



# Constitution

of the

## Tomaree Headland Heritage Group Inc.



**Revised November 2024**

### **Disclaimer**

This publication must not be relied on as legal advice. For more information, please refer to the appropriate legislation or seek independent legal advice.

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## Part 1 Preliminary

### 1 Definitions

- (1) In this constitution:

**board member** means an office-bearer or ordinary board member.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**office-bearer** means a board member who is elected to an office referred to in clause 15 (1)(a) (i) - (iv).

**ordinary board member** means a board member who is not an office-bearer.

**register of members** means the register of members maintained under clause 5

**secretary**, of the group, means:

- (a) the person holding office under this constitution as secretary, or
- (b) if no person holds that office - the public officer of the group.

**special general meeting**, of the group, means a general meeting of the group other than an annual general meeting.

**subcommittee** means a subcommittee established under clause 21.

**the Act** means the *Associations Incorporation Act 2009*.

**the Regulation** means the *Associations Incorporation Regulation 2022*.

**Note:** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this constitution.

- (2) The *Interpretation Act 1987* applies to this constitution as if it were an instrument made under the Act.

**Note:** The Act, Part 4 deals with various matters relating to the management of groups.

## Part 2 Objects

### 3 The objects of the group are:

- 1) To protect and interpret the outstanding natural and heritage, including indigenous heritage, assets of Tomaree Headland
- 2) To retain the site of the Tomaree Lodge in public ownership with appropriate public access
- 3) To create a nationally significant tourist attraction based on Tomaree Headland
- 4) To complement the existing and planned improvements to the adjoining Tomaree National Park, in particular the recently announced Tomaree Coastal Walk which commences at the base of Tomaree Headland
- 5) To optimise visitor experiences and enterprise opportunities leading to financial self-sufficiency of the site and to ensure its long-term sustainability
- 6) To facilitate the establishment of a Museum/Interpretive centre to conserve and present the natural and cultural history of Port Stephens and Tomaree Headland

- 7) To realise the potential use of the site for educational and research facilities relating to marine science, nature conservation, indigenous culture and more recent historical events.
- 8) To strengthen the appeal of the Tomaree Peninsula which is recognised as a strategic tourism hub
- 9) To ensure that the future use and development of Tomaree Headland is guided by an integrated Masterplan
- 10) To examine the need for an appropriate administrative authority to oversight the planning and management of Tomaree Headland
- 11) To develop concepts for the adaptive reuse of the assets of the Tomaree Lodge Heritage site
- 12) To enhance the public's appreciation of the vital role of the Tomaree Headland and Port Stephens in the defence of Australia during World War II

## **Part 3 Members of the group**

### **3 Membership generally**

- (1) There will be five categories of membership:
  - (a) Individual Membership which is open to a natural person
  - (b) Family (household) Membership
  - (c) Associate Membership, which is one nominee representing a community group, having an interest in the objects of the group
  - (d) A Corporate Membership, which is a person nominated to represent a business with commercial interests in Port Stephens
  - (e) Honorary Membership, being a person with special interests, skills or status which could assist the Group in achieving the Objects of the Group

### **4 Membership applications**

- (1) An application by a person to be a member of the group must be:
  - (a) made in writing, and
  - (b) in the form determined by the board, and
  - (c) lodged with the secretary.
- (2) The board may determine that an application may be made or lodged by email or other electronic means.
- (3) The secretary must refer an application to the board as soon as practicable after receiving the application.
- (4) The board must approve or reject the application.
- (5) As soon as practicable after the board has decided the application, the secretary must:
  - (a) give the applicant written notice of the decision, including by email or other electronic means if determined by the board, and
  - (b) if the application is approved - inform the applicant that the applicant is required to pay the entrance fee and annual subscription fee payable under clause 5 within 28 days of the day the applicant received the notice.
- (6) The secretary must enter the applicant's name in the register of members as soon as

practicable after the applicant pays the entrance fee and annual subscription fee in accordance with subclause (5)(b).

