members either directly or indirectly by way of dividend, bonus or otherwise.

### 3. Payments by the Company in good faith

Subject to articles 44 and 45, article 2 does not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:

- 3.1 of remuneration for services to the Company; or
- 3.2 for goods supplied in the ordinary course of business; or
- 3.3 of interest at a rate not exceeding the rate fixed for the purposes of this article 3 by the Company in general meeting on money borrowed from an officer or Member; or
- 3.4 of reasonable rent for premises let by an officer or Member.

In addition to the obligations of a Director under article 45, a Member must disclose to the Directors any of the arrangements set out in this article 3.

Any payment made a Director must be approved by the Directors.

### 4. Application of Company property on winding up

If any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:

- 4.1 having objects similar to the charitable purposes of the Company;
- 4.2 whose constitution or rules prohibit the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution; and
- 4.3 being an institution accepted as a deductible gift recipient under sub-division 30-B, section 30-100 of the *Income Tax Assessment Act 1997* by the Commissioner of Taxation or otherwise approved for these purposes by the Commissioner of Taxation.

The institution is to be determined by the Members at or before the time of dissolution.

## **PART 2 – ABOUT MEMBERS**

### **5. Limited liability of the Members**

The Company is a public company limited by guarantee and the Members have no liability as Members except as stated in article 74.

### **6. Becoming a Member**

A person may become a Member only under the provisions of this article.

#### **6.1. ~~Not Used~~Members of the Association**

~~A financial member of the Association who in writing agrees to become a Member becomes a Member upon giving that writing to the Company.~~

#### **6.2. Admission of others as a Member**

Subject to article 9, the Directors may admit as a Member any person (to avoid doubt, whether an individual or body corporate) who:

6.1.1 in writing applies to become a Member, which application is in a form acceptable to the Directors, is signed by the applicant and is given to the Company at its registered office; and

6.1.2 the Directors determine to accept as a Member.

#### **6.3. Consideration of membership applications**

Within 90 days after the Company's receipt of an application for membership in proper form, the Directors must determine to accept or not to accept the application. The Directors are not required to give any reason for their decision.

#### **6.4. Notification of the decision**

As soon as practicable after the Directors have determined to accept or not accept an application for membership, the Company must notify the decision to the applicant. A failure by the Company to respond to an application does not signify acceptance of the application, however.

### **7. Life Members**

#### **7.1 Selection of Life Members**

At any time, the Directors may determine that a Member is a Life Member. The Directors are not required to give any reason for their decision. Any number of Life Members may be so created.

#### **7.2 Rights of a Life Member**

A Life Member has the rights and obligations of a Member but is not required to pay any annual membership fee or other fee or levy to the Company.

## 8. Annual membership fees and other levies

### 8.1 Determination of fees and levies

At any time the Directors may determine that Members (not Life Members) each pay to the Company:

- 8.1.1 an annual membership fee of an amount and at a time determined by the Directors; and
- 8.1.2 such other levy or fee (if any) of an amount and at a time determined by the Directors.

An annual membership fee or levy as last determined by the Directors applies to the financial year concerned and to each subsequent financial year until the Directors determine otherwise.

### 8.2 Notice of fees and levies

Before the start of a financial year, the Company must notify each Member (not a Life Member) of the applicable annual membership fee and / or applicable levy or other fee for that financial year.

### 8.3 Reminder notice

If a Member (not a Life Member) was sent notice under article 8.2 and fails to pay a fee or any levy on the date the payment was due as stated in the notice, the Company may send a reminder notice to that Member.

### 8.4 Default in payment

If a Member was sent a reminder notice under article 8.3 and fails to pay a fee or levy within 180 days after the payment first fell due, they thereupon cease to be a Member. If thereafter such person wishes to again become a Member, they must apply for membership under article 6.2.

### 8.5 ~~Not Used~~ **Transitional**

~~If in respect of the financial year to end 30 June 2010, the members of the Association were liable to pay a fee or levy:~~

- ~~8.5.1 that fee or levy is deemed to have been determined by the Directors under article 8.1 and notified to the Members under article 8.2; and~~
- ~~8.5.2 a Member who (as a member of the Association) before the Implementation Date paid that fee or levy is to be credited with that payment.~~

## 9. Suspension of employee Members

An employee of the Company may not be or become a Member while an employee. A Member who becomes an employee of the Company thereupon ceases to be a Member, without prejudice to rights and obligations at that time accrued.

