

The Royal Society for the Prevention of Cruelty to Animals, New South Wales

ABN 87 000 001 641

CONSTITUTION

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PART 2 – NAME, OBJECT AND POWERS

2. Name

The name of the company is “The Royal Society for the Prevention of Cruelty to Animals, New South Wales” (in this constitution, “RSPCA NSW”).

3. Object

- 3.1 The object of RSPCA NSW is to prevent cruelty to animals by advocating for their welfare and actively promoting their protection and care.
- 3.2 RSPCA NSW will carry out its object through the following activities:
 - (a) advocating compliance with the support of communities;
 - (b) educating communities on animal welfare;
 - (c) formulating and disseminating animal welfare policy consistent with contemporary evidence based science;
 - (d) allocating resources to animal welfare initiatives to reduce total shelter intake;
 - (e) adapting the organisation’s service model to support “animals in homes” rather than “animals in care”; and
 - (f) performing any functions entrusted to it under legislation.

4. Legal Capacity and Powers

4.1 RSPCA NSW has:

- (a) the legal capacity and powers of an individual, and
- (b) all the powers of an incorporated body.

See section 124 of the Corporations Act.

4.2 RSPCA NSW may only:

- (a) exercise its powers; and
- (b) use its income and assets (including any surplus);

for:

- (c) its object, and
- (d) purposes incidental or ancillary to its object.

5. Not For Profit Organisation

5.1 RSPCA NSW must not distribute any surplus, income or assets directly or indirectly to its members.

5.2 Clause 5.1 does not prevent RSPCA NSW from paying its members:

- (a) reimbursement for expenses properly incurred by them, and
- (b) for goods supplied and services provided by them,

if this is done in good faith on terms no more favourable than if the member were not a member.

5.3 RSPCA NSW must not pay fees directly or indirectly to its directors.

5.4 RSPCA NSW may only make other payments to its directors if the payment has been specifically approved by resolution of the directors.

PART 3 – MEMBERSHIP

6. Eligibility

6.1 Any person who:

- (a) supports the object of RSPCA NSW; and
- (b) agrees to comply with the Code of Conduct*;

is eligible for membership.

6.2 In clause 6.1, “person” includes an individual, incorporated body or unincorporated body, and part of an incorporated or unincorporated body, subject to clause 6.3.

6.3 An unincorporated body, or part of an incorporated or unincorporated body may only become a member by nominating an individual or incorporated body to be a member on its behalf.

6.4 In this constitution, unless the contrary intention appears, “member” includes an unincorporated body, or part of an incorporated or unincorporated body represented by a member in accordance with clause 6.3.

7. Categories

7.1 RSPCA NSW has the following categories of membership:

- (a) full members, and
- (b) supporter members.

7.2 Full membership includes the following subcategories:

- (a) annual members,
- (b) life members, and
- (c) honorary life members.

7.3 Supporter membership includes the subcategory of junior members for individuals who are under the age of 18.

7.4 The Board may by regulation* create other categories of membership.

7.5 The Board may by regulation* prescribe the qualifications (if any) for each category of membership.

7.6 In this constitution, “category” when referring to membership includes subcategory.

8. Full Membership

8.1 Applications for full membership must be:

- (a) in writing*, stating that the applicant:
 - (i) wishes to become a member of RSPCA NSW;
 - (ii) supports the object of RSPCA NSW;
 - (iii) agrees to comply with the Code of Conduct*, constitution and regulations*; and

- (iv) undertakes to contribute up to \$10 to RSPCA NSW’s property, if RSPCA NSW is wound up;

- (b) accompanied by the first subscription (if required); and

- (c) given to RSPCA NSW.

8.2 Applications for full membership must be approved, rejected or deferred by the Board.

8.3 No reason need be given for the rejection or deferral of an application.

8.4 If the Board approves the application:

- (a) the applicant becomes a member from the date of the approval; and

- (b) the name and address of the new member, and the date of becoming a member must be entered in the register of members.

8.5 If the Board rejects the application, it must return any subscription to the applicant.

9. Supporter Membership

9.1 Applications for supporter membership must be:

- (a) in writing*, stating that the applicant:

- (i) wishes to become a member of RSPCA NSW; and

- (ii) agrees to comply with the Code of Conduct*, constitution and regulations*;

- (b) accompanied by the first subscription (if required); and

- (c) given to RSPCA NSW.

9.2 Applications for supporter membership are automatically approved by RSPCA NSW, subject to clause 9.3.

9.3 The Board may at any time revoke the membership of a supporter member that the Board in its absolute discretion considers unsuitable.

9.4 Supporter members are not members for the purposes of the Corporations Act.

9.5 In this constitution other than this Part, unless the contrary intention appears, “member” does not include a supporter member.

10. Subscriptions

10.1 The Board must by regulation* set the subscriptions for membership.

10.2 The amount of the subscription and the date for payment may vary according to criteria set by the Board in the regulation*, including the category of membership.

10.3 The subscription required for particular categories of membership may be nil.

10.4 The voting and other rights of members who have not paid any subscription required by the date for payment are suspended until the subscription is paid.