- (7) The applicant becomes a member once the applicant's name is entered in the register.

## **5 Register of members**

- (1) The secretary must establish and maintain a register of members of the group.

- (2) The register:

(a) may be in written or electronic form, and

(b) must include, for each member:

(i) the member's full name, and

(ii) a residential, postal or email address, and

(iii) the date on which the person became a member, and

(iv) if the person ceases to be a member - the date on which the person ceased to be a member, and

(c) must be kept in New South Wales:

(i) at the group's main premises, or

(ii) if the group has no premises - at the group's official address, and

(d) must be available for inspection, free of charge, by members at a reasonable time, and

(e) if kept in electronic form - must be able to be converted to hard copy.

- (3) If the register is kept in electronic form, the requirements in subclause (2)(c) and (d) apply as if a reference to the register is a reference to a current hard copy of the register.

- (4) A member may obtain a hard copy of the register, or a part of the register, on payment of a fee of not more than \$1, as determined by the board, for each page copied.

- (5) Information about a member, other than the member's name, must not be made available for inspection if the member requests that the information not be made available.

- (6) A member must not use information about a member obtained from the register to contact or send material to the member, unless:

(a) the information is used to send the member:

(i) a newsletter, or

(ii) a notice for a meeting or other event relating to the group, or

(iii) other material relating to the group, or

(b) it is necessary to comply with a requirement of the Act or the Regulation.

## **6 Subscriptions**

- (1) A member must pay to the group an annual subscription fee of \$2, or another amount determined by the board

(a) if the member becomes a member on or after the first day of the financial year of the group in a calendar year:

(i) in accordance with clause 3(5)(b), and

(ii) before the first day of the financial year of the group in each subsequent calendar

year, or

(b) otherwise - before the first day of the financial year of the group in each calendar year.

## **7 Members' liabilities**

The liability of a member of the group to contribute to the payment of either of the following is limited to the amount of any outstanding fees for the member under clause 6:

- (a) the debts and liabilities of the group,
- (b) the costs, charges and expenses of the winding up of the group.

## **8 Disciplinary action against members**

- (1) A person may make a complaint to the board that a member of the group has:
  - (a) failed to comply with a provision of this constitution, or
  - (b) willfully acted in a way prejudicial to the interests of the group.
- (2) The board may refuse to deal with a complaint if the board considers the complaint is trivial or vexatious.
- (3) If the board decides to deal with the complaint, the board must:
  - (a) serve notice of the complaint on the member, and
  - (b) give the member at least 14 days from the day the notice is served on the member within which to make submissions to the board about the complaint, and
  - (c) consider any submissions made by the member.
- (4) The board may, by resolution, expel the member from the group or suspend the member's membership if, after considering the complaint, the board is satisfied that:
  - (a) the facts alleged in the complaint have been proved, and
  - (b) the expulsion or suspension is warranted.
- (5) If the board expels or suspends the member, the secretary must, within 7 days of that action being taken, give the member written notice of:
  - (a) the action taken, and
  - (b) the reasons given by the board for taking the action, and (c) the member's right of appeal under clause 8.
- (6) The expulsion or suspension does not take effect until the later of the following:
  - (a) the day the period within which the member is entitled to exercise the member's right of appeal expires, or
  - (b) if the member exercises the member's right of appeal within the period - the day the group confirms the resolution under clause 8.

## **9 Right of appeal against disciplinary action**

- (1) A member may appeal against a resolution of the board under clause 8 by lodging a notice of appeal with the secretary within 7 days of being served notice of the resolution.
- (2) The member may include, with the notice of appeal, a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) The secretary must notify the board that the secretary has received a notice of appeal.
- (4) If notified that a notice has been received, the board must call a general meeting of the

group to be held within 28 days of the day the notice was received.