## 10. Disciplinary action against a Member

- 10.1 If the Directors are of the opinion that a Member may be guilty of disreputable conduct, the Directors may:



- 10.1.1 invite the Member to resign as such within a period notified by the Company; and / or
- 10.1.2 notify the Member by registered post to their address appearing in the register of members that the Member is invited and required to appear before the Directors on the investigation of such alleged disreputable conduct, which notice must:
- (a) state the date, time and place at which the hearing will be held, being a date, time and place reasonably believed to be convenient to the Member;
  - (b) inform the allegations of disreputable conduct made against them (having due regard to the law of defamation);
  - (c) inform that at the conclusion of the hearing, the Directors will consider expelling the Member or taking other disciplinary action against them.
- 10.2 At a hearing held under this article, the Directors:
- 10.2.1 may allow the Member to be represented by a lawyer or other advocate;
  - 10.2.2 may consider such evidence, oral or documentary, as they think relevant;
  - 10.2.3 must allow the Member to be informed of the detail of the allegations made against them;
  - 10.2.4 must allow the Member (or advocate) fair opportunity to be heard and to produce relevant evidence whether oral or documentary;
  - 10.2.5 are not bound by the strict rules of evidence and subject to the above provisions may proceed in such manner as the Directors think fit;
  - 10.2.6 may be assisted by a lawyer.
- 10.3 At the conclusion of a hearing held under this article, the Directors may:
- 10.3.1 determine, by a majority of those Directors present, whether to find all, some or none of any such allegations proven or not;
  - 10.3.2 if allegations are proven, by a majority of at least two thirds of the Directors present the Directors may determine to either:
    - (a) take no action against the Member;
    - (b) caution the Member;
    - (c) suspend for a stated period (not exceeding 6 months) the Member's right to attend and / or vote at Members' meetings; or
    - (d) expel the Member.
- 10.4 A former Member who accepted an invitation to resign made under this article or was expelled under this article remains liable for and must pay to the Company all monies which at the time they ceased to be a Member were owing by them to the

Company and they are not entitled to a refund in respect of any unexpired portion of their annual subscription fee or other levy or fee paid.

In this article, **disreputable conduct** means either:

- (a) serious or persistent breach by the Member of this Constitution;
- (b) conduct of the Member (or Representative) likely to bring the Company into disrepute;
- (c) dishonest or improper conduct;
- (d) any other conduct in respect of which the Directors consider that the membership of the Member might be terminated or that other disciplinary action might be taken against the Member.

## 11. **Ceasing to be a Member**

A person ceases to be a Member if and when:

- 11.1 their membership is terminated under article 8.4;
- 11.2 expelled under article 10.3.2;
- 11.3 they give written notice of resignation to the Company at its registered office;
- 11.4 the Member is an individual and either:
  - 11.4.1 dies; or
  - 11.4.2 becomes an insolvent under administration (as defined in the Act); or
  - 11.4.3 becomes a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
  - 11.4.4 becomes an employee (refer article 9); or
- 11.5 the Member is a body corporate and either:
  - 11.5.1 is dissolved; or
  - 11.5.2 becomes an externally administered body corporate or has a controller appointed over any of its assets (as defined in the Act).

## 12. **Membership is not transferable**

Membership is personal to the Member and not transferable.

# **PART 3 – MEMBERS' MEETINGS**

## 13. **Calling of Members' meetings**

- 13.1 At any time, a majority in number of the Directors may call a Members' meeting.
- 13.2 The Directors must call and arrange to hold a Members' meeting if required to do so by request of Members under s. 249D of the Act.

13.3 Members may call and arrange to hold a Members' meeting as s. 249F of the Act allows.

13.4 The Company must hold call annual general meetings as s. 250N of the Act requires.

#### 14. Notice of a Members' meeting

A notice from the Company calling a Members' meeting must conform to the Act, including:

14.1 set out the information s. 249L of the Act requires;

14.2 be given to each Member, each Director and the Auditor as s. 249J and s. 249K of the Act require;

14.3 be given within the time s. 249H of the Act requires;

14.4 be accompanied by a proxy appointment form if s. 249Z so requires.

In conformity with s. 105 of the Act, in calculating days notice, count the day notice was given but not the day of the meeting called by it.

In conformity with and subject to s. 1322(3) of the Act, a Members' meeting or any proceeding at such a meeting is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting.