11. Rights and Obligations

11.1 Only full members are entitled to vote at general meetings.

11.2 The rights of members are not transferable, and end when the member ceases to be a member in accordance with clause 15.

11.3 By becoming and remaining members, members agree:

- (a) to support the object of RSPCA NSW; and
- (b) to comply with the Code of Conduct*.

11.4 Members must at all times comply with the constitution and regulations*.

11.5 This constitution is an enforceable contract between RSPCA NSW and each member.

For full members, see section 140 of the Corporations Act.

12. Liability

12.1 The liability of full members is limited to the amount specified in clause 12.2.

12.2 If RSPCA NSW is wound up, each full member undertakes to contribute up to \$10 to RSPCA NSW's property.

12.3 In clause 12.2, "member" includes a former member who was a member at any time during the year ending on the day of the commencement of the winding up, subject to clause 12.4.

12.4 Former members need not contribute in respect of a debt or liability of RSPCA NSW contracted after they ceased to be a member.

12.5 Supporter members have no liability in respect of their membership.

13. Discipline

13.1 The Board may by resolution passed by an absolute majority* reprimand, suspend or expel a full member for:

- (a) failing to comply with the constitution or regulations*; or
- (b) conduct prejudicial to RSPCA NSW.

13.2 The Board must not pass a resolution under clause 13.1 unless the member has been:

- (a) informed of what it is alleged the member has done; and
- (b) given a reasonable opportunity to be heard.

13.3 RSPCA NSW may not fine members.

13.4 Without limiting clause 42.4, the Board may delegate its powers under this clause to a discipline committee appointed by the Board.

13.5 The members of the discipline committee need not be directors or members of RSPCA NSW.

13.6 Clauses 13.1 and 13.2 apply to the discipline committee in the same way as the Board.

14. Resignation

14.1 Members may resign by writing* to RSPCA NSW.

14.2 The following are taken to have resigned:

- (a) members whose subscriptions (if required) are more than 1 year in arrears;
- (b) members who have not confirmed in writing* they wish to remain members within 3 months of being requested by RSPCA NSW; and
- (c) members who breach the Code of Conduct*.

15. Cessation

15.1 Members cease to be members:

- (a) on resignation, expulsion, death or winding up;
- (b) in the case of members nominated to act on behalf of an unincorporated body, or part of an incorporated or unincorporated body under clause 6.3 who are not members in their own right – when another member is nominated; and

- (c) in the case of supporter members – on revocation under clause 9.3.

15.2 If a full member ceases to be a member, the date of ceasing to be a member must be entered in the register of members.

16. Register of Members

The Board must ensure that a register of members is kept in which are entered:

- (a) the name of each full member,
- (b) the address for notices last given by the member,
- (c) the date of becoming a member, and
- (d) for former members – the date of ceasing to be a member.

See section 169 of the Corporations Act.

17. Grievance Procedure

17.1 The grievance procedure in this clause applies to disputes under this constitution between:

- (a) a full member and another full member, and
- (b) a full member and the Board or RSPCA NSW.

17.2 The parties must first attempt to resolve the dispute themselves.

17.3 If the parties are unable to resolve the dispute, the Board must appoint a conciliator and arbitrator (in this clause, “conciliator”).

17.4 The conciliator:

- (a) must not have a personal interest in the dispute;
- (b) must not be biased in favour of or against any party;
- (c) may be a member or former member; and
- (d) if possible, must be appointed with the agreement of all parties.

17.5 The conciliator must conduct a conciliation at which each party is given a reasonable opportunity to be heard.

17.6 The parties must in good faith attempt to resolve the dispute by conciliation.

17.7 The conciliator may during, and must at the end of, the conciliation attempt to resolve the dispute by agreement between the parties.

17.8 If the conciliator is unable to resolve the dispute by agreement between the parties, the conciliator must determine the respective rights and obligations under this constitution of the parties and any other members.

17.9 A determination of a conciliator under clause 17.8 is binding on the parties and all members.

17.10 A party may appoint another person to act on its behalf in the grievance procedure.

17.11 The State, Territory and Commonwealth Acts applying to commercial arbitrations do not apply to the grievance procedure in this clause.

18. Branches and Supporter Groups

18.1 The Board may by regulation* establish:

- (a) Branches of RSPCA NSW consisting of members; and
- (b) Supporter Groups of RSPCA NSW consisting of supporter members.

18.2 To avoid doubt, the funds and other property of Branches and Supporter Groups belong to RSPCA NSW and are subject to the control of the Board and Chief Executive Officer.

PART 4 – GENERAL MEETINGS

19. Annual General Meeting

19.1 The Board must convene* an annual general meeting to be held in October or November each year.

Compare section 250N of the Corporations Act.

19.2 At least 21 days before the annual general meeting, RSPCA NSW must publish on RSPCA NSW’s website the financial report and auditor’s report for the last financial year referred to in clause 60.

19.3 If a member requests, RSPCA NSW must send a hard copy or electronic copy of the financial report and auditor’s report to the member.