(5) At the general meeting:

- (a) no business other than the question of the appeal is to be transacted, and
- (b) the member must be given an opportunity to state the member's case orally or in writing, or both, and
- (c) the board must be given the opportunity to state the board's case orally or in writing, or both, and
- (d) the members present must vote by secret ballot on the question of whether the appeal is to be determined by a simple majority
- (e) resolution should be confirmed or revoked.

## **10 Resolution of internal disputes**

(1) The following disputes must be referred to a Community Justice Centre within the meaning of the Community Justice Centres Act 1983 for mediation:

- (a) a dispute between 2 or more members of the group, but only if the dispute is between the members in their capacity as members, or
- (b) a dispute between 1 or more members and the group.

(2) If the dispute is not resolved by mediation within 3 months of being referred to the Community Justice Centre, the dispute must be referred to arbitration.

(3) The Commercial Arbitration Act 2010 applies to a dispute referred to arbitration.

## **11 Membership entitlements not transferable**

A right, privilege or obligation that a person has because the person is a member of the group:

- (a) cannot be transferred to another person, and
- (b) terminates once the person ceases to be a member of the group.

## **12 Member resignation**

(1) A member of the group may resign from being a member by giving the secretary written notice of at least 1 month, or another period determined by the board, of the member's intention to resign.

(2) The member ceases to be a member on the expiration of the notice period.

## **13 Cessation of membership**

A person ceases to be a member of the group if the person:

- (a) dies, or
- (b) resigns from being a member, or
- (c) is expelled from the group, or
- (d) fails to pay the annual subscription fee payable under clause 5(2) within 3 months of the due date.



## **Part 4 Board**

### *Division 1 Constitution*

#### **14 Functions of board**

Subject to the Act, the Regulation, this constitution and any resolution passed by the group in general meeting, the board:

- (a) is to control and manage the affairs of the group, and
- (b) may exercise all the functions that may be exercised by the group, other than a function that is required to be exercised by the group in general meeting and
- (c) has power to do all things that are necessary or convenient to be done for the proper management of the affairs of the group.

#### **15 Composition of board**

- (1) The board must have 7 members, as elected in accordance with clause 16, consisting of:
  - (a) the following office-bearers:
    - (i) the president,
    - (ii) the vice-president,
    - (iii) the secretary,
    - (iv) the treasurer, and
  - (b) at least 3 ordinary board members.
  - (c) the total of elected board members should not exceed 14

**Note** - The Act, section 28 contains requirements relating to membership eligibility and composition of the board.

- (2) An office-bearer may hold up to 2 offices, other than both the offices of president and vice-president.

#### **16 Election of board members**

- (1) Any member of the group may be nominated as a candidate for election as an
- (2) in the way directed by the member presiding at the meeting office-bearer or ordinary board member.
- (3) The nomination must be:
  - (a) made in writing, and
  - (b) signed by at least 2 members of the group, not including the candidate, and
  - (c) accompanied by the written consent of the candidate to the nomination, and
  - (d) given to the secretary at least 7 days before the date fixed for the annual general meeting at which the election is to take place.
- (4) If insufficient nominations are received to fill all vacancies:
  - (a) the candidates nominated are taken to be elected, and
  - (b) a call for further nominations must be made at the meeting.

- (5) A nomination made at the meeting in response to a call for further nominations must be made.
- (6) Vacancies that remain after a call for further nominations are taken to be casual vacancies.
- (7) If the number of nominations received is equal to the number of vacancies to be filled, the members nominated are taken to be elected.
- (8) If the number of nominations received is more than the number of vacancies to be filled, a ballot must be held at the meeting in the way directed by the board.

## **17 Terms of office**

- (1) Subject to this constitution, a board member holds office from the day the member is elected until immediately before the next annual general meeting.
- (2) A member is eligible, if otherwise qualified, for re-election.
- (3) There is no limit on the number of consecutive terms for which a board member may hold office.