#### 15. Holding a Members' meeting

A Member's meeting:

15.1 as s. 249Q of the Act requires, must be held for a proper purpose;

15.2 as s. 249R of the Act requires, must be held at a reasonable time and place;

15.3 ~~as s. 249S of the Act allows,~~ may be held:

15.3.1 ~~at one 2 or more physical venues; or~~

15.3.2 ~~at one or more physical venues and using virtual meeting technology; or~~

15.3.3 ~~using virtual meeting technology only,~~

~~15.3~~ at the discretion of the Directors, using any technology that gives the Members as a whole a reasonable opportunity to participate, both verbally and in writing.

#### 16. Postponement or cancellation of a Members' meeting

16.1 A Members' meeting may be postponed or cancelled at any time before the day of the meeting:

16.1.1 if called by the Company on the request of Members under s. 249D of the Act, by those Members so notifying the Company;

16.1.2 if called by Members under s. 249E of the Act, by those Members so notifying the Company;

16.1.3 if called by Members under s. 249F of the Act, by those Members so notifying the Company; or

16.1.4 if called by the Company of its own volition, as the Directors may determine.

- 16.2 The Company must give notice of the postponement or cancellation, and the reasons, to all persons entitled to receive notice of that meeting. A notice postponing a Members' meeting must conform to the same requirements as the original notice calling that meeting. The only business that may be transacted at a Members' meeting that is postponed is the business specified in the original notice calling the meeting.
- 16.3 Any Members postponing or cancelling a Members' meeting must pay the expenses of the postponement or cancellation unless the Directors determine otherwise.
- 16.4 If a Members' meeting was postponed, an instrument appointing a proxy, attorney or Representative for the meeting received by the Company at least 48 hours before the holding of the meeting is effective for the meeting.

## 17. Quorum at Members' meetings

- 17.1 Subject to article 17.4, the quorum for a Members' meeting is ~~15~~<sup>9</sup> Members present in person or by proxy, attorney or Representative.
- 17.2 An item of business may not be transacted at a Member's meeting unless a quorum is present when the meeting proceeds to consider it. A quorum present at the beginning of a meeting is taken to be present throughout the meeting unless the chair of the meeting declares otherwise.
- 17.3 If within 15 minutes after the time appointed for a Members' meeting a quorum is not present, the meeting:
- 17.3.1 if called by or on request of Members, is dissolved; and
- 17.3.2 in any other case is adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.
- 17.4 At a meeting adjourned under article 17.3.2, the quorum is 3 Members present in person or by proxy, attorney or Representative. If a quorum is not present within 30 minutes after the time appointed for the resumed meeting, the meeting is dissolved.

## 18. Officers may attend Members' meetings

At a Member's meeting:

- 18.1 a Director is entitled to attend and be heard at the meeting;
- 18.2 as s. 249V of the Act requires, the Auditor is entitled to attend and (so far as concerns any business of the meeting that concerns the Auditor in that capacity) be heard at the meeting.

## 19. Chair of Members' meetings

A Director elected by the Directors as Chairman is entitled to chair a Member's meeting. If at a Member's meeting:

- 19.1 a Chairman has not been elected by the Directors; or
- 19.2 the elected Chairman is not present within 15 minutes after the time appointed for the meeting, or declines to act,

the following may chair the meeting (in order of precedence):

- 19.3 the Deputy Chairman;

- 19.4 a Director chosen by a majority of the Directors present;
- 19.5 the only Director present; or
- 19.6 a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

## 20. Voting rights of Members

Excepting Life Members, a Member may only vote at a Members' meeting if the Member has paid any annual membership fee, levy or other fee made payable under article 8 and due for payment before the meeting. Otherwise, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote, both on a show of hands or on a poll.

## 21. Proxies

- 21.1 As s. 249X(1) of the Act requires, a Member who is entitled to attend and cast a vote at a Members' meeting may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. As s. 249X(1A) of the Act requires, the person appointed need not be a Member and may be an individual or a body corporate. An appointment may be a standing one.
- 21.2 As s. 249Y(1) of the Act requires, a proxy appointed to attend and vote for a Member has the same rights as the Member to speak, vote and join in a demand for a poll at the meeting. A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.
- 21.3 For an appointment of a proxy for a Members' meeting to be effective:
  - 21.3.1 the appointment must be signed, contain the information s. 250A(1) of the Act requires, but as s. 250A(6) of the Act requires does not have to be witnessed;
  - 21.3.2 subject to s. 250B of the Act, the proxy's appointment and any authority or a certified copy of any authority under which the appointment was signed must be received by the Company at least 48 hours before the meeting.
- 21.4 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - 21.4.1 the appointing Member dies or is dissolved; or
  - 21.4.2 the Member is mentally incapacitated; or
  - 21.4.3 the Member revokes the proxy's appointment; or
  - 21.4.4 the Member revokes the authority under which the proxy was appointed by a third party.
- 21.5 Subject to s. 249Y(1)(b) and s. 250A(4) of the Act and any contrary express terms of an appointment, a proxy may vote:
  - 21.5.1 on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
  - 21.5.2 on any procedural motion put to the meeting.