Compare section 316A of the Corporations Act.

19.4 The Board must lay before the annual general meeting the financial report and auditor’s report.

As under section 317 of the Corporations Act.

19.5 The ordinary business of the annual general meeting is:

- (a) to verify the minutes of:
 - (i) the last annual general meeting, and
 - (ii) any special general meetings since the last annual general meeting;
- (b) to consider the financial report and auditor's report (including questions and comments from members on the management of RSPCA NSW); and

As under section 250S of the Corporations Act.

- (c) to elect 4 directors in accordance with clause 30.

19.6 The annual general meeting may only consider other business of which notice has been given in accordance with clause 21.2(c).

20. Special General Meetings

20.1 The Board may convene* a special general meeting.

20.2 The Board must convene* a special general meeting if requested by members on the same basis as under the Corporations Act.

See section 249D of the Corporations Act.

20.3 Members may themselves convene* a special general meeting on the same basis as under the Corporations Act.

See section 249F of the Corporations Act.

20.4 Special general meetings may only consider business of which notice has been given in accordance with clause 21.2(c).

21. Notice

21.1 At least 21 days notice in writing* of general meetings must be given to:

- (a) each member (including each director), and
- (b) RSPCA NSW's auditor.

As under sections 249H(1), 249J(1) and 249K of the Corporations Act.

21.2 The notice must state:

- (a) the date, time and place (or places) of the meeting,
- (b) if the meeting is to be held at more than 1 place – the technology that will be used,

- (c) the general nature of each item of business to be considered, and

- (d) if a special resolution* is to be proposed:

- (i) the proposed resolution, and
- (ii) that it is intended that the resolution be proposed as a special resolution*.

As under section 249L(1) of the Corporations Act.

21.3 The notice of the annual general meeting must include under clause 21.2(c) any business that any member has requested in writing* be considered at least 60 days before the notice is sent.

21.4 The notice must also include:

- (a) a call for nominations in accordance with clause 30.2;
- (b) a statement that members that are incorporated bodies may appoint a representative to attend, speak and vote on their behalf in accordance with clause 22,

- (c) a statement that:

- (i) all members have the right to appoint a proxy to attend, speak and vote instead of the member in accordance with clause 23, and

- (ii) proxies must be members, and

Compare section 249L(1) of the Corporations Act.

- (d) a copy of clauses 22 and 23.

21.5 The notice may (but need not) include forms of appointment for the purposes of clauses 21.4, 22 and 23.

21.6 If a general meeting is adjourned for 1 month or more, new notice of the resumed meeting must be given.

21.7 Despite clause 21.1, the accidental omission to give notice of the meeting to a person entitled to notice, or the non-receipt of notice of the meeting by a person entitled to notice does not invalidate the meeting.

Compare section 1322(3) of the Corporations Act.

22. Representatives

22.1 Members that are incorporated bodies may appoint individuals to represent them at general meetings.

As under section 250D of the Corporations Act.

22.2 Appointments of representatives must be:

- (a) in writing*, naming the individual (or individuals, in order) appointed;
- (b) sealed by, or signed on behalf of, the member making the appointment; and
- (c) received by RSPCA NSW at least 48 hours before the meeting.

22.3 Representatives may exercise all the rights of members at general meetings.

23. Proxies

23.1 Members entitled to vote at the general meeting may appoint any other member as a proxy.

Compare section 249X(1) of the Corporations Act.

23.2 Appointments of proxies must be:

- (a) in writing*, naming the member (or members, in order) appointed;
- (b) signed by the member making the appointment; and
- (c) received by RSPCA NSW at least 48 hours before the meeting.

23.3 Appointments of proxies are valid if they contain the information required by clause 23.2.

Compare section 250A(1) of the Corporations Act.

23.4 Proxies may exercise all the rights of members at general meetings.

24. Use of Technology

General meetings may be held at more than 1 place, provided that the technology used enables each member present at all places the meeting is held to communicate clearly and simultaneously with every other such member.

25. Quorum

25.1 The quorum for consideration of the ordinary business of the annual general meeting is the presence in person or by representative of at least 10 members entitled to vote.

25.2 The quorum for consideration of a proposed resolution (including a special resolution*) recommended by the Board is the presence in person, by representative or by proxy of at least 2% of members entitled to vote.

25.3 The quorum for the consideration of all other business at general meetings is the presence in person, by representative or by proxy of at least 20% of members entitled to vote.

25.4 If a quorum is not present within 30 minutes from the time of the meeting of which notice has been given, the meeting must not proceed.

26. Chairing

26.1 The following in order of priority are entitled to chair general meetings:

- (a) the President,
- (b) the Vice-President longest in office,
- (c) the other Vice-President,
- (d) a director nominated by the directors present,
- (e) a member elected by the meeting.

26.2 The chair of the meeting does not have a casting vote.

27. Voting

27.1 All members are entitled to vote at general meetings, except those whose voting rights have been suspended under clause 10.4 or 13.1.