## **18 Vacancies in office**

- (1) A casual vacancy in the office of a board member arises if the member:
  - (a) dies, or
  - (b) ceases to be a member of the group, or
  - (c) resigns from office by written notice given to the secretary, or
  - (d) is removed from office by the group under this clause, or
  - (e) is absent from 3 consecutive meetings of the board without the consent of the board, or
  - (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (g) is prohibited from being a director of a company under the *Corporations Act 2001* of the Commonwealth, Part 2D.6, or
  - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty is imprisonment for at least 3 months, or
  - (i) becomes a mentally incapacitated person.
- (2) The group in general meeting may, by resolution:
  - (a) remove a board member from office at any time, and
  - (b) appoint another member of the group to hold office for the balance of the board member's term of office.
- (3) A board member to whom a proposed resolution referred to in subclause (2) relates may:
  - (a) give a written statement, of a reasonable length, to the president or secretary, and
  - (b) request that the board send a copy of the statement to each member of the group at least 7 days before the general meeting at which the proposed resolution will be considered.
- (4) If the board fails to send a copy of a statement received under subclause (3)(a) to

each member in accordance with a request made under subclause (3)(b), the statement must be read aloud by the member presiding at the general meeting at which the proposed resolution will be considered.

- (5) The board may appoint a member of the group to fill a casual vacancy other than a vacancy arising from the removal from office of a board member.
- (6) Subject to this constitution, a member appointed to fill a casual vacancy holds office until the next annual general meeting.

## 19 Secretary

- (1) As soon as practicable after being elected as secretary, the secretary must lodge a notice with the group specifying the secretary's address.
- (2) The secretary must keep minutes of:
  - (a) all elections of board members, and
  - (b) the names of board members present at a meeting of the board or a general meeting, and
  - (c) all proceedings at board meetings and general meetings.
- (3) The minutes must be:
  - (a) kept in written or electronic form, and
  - (b) for minutes of proceedings at a meeting -signed, in writing or by electronic means, by:
    - (i) the member who presided at the meeting, or
    - (ii) the member presiding at the subsequent meeting.

## 20 Treasurer

The treasurer of the group must ensure—

- (a) all money owed to the group is collected, and
- (b) all payments authorised by the group are made, and
- (c) correct books and accounts are kept showing the financial affairs of the group, including full details of receipts and expenditure relating to the group's activities.

## 21 Delegation to subcommittees

- (1) The board may:
  - (a) establish 1 or more subcommittees to assist the board to exercise the board's functions, and
  - (b) appoint 1 or more members of the group to be the members of the subcommittee.
- (2) The board may delegate to the subcommittee the exercise of the board's functions specified in the instrument, other than:
  - (a) this power of delegation, or
  - (b) a duty imposed on the board by the Act or another law.

**Note:** The *Interpretation Act 1987*, section 49 deals with various matters relating to delegations.

## Division 2 Procedure

### 22 Board meetings

- (1) The board must meet at least 3 times in each 12-month period at the place and time determined by the board.
- (2) Additional meetings of the board may be called by any board member.
- (3) The procedure for calling and conducting business at a meeting of a subcommittee is to be as determined by the subcommittee.

**Note:** The Act, section 30(1) provides that board meetings may be held as and when the group's constitution requires.

### 23 Notice of board meeting

- (1) The secretary must give each board member oral or written notice of a meeting of the board at least 48 hours, or another period on which the board members unanimously agree, before the time the meeting is due to commence.
- (2) The notice must describe the general nature of the business to be transacted at the meeting.
- (3) The only business that may be transacted at the meeting is:
  - (a) the business described in the notice, and
  - (b) business that the board members present at the meeting unanimously agree is urgent business.