## **22. Voting by an attorney**

- 22.1 A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any Members' meetings.
- 22.2 To be effective under this article, an instrument or certified copy of the instrument appointing an attorney, together with any evidence of non-revocation the Directors may require, must be received by the Company at least 48 hours before the meeting.

## **23. Voting by a Representative**

As s. 250D of the Act allows, a Member which is a body corporate may appoint an individual as its Representative to exercise all or any of the powers the body corporate may exercise at Members' meetings.

## **24. Reference to a Member**

Unless the contrary intention appears, in this Part a reference to a Member means a person who is a Member or is a proxy, attorney or a Representative of that Member.

## **25. Chair's casting vote**

The chair of a Members' meeting has a casting vote in addition to their vote as a Member or as proxy, attorney or Representative of a Member.

## **26. Conduct of Member's meetings**

The chair of a Members' meeting has the general conduct of the meeting and of the procedures to be adopted at the meeting. Without limiting the foregoing, the chair may terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting. A decision by the chair under this article is final.

## **27. Adjournment of Members' meetings**

The chair of a Members' meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting. The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- 27.1 in exercising this discretion, the chair may, but need not, seek the approval of the Members present;
- 27.2 unless required by the chair, a vote may not be taken or demanded by the Members present in respect of any adjournment; and
- 27.3 only unfinished business is to be transacted at a meeting resumed after an adjournment.

When a meeting is adjourned, new notice of the resumed meeting must be given only if the meeting is adjourned for one month or more.

As s. 249W(1) of the Act requires, a resolution at a Members' meeting resumed after an adjournment is passed on the day it was passed.

## **28. How voting is carried out**

- 28.1 Subject to any requirements of the Act, a resolution at a Members' meeting is carried if a simple majority of the votes cast on the resolution are in favour of it.

- 28.2 A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded.
- 28.3 On a show of hands, a declaration by the chair is conclusive evidence of the result, provided the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

## 29. Poll

- 29.1 In conformity with s. 250K of the Act, at a Members' meeting a poll may be demanded on any resolution except a resolution concerning the adjournment of the meeting.
- 29.2 In conformity with s. 250L(1) of the Act, a poll may be demanded by:
- 29.2.1 the chair; or
  - 29.2.2 not less than 5 Members (including any proxies acting under article 21.2) having the right to vote on the resolution.
- 29.3 In conformity with s. 250L(3) of the Act, the poll may be demanded:
- 29.3.1 before a vote is taken;
  - 29.3.2 before the voting results on a show of hands are declared; or
  - 29.3.3 immediately after the voting results on a show of hands are declared.
- 29.4 A poll demanded on a matter other than the election of a chair must be taken when and in the manner the chair directs. A poll on the election of a chair must be taken immediately.
- 29.5 A demand for a poll may be withdrawn.
- 29.6 A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## 30. Objection to voting

A challenge to a right to vote at a Members' meeting:

- 30.1 may only be made at the meeting; and
- 30.2 must be determined by the chair, whose decision is final.

## PART 4 – APPOINTMENT OF DIRECTORS

## 31. Disqualification

- 31.1 A person who is not a Member (or Representative) cannot be a Director.
- 31.2 An employee of the Company ~~or of the Association~~ cannot be a Director.
- 31.3 A former employee of the Company ~~or of the Association~~ cannot be a Director for 60 calendar months after they ceased to be an employee of the Company ~~or of the Association~~.
- 31.4 A person may not be appointed or elected as a Director if ~~having regard to article 34~~ they have held office as a Director for more than 12 consecutive years or would hold



office for more than 12 consecutive years if so appointed or elected.

**32. Number of Directors**

~~On and from the conclusion of the annual general meeting held in calendar 2010, the~~[The](#) maximum number of Directors is 9.