27.2 Each member has 1 vote.

27.3 Members may vote in person, by representative or by proxy.

27.4 Voting is by show of hands, unless a poll is demanded.

27.5 Proxies are not entitled to vote on a show of hands (but this does not prevent members appointed as proxies from voting as members on a show of hands).

27.6 If an equal number of votes are cast for and against a proposed resolution or amendment, the chair of the meeting must declare the proposed resolution or amendment lost.

27.7 A challenge to a right to vote:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair of the meeting, whose decision is final.

28. Poll

- 28.1 Any person entitled to vote (including the chair of the meeting) may demand a poll on any resolution, other than a resolution concerning:
- (a) the election of the chair of the meeting, or
 - (b) the adjournment of the meeting.
- 28.2 The poll may be demanded:
- (a) before a vote is taken,
 - (b) before the voting results on a show of hands are declared, or
 - (c) immediately after the voting results on a show of hands are declared.
- 28.3 The poll must be taken when and in the manner the chair of the meeting directs.
- 28.4 On a poll, proxies:
- (a) need not cast any or all of their votes as proxies, unless they are the chair of the meeting;
 - (b) may cast their votes in different ways; and
 - (c) if:
 - (i) they do cast votes as proxies; and
 - (ii) the appointment of proxy specifies the way the proxy is to vote on a proposed resolution;must vote that way.
- 28.5 A demand for a poll may be withdrawn.

PART 5 – DIRECTORS AND COMPANY SECRETARY

29. Positions

- 29.1 RSPCA NSW has between 8 and 12 directors:
- (a) 8 elected directors – 4 elected every 2 years under clause 30, with staggered 4 year terms; and
 - (b) up to 4 co-opted directors – appointed under clause 32.
- 29.2 Employees of RSPCA NSW are not eligible to be elected or appointed as directors.
- 29.3 RSPCA NSW does not have:
- (a) alternate directors, or
 - (b) a managing director.

30. Election

- 30.1 In each even-numbered year the annual general meeting must elect 4 directors.
- 30.2 The notice of the meeting must include a call for nominations for 4 directors.
- 30.3 Only individuals who are:
- (a) members, or
 - (b) representatives of members, entitled to vote at the meeting are eligible:
 - (c) to be elected as directors; and
 - (d) to nominate candidates and second nominations.
- 30.4 A director who has held office for 3 consecutive terms (not including part of a term filled as a casual vacancy) is not eligible to be re-elected without a break of at least 4 years.
- 30.5 Nominations must be signed by:
- (a) the nominator and seconder, and
 - (b) the candidate, consenting to act as a director of the company.
- See section 201D of the Corporations Act.
- 30.6 The Board may by regulation* prescribe a nomination form for the purposes of clause 30.5, in which case nominations must be in the prescribed form.
- 30.7 Nominations (or an emailed copy) must be received by RSPCA NSW no later than 4.00 p.m. 1 week before the meeting.
- 30.8 If there are only 4 nominations, the chair of the meeting must declare those candidates elected.
- 30.9 If there are more than 4 nominations, a ballot must be held in accordance with clause 31.
- 30.10 If there are fewer than 4 nominations, the chair of the meeting must declare any candidates who have nominated elected, and the Board may fill the remaining vacancy or vacancies in accordance with clause 33.9.
- ### 31. Ballot
- 31.1 The chair of the meeting must appoint a returning officer to conduct the ballot (who may be the chair of the meeting).
- 31.2 The candidates may each make a short speech in support of their election.
- 31.3 The election must be by secret ballot.

- 31.4 The returning officer must give each member, representative and proxy present a ballot paper for each vote they are entitled to cast.
- 31.5 The ballot paper must list the names of the candidates in an order decided by lot.
- 31.6 Voters must cross off the names of those candidates they do not wish to vote for, leaving the names of those candidates they do wish to vote for.
- 31.7 Voters must cross off sufficient names so that the number of candidates whose names have not been crossed off is 4 or fewer.
- 31.8 Ballot papers that do not comply with clause 31.7 are informal.
- 31.9 Each formal ballot paper where the name of a candidate has not been crossed off counts as 1 vote for that candidate.
- 31.10 The returning officer must declare elected the 4 candidates who receive the most votes, subject to clause 31.11.
- 31.11 If 2 or more candidates receive the same number of votes, and some but not all of those candidates are to be elected, the returning officer must decide by lot which is to be elected.

32. Co-option

- 32.1 The Board may:
- (a) at its first meeting after the annual general meeting in each even-numbered year, and
 - (b) at any subsequent meeting,
- co-opt up to 4 individuals as directors.
- 32.2 Before being appointed, the director must give RSPCA NSW a signed consent to act as a director of the company.
- See section 201D of the Corporations Act.
- 32.3 The Board may by resolution decide when the term of office of a co-opted director is to begin and end. However, each term of a co-opted director must not be longer than 4 years.
- 32.4 A director who has been co-opted for a total of 12 years is not eligible to be co-opted again without a break of at least 4 years.
- 32.5 Before co-opting directors, the Board:
- (a) must consider the skills, experience and other attributes of the existing directors; and

- (b) may call for expressions of interest, by advertisement or otherwise.

33. Term of Office

- 33.1 Elected directors hold office:
- (a) from the end of the annual general meeting at which they are elected,
 - (b) until the end of the fourth annual general meeting after they are elected, subject to clauses 33.3–33.8.
- 33.2 Co-opted directors hold office:
- (a) from the time they are co-opted,
 - (b) until the beginning of the first Board meeting after the annual general meeting in each even-numbered year, subject to clauses 32.3 and 33.3–33.8.
- 33.3 Directors may be re-elected and co-opted again, subject to clauses 30.4 and 32.4.
- 33.4 Directors may resign by writing* to RSPCA NSW.
- 33.5 Directors cease to hold office if they:
- (a) fail to attend 3 consecutive Board meetings without leave of absence under clause 54;
 - (b) become an employee of RSPCA NSW;
 - (c) accept any payment from RSPCA NSW otherwise than in accordance with this constitution; or
 - (d) become disqualified under the Corporations Act.
- See Part 2D.6 of the Corporations Act.
- 33.6 Elected directors also cease to hold office if:
- (a) in the case of directors who at the time of their election were representatives of members – the member notifies RSPCA NSW in writing* that the director no longer represents the member; or
 - (b) in any other case – the director ceases to be a member.
- 33.7 In clause 33.6(a), “representatives of members” includes an individual nominated to act as member on behalf of an unincorporated body, or part of an incorporated or unincorporated body under clause 6.3.

33.8 Directors may be removed by a general meeting in accordance with the Corporations Act. The resulting vacancy may be filled at the general meeting.

See section 203D of the Corporations Act.

33.9 If there is a vacancy in elected directors (including a vacancy under clause 33.8 not filled at the general meeting), the Board may appoint an individual who would be eligible to be elected under clauses 30.3 and 30.4 to fill the vacancy for the remainder of the term of office.

33.10 The Board may continue to act despite any vacancy in directors.

33.11 Even if it is subsequently found that a person who has acted as a director was not properly elected or appointed, the validity of:

- (a) the acts of that person as a director, and
- (b) decisions of Board meetings in which that person has participated;

is not affected.

See section 201M of the Corporations Act.

34. Notification to ACNC

If a person becomes or ceases to be a director, RSPCA NSW must notify the ACNC* in the approved form:

- (a) if the revenue of RSPCA NSW for the financial year is \$250,000 or more – within 28 days; or
- (b) if the revenue of RSPCA NSW for the financial year is less than \$250,000 – within 60 days.

See section 65-5 of the ACNC Act.

35. Duties

35.1 Each director is subject to, and must comply with, the following duties under the ACNC Regulation:

- (a) to exercise the director's powers and discharge the director's duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of RSPCA NSW;
- (b) to act in good faith in RSPCA NSW's best interests, and to further the object of RSPCA NSW;
- (c) not to misuse the director's position;
- (d) not to misuse information obtained in the performance of their duties as a director of RSPCA NSW;

- (e) to disclose perceived or actual material conflicts of interest of the director – see clause 53.1;

- (f) to ensure that RSPCA NSW's financial affairs are managed in a responsible manner; and

- (g) not to allow RSPCA NSW to operate while insolvent.

See section 45.25 of the ACNC Regulation.

35.2 This constitution is an enforceable contract between RSPCA NSW and each director.

See section 140 of the Corporations Act.

36. Company Secretary

36.1 The Board must appoint a company secretary in accordance with the Corporations Act.

See Part 2D.4 of the Corporations Act.

36.2 Unless the Board otherwise resolves, the Chief Executive Officer is to be appointed company secretary.

37. Indemnity

RSPCA NSW indemnifies its directors and company secretary against any liability incurred in that capacity (other than to RSPCA NSW or a related body corporate), unless the liability did not arise out of conduct in good faith.

PART 6 – OFFICE-BEARERS

38. Positions

38.1 RSPCA NSW has the following office-bearers:

- (a) President,
- (b) 2 Vice-Presidents, and
- (c) Treasurer.

38.2 The Board may by regulation* establish other office-bearer positions.

39. Election

39.1 At its first meeting after the annual general meeting in each even-numbered year the Board must elect the office-bearers from among the directors.

39.2 A director who has already been elected to a particular office-bearer position 3 times (including filling a vacancy) is not eligible to be elected again to that position.

40. Term of Office

- 40.1 Office-bearers hold office from the time of their election until their successor is elected, subject to clauses 40.2–40.4.
- 40.2 Office-bearers may resign by writing* to the Board.
- 40.3 Office-bearers who cease to be directors, other than by the expiry of their term of office, cease to be office-bearers.
- 40.4 Office-bearers may be removed by resolution passed by an absolute majority* of the Board.
- 40.5 The Board must as soon as practicable fill vacancies in office-bearer positions for the remainder of the term.

PART 7 – THE BOARD

41. Membership

The members of the Board are the directors of RSPCA NSW.