**33. ~~Not Used~~Appointment of the Association's board**

~~A person who:~~

~~33.1 did not by force of s. 120(1) of the Act become a Director on registration of the Company;~~

~~33.2 on the Implementation Date was a member of the board of management of the Association; and~~

~~33.3 within 30 days after the Implementation Date consents in writing to appointment as a Director;~~

~~becomes a Director.~~

**34. ~~Not Used~~Service on the Association's board**

~~For the purposes of this Constitution, a Director who:~~

~~34.1 on or within 90 days before the Implementation Date was a member of the board of management of the Association; and~~

~~34.2 on registration of the Company became a Director, or within 30 days after the Implementation Date became a Director;~~

~~such person:~~

~~34.3 is taken to have been elected as a Director on the date they were last elected as a member of the board of management of the Association;~~

~~34.4 if appointed by the board of management of the Association to fill a casual vacancy, is taken to have been appointed to fill a casual vacancy of the Directors and must retire as a Director on the date when the member in whose place they were appointed would have retired if they had been appointed a Director and served the full term for which they were elected or appointed.~~

**35. Maximum term of Directors**

Despite any other provision of this Constitution, a person must not be elected or appointed as a Director if at the time the periods served by the person as a Director total 12 or more consecutive years.

**36. ~~Not Used~~Retirement of surplus Directors at 2010 AGM**

~~If at the commencement of the annual general meeting held in calendar 2010 there are more than 9 Directors in office, at that meeting Directors exceeding that number must retire. If insufficient Directors offer their retirement under this article, the Directors to retire are those longest in office having regard to article 34 and in case of Directors having served in office for an equal period, as determined by the drawing of lots. A retiring Director holds office until the end of the annual general meeting at which they retire. This article operates in addition to article 37.~~



### 37. Rotation of Directors

- 37.1 At ~~the annual general meeting held in calendar 2010 and~~ each annual general meeting ~~thereafter~~ one-third of the Directors, or, if their number is not 3 or a multiple of 3, then the number nearest one-third must retire from office.
- 37.2 In determining the number of Directors to retire, ignore a Director who only holds office until the end of the meeting in accordance with article 36.
- 37.3 The Directors to retire at any annual general meeting must be those who have been longest in office since their last election ~~having regard to article 34~~. As between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.
- 37.4 A retiring Director holds office until the end of the annual general meeting at which they retire.

### 38. Nominations for Directors

A person is not eligible for election as a Director at a Members' meeting unless:

- 38.1 the person is a Director retiring under ~~article 35 or~~ article 37 who seeks re-election; or
- 38.2 at least 42 days before the meeting the Company receives at its registered office both:
- 38.2.1 a signed consent to act as a Director by the person; and
  - 38.2.2 a nomination in writing (in 1 or more copies) signed by at least 2 other Members.

At least 60 days before the date of a general meeting at which elections for Directors are to be held, the Company must give to the Members a notice calling for nominations for the positions of Directors to become vacant at that meeting.

### 39. Directors may be elected

Subject to this Constitution:

- 39.1 a Director who retires in accordance with article 37 is eligible for re-election; and
- 39.2 at a Members' meeting at which a Director retires or otherwise vacates office, the Members may by resolution fill the vacated office by electing a person to that office.

### 40. Casual vacancy

Subject to this Constitution, at any time the Directors may appoint a person to be a Director to fill a casual vacancy. A Director appointed under this article holds office for the balance of the term of the vacating Director.

### 41. Vacation of office

A person ceases to be a Director:

- 41.1 if and when they cease to be a Member;
- 41.2 if and when they resign from office by notice in writing to the Company;
- 41.3 if and when they become a person whose person or estate is dealt with in any way under a law relating to mental health;

- 41.4 if and when disqualified from managing corporations under Part 2D.6 of Act;
- 41.5 if and when this Constitution otherwise requires or permits; or
- 41.6 if not being engaged abroad on the business of the Company is not present personally or by proxy at Director's meetings for 3 consecutive months without leave of absence from the Directors where the Directors have not, within 14 days of having been served by a Secretary a notice giving particulars of the absence, determined that leave of absence be granted.

Subject to the Act and this Constitution, that person is eligible for reappointment or re-election as a Director.

#### 42. **Alternate Directors**

A Director may not appoint an alternate.

#### 43. **Effect of vacancy**

The continuing Directors may act despite a vacancy in their number. If any time there is less than 3 Directors, except in an emergency those continuing Directors may act only for the purpose of filling vacancies to the extent necessary to bring their number up to 3 or for calling a Members' meeting.

### **PART 5 – ABOUT DIRECTORS**

#### 44. **Remuneration of Directors**

A Director may not be paid any remuneration for services as a Director. However, a Director is to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors, the Company or a committee or when otherwise engaged on the affairs of the Company. Any payment to a Director must be approved in advance by the Directors.