42. Responsibility and Powers

- 42.1 The Board is responsible for both the governance and management of RSPCA NSW.
- 42.2 The Board must by regulation* delegate the management of RSPCA NSW to the Chief Executive Officer.
- 42.3 The Board may exercise all powers of RSPCA NSW on its behalf.
- 42.4 The Board may delegate its powers as it considers appropriate.
- 42.5 No delegation by the Board under this clause limits the duties and liability of each director.

43. Committees

- 43.1 The Board may establish committees with such membership and terms of reference as it considers appropriate.
- 43.2 Without limiting clause 43.1, the Board must by regulation* establish:
 - (a) a Finance, Audit and Risk Committee, to be chaired by the Treasurer, and
 - (b) an Animal Welfare Policy Committee.

44. Code of Conduct

The Board must by resolution passed by an absolute majority* prescribe a Code of Conduct to be complied with by members in accordance with clause 11.3(b).

45. Regulations

- 45.1 The Board may by resolution passed by an absolute majority* make regulations to give effect to this constitution.
- 45.2 Members and directors must at all times comply with the regulations as if they formed part of this constitution.

46. Public Statements

- 46.1 The Board may by regulation* or resolution authorise the Chief Executive Officer, an office-bearer or other person to make public statements on behalf of RSPCA NSW.
- 46.2 No person may make any public statement on behalf of RSPCA NSW unless authorised by the Board.

PART 8 – BOARD MEETINGS

47. Convening

- 47.1 The President, company secretary or any 3 directors may convene* a Board meeting.
- 47.2 Ordinary Board meetings must be held at least 6 times each year.

48. Notice

- 48.1 Each director must be given at least 7 days notice in writing* of Board meetings, subject to clause 48.4.
- 48.2 Notice may be given of more than 1 Board meeting at the same time.
- 48.3 The notice must state the date, time and place (or places) of the meeting, but need not include the business to be considered.
- 48.4 In cases of urgency a meeting may be held without the notice required by clause 48.1, provided that:
 - (a) as much notice as practicable is given to each director by the quickest practicable means; and
 - (b) resolutions may only be passed by an absolute majority*.

49. Use of Technology

- 49.1 Board meetings may be held at more than 1 place, provided that the technology used enables each director present at all places the meeting is held to communicate clearly and simultaneously with every other such director.
- 49.2 Without limiting clauses 48.4(a) and 49.1, Board meetings may be convened* and held by telephone.
- 49.3 By becoming and remaining a director, all directors are taken to consent to this clause.
- See section 248D of the Corporations Act.

50. Quorum

The quorum for Board meetings is the presence in person of a majority of the directors at the time.

51. Chairing

- 51.1 The following in order of priority are entitled to chair Board meetings:
- (a) the President,
 - (b) the Vice-President longest in office,
 - (c) the other Vice-President,
 - (d) a director elected by the meeting.
- 51.2 The chair of the meeting does not have a casting vote.

52. Voting

- 52.1 Each director present at a Board meeting has 1 vote.
- 52.2 There is no voting by proxy.
- 52.3 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.

53. Conflict of Interest

- 53.1 Each director who has a perceived or actual material conflict of interest in a matter that relates to the affairs of RSPCA NSW must disclose the conflict:
- (a) to the other directors, or
 - (b) to the members of RSPCA NSW.
- See section 45.25 of the ACNC Regulation.

- 53.2 Each director who has a material personal interest in a matter that is being considered at a Board meeting:
- (a) must not be present while the matter is being considered; and
 - (b) must not vote on the matter;
- except as provided by the Corporations Act.
- See section 195 of the Corporations Act.

54. Leave of Absence

- 54.1 The Board may by resolution grant directors leave of absence from Board meetings for up to 6 months.
- 54.2 The Board may not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the director concerned to seek leave of absence in advance.

55. Resolutions without Meeting

- 55.1 A resolution agreed to in writing* by all directors has the same effect as a resolution passed at a Board meeting.
- 55.2 In clause 55.1, “all directors” does not include those directors who:
- (a) would be prohibited by clause 53.2 from voting on the matter at a Board meeting; or
 - (b) have leave of absence from Board meetings under clause 54.

PART 9 – FINANCIAL AND LEGAL

56. Chief Executive Officer

- 56.1 The Board must appoint a Chief Executive Officer of RSPCA NSW.
- 56.2 The Chief Executive Officer is responsible to the Board for the management of RSPCA NSW.
- 56.3 The Chief Executive Officer must attend all meetings of the Board, unless excused or requested not to by the Board.

57. Financial Year

The financial year of RSPCA NSW is from 1 July to 30 June, unless the Board otherwise determines under the Corporations Act.

See section 323D of the Corporations Act.

58. Financial and Other Records

58.1 RSPCA NSW must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

See section 55-5(1) of the ACNC Act.

58.2 RSPCA NSW must also keep written records that correctly record its operations.

See section 55-5(2) of the ACNC Act.

58.3 RSPCA NSW must retain the records for at least 7 years.

See section 55-5(4) of the ACNC Act.

58.4 The Board must provide for the safe keeping of the records of RSPCA NSW.

59. Auditor

59.1 The Board must within 1 month fill a vacancy in auditor until the next annual general meeting.

See section 327C(1) of the Corporations Act.

59.2 The annual general meeting must fill any vacancy in auditor.

See section 327B(1)(b) of the Corporations Act.

60. Financial Reporting and Audit or Review

60.1 For each financial year, RSPCA NSW must prepare a financial report in accordance with the ACNC Act and the ACNC Regulation.

See section 60-15 of the ACNC Act and Division 60 of the ACNC Regulation.

60.2 If the revenue of RSPCA NSW for the financial year is \$1 million or more, RSPCA NSW must have the financial report audited in accordance with the ACNC Act, and obtain an auditor's report.

See section 60-25 of the ACNC Act.

60.3 If the revenue of RSPCA NSW for the financial year is \$250,000 or more and less than \$1 million:

- (a) RSPCA NSW may have the financial report reviewed in accordance with the Corporations Act, instead of audited; and

See section 60-20 of the ACNC Act.

- (b) references in this constitution to the auditor are taken to be to the reviewer.

See section 60-30(2) of the ACNC Act.

60.4 The financial report and auditor's report must be considered by the annual general meeting in accordance with clause 19.

60.5 If the revenue of RSPCA NSW for the financial year is less than \$250,000:

- (a) RSPCA NSW is not required to prepare a financial report; and
- (b) clause 59, the remainder of this clause and clauses 19.2–19.4 and 19.5(b) do not apply.

See Subdivision 60-C of the ACNC Act.

61. Payments

61.1 All payments by RSPCA NSW must be:

- (a) specifically authorised in writing*, and
- (b) in the case of cheques – signed,

by at least 2 persons who are:

- (c) either directors or employees of RSPCA NSW, and
- (d) nominated by the Board by regulation* or resolution.

61.2 The Board may nominate a list of individuals or positions for the purposes of clause 61.1.

61.3 Signatories must not sign cheques until the payee and amount have been written in.

61.4 This clause does not apply to credit card and petty cash payments where the amount is within limits set by the Board by regulation* or resolution.

62. Common Seal

62.1 RSPCA NSW may have a common seal, in which case the remainder of this clause applies.

See section 123(1) of the Corporations Act.

62.2 RSPCA NSW must set out its name and ABN (or ACN) on the common seal.

See section 123(1)(b) of the Corporations Act.

62.3 A document may only be sealed with the common seal if authorised by resolution of the Board.

62.4 The sealing must be witnessed by the signatures of at least 2 directors nominated by the Board by regulation* or resolution.

62.5 The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 62.4.

62.6 The Board must provide for the safe keeping of the common seal.

63. Minutes

The Board must ensure that:

- (a) minutes are taken and kept of all general meetings, Board meetings and resolutions without a meeting; and
- (b) in the case of minutes of meetings – the minutes are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting; or
- (c) in the case of minutes of resolutions without a meeting – the minutes are signed by a director within a reasonable time after the resolution is passed.

For general meetings, as under, and for Board meetings, see, section 251A(1) of the Corporations Act.

64. Access to Records

64.1 Members may inspect the records of RSPCA NSW at any reasonable time, subject to clause 64.2.

64.2 Members may not inspect the records of RSPCA NSW that relate to confidential personal, employment, commercial and legal matters, except as permitted by the Board.

64.3 Members may only have copies of records of RSPCA NSW if permitted by the Board.

64.4 Copies of the Code of Conduct*, constitution and regulations* must be freely available to members and applicants for membership.

65. Amendment

65.1 This constitution may only be amended by special resolution*.

See section 136(2) of the Corporations Act.

65.2 RSPCA NSW must notify the ACNC* of the amendment in the approved form:

- (a) if the revenue of RSPCA NSW for the financial year is \$250,000 or more – within 28 days; or

- (b) if the revenue of RSPCA NSW for the financial year is less than \$250,000 – within 60 days.

See section 65-5 of the ACNC Act.

66. Winding Up

66.1 If RSPCA NSW is wound up, its surplus assets must not be distributed to any member.

66.2 The surplus assets must be given to a charity that:

- (a) has a similar object to RSPCA NSW; and
- (b) also prohibits the distribution of any surplus, income and assets to its members to at least as great an extent as RSPCA NSW;

subject to clauses 67.2(e) and 67.2(f).

66.3 If RSPCA NSW is wound up voluntarily, the charity to which its surplus assets are to be given must be decided by special resolution*.

67. Tax Deductibility

67.1 In this clause:

- (a) “contributions” and “fund-raising event” have the same meaning as in Division 30 of the Tax Act;
- (b) “DGR” means a deductible gift recipient under Division 30 of the Tax Act;
- (c) “gift funds” means:
 - (i) gifts and contributions to RSPCA NSW, and
 - (ii) money received by RSPCA NSW because of such gifts and contributions; and
- (d) “the Tax Act” means the *Income Tax Assessment Act 1997* (Cth).