#### 45. **Director's interests**

Subject to s. 191 (duty of disclosure where a Director has a material personal interest), s. 195 (restriction on voting where a Director has a material personal interest) and s. 208 (need for Member approval of financial benefits to a Director or related party) of the Act, a Director may:

- 45.1 hold any office or place of profit in any body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- 45.2 enter into a contract or arrangement with the Company;
- 45.3 participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- 45.4 act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as Auditor;
- 45.5 participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
- 45.6 sign or participate in the execution of a document by or on behalf of the Company.

A Director may do any of the above despite the fiduciary relationship of the Director's office:

- (a) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
- (b) without affecting the validity of any contract or arrangement.

#### 46. **Directors to manage the Company**

- 46.1 The business of the Company is to be managed by or under the direction of the Directors.
- 46.2 The Directors may exercise all the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.

#### 47. **Delegations by the Directors**

The Directors may delegate any of their powers to committees or others as s. 198D of the Act permits. A delegation of powers by the Directors:

- 47.1 may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;
- 47.2 may be concurrent with or to the exclusion of the exercise by the Directors of those powers.

A power of attorney granted under this article may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit.

#### 48. **Policies**

- 48.1 Subject to the Act and other law, the Directors may adopt policies for the management of the Company including, but not limited to, community engagement, code of conduct for officers, code of conduct for employees, financial management of the Company.
- 48.2 An officer must comply with a code of conduct by its express terms made applicable to persons holding that office.

#### 49. **Committees**

A committee formed under article 47 has the functions and powers vested by the Directors, subject to any directions given by the Directors. So far as can be made applicable, the meetings and proceedings of a committee comprising any Directors are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors.

#### 50. **Representative to the National Board**

At all times ~~after the Implementation Date~~, the Directors must have appointed a Director to serve as the nominated representative of the Company on the National Board of the Royal Flying Doctor Service of Australia ACN 004 213 067.

### **PART 6 – DIRECTORS' MEETINGS**

#### 51. **Directors' meetings**

The Directors may meet together for conducting business and adjourn and otherwise regulate their meetings as they think fit. The Directors must meet at least once every 2 calendar months.

## 52. **Calling a Directors' meeting**

Two Directors may at any time, and the Secretary must on the written request of 2 Directors, call a Directors' meeting.

## 53. **Use of technology**

As s. 248D of the Act requires, a Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

## 54. **Quorum at a Directors' meeting**

Unless the Directors determine otherwise, the quorum for a Directors' meeting is the nearest whole number above 50% of the Directors in office and who are present in person or by proxy. A quorum must be present at all times during the meeting.

## 55. **Proxy voting at a Directors' meeting**

55.1 A Director may attend and vote by proxy at a Directors' meeting if the proxy:

55.1.1 is another Director; and

55.1.2 is appointed in writing signed by the appointor and given to the Company.

The appointment may be a standing one. In this article, **writing** includes an email or fax or text message purporting to be from the appointor.

55.2 In addition to their own vote as a Director, a Director present at a Directors' meeting as a proxy for another has 1 vote for his or her appointor if their appointor would be entitled to vote if present at the meeting.

## 56. **Chairman and Deputy Chairman**

56.1 At all times, the Directors must have elected one of their number as Chairman and must have elected one of their number as Deputy Chairman. The Directors may determine the period during which each is to hold office.

56.2 A Chairman or Deputy Chairman may be removed from that office by a resolution of the Directors of which not less than 14 days' notice has been given to the Directors.

56.3 The Chairman is entitled to chair a Directors' meeting. If at a Director's meeting the Chairman is not present within 15 minutes after the time appointed for the meeting, or declines to act, the following may chair the meeting (in order of precedence):

56.3.1 the Deputy Chairman; or

56.3.2 a Director chosen by a majority of the Directors present.

## 57. **Questions decided by majority of Directors' votes**

A resolution of Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

## 58. **Chair's casting vote**

The chair of a Directors' meeting has a casting vote if necessary in addition to a vote in their capacity as a Director.

## 59. **Circulating resolutions of Directors**

The Directors may pass a resolution without a Directors' meeting being held if 1 more than a majority of the Directors who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. 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. The resolution is passed when the last Director required signs. A document referred to in this article must be sent to every Director who is entitled to vote on the resolution (whether or not the Director signs the document). [Compliance with ss. 110, 110A, 110C and 110D of the Act is taken to be compliance with this article in respect of sending and signing documents.](#)

## **PART 7 – OTHER OFFICERS**

### 60. **Chief Executive Officer**

60.1 The Company may have a Chief Executive Officer.

60.2 A Director may not be Chief Executive Officer.

60.3 The Directors may appoint a Chief Executive Officer for the period, and on the terms (including as to remuneration), as the Directors see fit. The Directors may revoke or vary an appointment of a Chief Executive Officer, subject to any agreement made between the Chief Executive Officer and the Company.