67.2 While RSPCA NSW is endorsed as a DGR:

- (a) receipts for gifts to RSPCA NSW must include:
 - (i) the name and ABN of RSPCA NSW, and
 - (ii) the fact that the receipt is for a gift;

- (b) receipts for contributions to RSPCA NSW in relation to a fund-raising event must include:
 - (i) the name and ABN of RSPCA NSW, and
 - (ii) the other information required by section 30-228 of the Tax Act;
- (c) RSPCA NSW must keep records that record and explain all transactions and other acts it engages in relevant to its status as a DGR for at least 5 years;
- (d) the records must show that RSPCA NSW uses gift funds only for the principal purpose of RSPCA NSW;
- (e) on winding up of RSPCA NSW or revocation of its endorsement (whichever occurs earlier), any surplus gift funds must be transferred to another DGR; and
- (f) on winding up of RSPCA NSW its surplus assets other than any surplus gift funds must also be given to another DGR.

68. Notices

- 68.1 Members and directors must give RSPCA NSW their address for notices, and any change in that address.
- 68.2 The address for notices may include an email address and a fax number.
- 68.3 RSPCA NSW must enter any change in the address of a member in the register of members.
- 68.4 Notice may be given to a member or director by sending it to the address last given by the member or director.
- 68.5 In this constitution a period of notice of a meeting expressed in days:
 - (a) does not include the day on which notice is given; but
 - (b) includes the day on which the meeting is held.
- 68.6 Notices sent by priority post are taken to have been given on the 4th business day after posting.
- 68.7 Notices sent by email or fax are taken to have been given on the business day after sending.

- 68.8 In this clause, “business day” means a day that is not a Saturday or a Sunday, or a public holiday at the address of the intended recipient.

69. Replaceable Rules

- 69.1 The replaceable rules in the Corporations Act do not apply to RSPCA NSW, except those in sections 204F and 248G(1).
- 69.2 The replaceable rules in sections 249M, 249U(4), 249W(2), 250C(2) and 250J(2) of the Corporations Act are also taken to apply to RSPCA NSW.

Compare item 9 of section 111L(1) of the Corporations Act.

70. Interpretation

- 70.1 In this constitution, unless the contrary intention appears:
 - (a) “absolute majority” means a majority of the votes of all directors entitled to vote at the time, whether or not those directors are present, and whether or not they vote;
 - (b) “the ACNC” means the Australian Charities and Not-for-profits Commission;
 - (c) “ACNC Act” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
 - (d) “ACNC Regulation” means the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth);
 - (e) “Code of Conduct” means the code of conduct for members prescribed under clause 44;
 - (f) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
 - (g) “Corporations Act” means the *Corporations Act 2001* (Cth);
 - (h) “member” has the extended meanings given in clauses 6.4, 9.5, 22.3 and 23.4;
 - (i) “regulations” means regulations of RSPCA NSW made under clause 45, and “regulation” has a corresponding meaning;
 - (j) “RSPCA NSW” has the meaning given in clause 2;

- (k) “special resolution” means a resolution at a general meeting:
- (i) of which notice has been given in accordance with clause 21.2(d); and
 - (ii) that is passed by at least 75% of the votes cast (in person, by representative or by proxy) by those members entitled to vote on the resolution; and
- See sections 9 and 249L(1)(c) of the Corporations Act.
- (l) “writing” includes emails, and forms and other documents sent electronically.

- 70.2 Without limiting clause 42.4, references in clauses 8 and 9 to the Board include any delegate appointed by the Board under clause 42.4.
- 70.3 Where this constitution requires a document to be signed, in the case of an incorporated body the document must be either sealed, or signed on its behalf.
- 70.4 The headings form part of this constitution.
- 70.5 The explanatory notes inserted in a smaller font size after provisions of this constitution are for guidance only and do not form part of this constitution.
- 70.6 This constitution is to be interpreted in accordance with the Corporations Act and the ACNC Act, except as otherwise provided in this clause.
- 70.7 The Board is responsible for the interpretation of the constitution and regulations*.

71. Transitional

- 71.1 In this clause, “2018 AGM”, “2020 AGM”, and “2022 AGM” mean the annual general meetings held in those years.
- 71.2 This constitution takes effect at the end of the 2018 AGM, when the directors of RSPCA NSW become:
- (a) 4 elected directors with a term of office expiring at the end of the 2020 AGM – Peter Wright, Wendy Barrett, Andrew Givney and Don Robinson; and
 - (b) 4 elected directors with a term of office expiring at the end of the 2022 AGM – Graham Hall, Brian Pickup, Sarah Cruickshank and Ian Roth.

- 71.3 The 8 persons referred to in clause 71.2 become the only directors of RSPCA NSW. Any other persons who were previously directors of RSPCA NSW cease to be directors.
- 71.4 At its first meeting after the 2018 AGM the Board:
- (a) must elect the office-bearers from among the directors in accordance with clause 39.1; and
 - (b) may co-opt up to 4 additional directors in accordance with clause 32.1(a).
- 71.5 Clauses 30.4 and 39.2 do not apply to terms of office served before this constitution came into effect.

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