60.4 The Directors may confer on a Chief Executive Officer any of the powers that the Directors can exercise. Except to any extent the Directors resolve otherwise, a Chief Executive Officer has the day-to-day executive management of the affairs of the Company, subject to such directions as the Directors may give to the Chief Executive Officer. The Directors may revoke or vary a conferral of powers on the Chief Executive Officer, subject to any agreement made between the Chief Executive Officer and the Company.

### 61. **Secretary**

As s. 204A(2) of the Act requires, the Company must have at least 1 Secretary. As s. 204D of the Act requires, a Secretary is to be appointed by the Directors. The Directors may suspend or remove a Secretary from that office. A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine. A Secretary has responsibility for those matters listed in s. 188(1) of the Act and such other functions that the Directors determine.

### 62. **Treasurer**

The Company may have a Treasurer. The Treasurer must be a Director. A Treasurer will be appointed by the Directors and, in that capacity, has those functions that the Directors determine.

### 63. **Executive**

If a matter of substance arises which in the opinion of the Executive requires immediate decision, the Executive may act for the Company. At the next Directors' meeting, the Chairman must give a full report of the matter to the Directors. A failure to make such report does not invalidate action so taken by the Executive.

### 64. **Auditor**

The Company must have an Auditor as Subdivision A of Division 6 of Part 2M.4 of the Act requires.

## PART 8 – GENERAL MATTERS

### 65. Effectiveness of acts by Directors or Secretaries

As s. 201M(1) and s. 204E(1) of the Act require, an act done by a Director or a Secretary is effective even if their appointment, or the continuance of their appointment, is invalid because the Company or the person did not comply with this Constitution or any provision of the Act.

### 66. Minutes

The Directors must cause minutes of meetings to be made and kept in accordance with s. 251A of the Act.

### 67. Accounts

The Directors must cause:

- 67.1 financial records to be kept as s. 286 of the Act requires;
- 67.2 an financial report for a financial year to be prepared as s. 292(1)(b) of the Act requires;
- 67.3 each above financial report to be audited as s. 310(1) of the Act requires;
- 67.4 a Directors' report for a financial year to be prepared as s. 292(1)(b) of the Act requires; and
- 67.5 the Company to provide to the Members for each financial year the financial report, Directors' report and auditor's report within the time s. 315(1) of the Act requires.

### 68. Common seal

- 68.1 As s. 123 of the Act allows, the Company may but need not have a common seal.
- 68.2 The Company may execute a document without using a common seal as s. 127 allows.
- 68.3 If the Company has a common seal:
  - 68.3.1 the Directors must provide for its safe custody;
  - 68.3.2 it may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise its use; and
  - 68.3.3 the fixing of the common seal to a document must be witnessed by 2 persons one of whom is a Director and the other being a Director, a Secretary or another person appointed by the Directors to so witness for that document or a class of documents in which that document is included.

### 69. Inspection of records

- 69.1 Subject to the Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by theMembers (other than Directors).
- 69.2 A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.



## 70. Service of documents

The Company may give a document (including a notice) to a Member in any manner s. 249J(3) of the Act allows.

A document sent by post is taken to be given 2 days after it is posted. A document sent by fax, or other electronic means, is taken to be given on the business day after it is sent. A document given under s. 249J(3)(c**b**) is taken to be given on the business day after the day on which the Member is notified that the document is available.

## 71. Indemnity

71.1 Subject to s. 199A of the Act and other law, to the extent an officer or former officer of the Company is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company may indemnify every such officer or former officer against any liability incurred by that person:

71.1.1 as an officer of the Company; and

71.1.2 to a person other than the Company or a related body corporate;

unless the liability arises out of conduct on the part of the person which:

71.1.3 involves a lack of good faith; or

71.1.4 is contrary to the Company's express instructions.

71.2 Subject to s. 199A of the Act and other law, to the extent an officer or former officer of the Company is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company may indemnify every such officer or former officer against any liability for costs and expenses incurred by the person as an officer of the Company:

71.2.1 in defending any proceedings, whether civil or criminal or administrative, in which judgment or the decision is given favour of the person or in which the person is acquitted; or

71.2.2 in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act.

71.3 Unless the Directors otherwise determine, this clause ceases to apply if favour of a person who does not to the satisfaction of the Directors cooperate with the Company in investigating, defending or resolving the matter to which this clause would otherwise apply.

71.4 In this article, **officer** includes:

71.4.1 a Director (whether in their capacity as a Director or as a Treasurer) and a Secretary;

71.4.2 a Chief Executive Officer;

71.4.3 a senior manager of the Company (as defined in the Act); and

71.4.4 any employee of the Company as determined by the Directors.

## 72. Insurance

Subject to s. 199B of the Act, the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been an officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

72.1 the Company is forbidden by law to pay or agree to pay the premium; or

72.2 the contract would, if the Company paid the premium, be made void by statute.

In this article, **officer** has the same meaning as in article 71.

## 73. Directors' Deed

Subject to s. 208 of the Act, other laws and this Constitution, the Company may execute in favour of an officer or former officer a document:

73.1 with respect to any matters the subject of article 71 and / or article 72; and / or

73.2 giving rights to inspect the books of the Company (including its financial records) whether or not s. 198F of the Act applies or applied to the person.

In this article, **officer** has the same meaning as in article 71.

## 74. Winding up

Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member or within one year after they cease to be a Member. This contribution is for:

74.1 payment of the Company's debts and liabilities contracted before they ceased to be a Member;

74.2 the costs of winding up; and

74.3 adjustment of the rights of the contributories among themselves,

and the amount is not to exceed \$10.

## 75. Dictionary

In this Constitution:

[ACNC Act means the Australian Charities and Not-for-profits Commission Act 2012 as amended from time to time.](#)

**Act** means the *Corporations Act 2001* ~~as it applies to the Company~~ as amended from time to time.

~~**Association** means Royal Flying Doctor Service of Australia (Central Operations) Incorporated ABN 81 108 409 735.~~

**Auditor** means the auditor for the time being of the Company.

**Chairman** means the chairman for the time being of the board of Directors and **Deputy Chairman** means the deputy chairman for the time being of the board.

**Chief Executive Officer** means an individual for the time being appointed by the Directors as chief executive officer.



**Company** means Royal Flying Doctor Service of Australia (Central Operations).

**Constitution** means this constitution as may be modified from time to time.

**Director** means a Director for the time being of the Company.

**Directors** mean all or some of the Directors acting as a board.

**Executive** means a committee constituted of the Chairman, Deputy Chairman, Treasurer (if one is appointed) and such other Director or Directors as may be appointed to that committee by the Directors from time to time.

~~**Implementation Date** means the later of 1 July 2009 and the date orders are made in respect of the Association under s. 34(2) of the Associations Incorporation Act 1987 (SA).~~

**Life Member** means a Member granted life membership of the Company under article 7.

**Member** means a member of the Company and unless stated otherwise includes a Life Member.

**Representative** means an individual under s. 250D of the Act appointed to represent a Member that is a body corporate.

**Secretary** means an individual under s. 204D of the Act at the time appointed by the Directors as a company secretary of the Company.

**Treasurer** means a Director appointed by the Directors at the time as treasurer of the Company.

## 76. Interpretation

In this Constitution, unless the contrary intention appears:

- 76.1 subject to article 75, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
- 76.2 headings are for ease of reference only and do not affect the construction of this Constitution;
- 76.3 the word person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
- 76.4 the singular includes the plural and vice versa;
- 76.5 the words "include" or "including" are not used as, nor are they to be construed as, words of limitation;
- 76.6 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 76.7 a reference to writing includes typewriting, printing, telex, telegram, facsimile and other modes of representing or reproducing words in a visible form.

## 77. Act

Despite any other provision in this Constitution:

- 77.1 if the Act prohibits a thing being done, the thing may not be done;
- 77.2 if the Act requires a thing to be done, authority is given for that thing;
- 77.3 if a provision of this Constitution is or becomes inconsistent with the Act (other than a replaceable rule), that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

## 78. Replaceable rules under the Act

This Constitution displaces the provisions of the Act that would apply to the Company as replaceable rules.

## 79. Powers

Powers conferred on the Company, the Directors, a committee of Directors, a Director or a Member may be exercised at any time and from time to time.

## 80. ACNC Act

Where at the time the Company is registered under the ACNC Act:

- 80.1 if the ACNC Act prohibits a thing being done, the thing may not be done;
- 80.2 if the ACNC Act requires a thing to be done, authority is given for that thing;
- 80.3 if a provision of this Constitution is or becomes inconsistent with the ACNC Act, that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency;
- 80.4 and this Constitution references a section of the Act, that section applies to the Company even if section 111L of the Act (or other provision of the Act) says that such referenced section of the Act does not apply to the Company by force of law.