### 24 Quorum

- (1) The quorum for a meeting of the board is 5 board members.
- (2) No business may be transacted by the board unless a quorum is present.
- (3) If a quorum is not present within half an hour of the time the meeting commences, the meeting is adjourned:
  - (a) to the same place, and
  - (b) to the same time of the same day in the following week.
- (4) If a quorum is not present within half an hour of the time the adjourned meeting commences, the meeting is dissolved.
- (5) If the number of board members is less than the number required to constitute a quorum for a board meeting, the board members may appoint 1 or more members of the group as board members to enable the quorum to be constituted.
- (6) A board member appointed under subclause (5) holds office, subject to this constitution, until the next annual general meeting.
- (7) This clause does not apply to the filling of a casual vacancy to which clause 17 applies.

**Note:** The Act, section 28A provides for the filling of vacancies on the board to constitute a quorum.

## **25 Presiding board member**

- (1) The following board member presides at a meeting of the board:
  - (a) the president,
  - (b) if the president is absent - the vice-president,
  - (c) if both the president and vice-president are absent - 1 of the members present at the meeting, as elected by the other members.
- (2) The member presiding at the meeting has:
  - (a) a deliberative vote, and
  - (b) in the event of an equality of votes - a second or casting vote.

## **26 Voting**

A decision supported by a majority of the votes cast at a meeting of the board or a subcommittee at which a quorum is present is the decision of the board or subcommittee.

## **27 Acts valid despite vacancies or defects**

- (1) Subject to clause 23(1), the board may act despite there being a casual vacancy in the office of a board member.
- (2) An act done by a board or subcommittee is not invalidated because of a defect relating to the qualifications or appointment of a member of the board or subcommittee.

## **28 Transaction of business outside meetings or by telephone or other means**

- (1) The board may transact its business by the circulation of papers, including by electronic means, among all board members.
- (2) If the board transacts business by the circulation of papers, a written resolution, approved in writing by a majority of board members, is taken to be a decision of the board made at a meeting of the board.
- (3) The board may transact its business at a meeting at which 1 or more board members participate by telephone or other electronic means, provided a member who speaks on a matter can be heard by the other members.
- (4) The member presiding at the meeting and each other member have the same voting rights as they would have at an ordinary meeting of the board for the purposes of:
  - (a) the approval of a resolution under subclause (2), or
  - (b) a meeting held in accordance with subclause (3).
- (5) A resolution approved under subclause (2) must be recorded in the minutes of the meetings of the board.

**Note:** The Act, section 30(2) and (3) contains requirements relating to meetings held at 2 or more venues using technology.

## Part 5 General meetings of group

### 29 Annual general meetings

- (1) The group must hold the group's first annual general meeting within 18 months of the day the group was registered under the Act.
- (2) The group must hold subsequent annual general meetings within:
  - (a) 6 months of the last day of the group's financial year, or
  - (b) the later period allowed or prescribed in accordance with the Act, section 37(2)(b).
- (3) Subject to the Act and subclauses (1) and (2), the annual general meeting is to be held at the place and time determined by the board.
- (4) The business that may be transacted at an annual general meeting includes the following:
  - (a) confirming the minutes of the previous annual general meeting and any special general meetings held since the previous annual general meeting,
  - (b) receiving reports from the board on the group's activities during the previous financial year,
  - (c) electing office-bearers and ordinary board members,
  - (d) receiving and considering financial statements or reports required to be submitted to members of the group under the Act.

**Note:** The Act, section 37(1) and (2) provides for when annual general meetings must be held.

### 30 Special general meetings

- (1) The board may call a special general meeting whenever the board thinks fit.
- (2) The board must call a special general meeting if the board receives a request made by at least 5% of the total number of members.
- (3) The request:
  - (a) must be in writing, and
  - (b) must state the purpose of the meeting, and
  - (c) must be signed by the members making the request, and
  - (d) may consist of more than 1 document in a similar form signed by 1 or more members, and
  - (e) must be lodged with the secretary, and
  - (f) may be in electronic form and signed and lodged by electronic means.
- (4) If the board fails to call a special general meeting within 1 month of the request being lodged, 1 or more of the members who made the request may call a special general meeting to be held within 3 months of the date the request was lodged.
- (5) A special general meeting held under subclause (4) must be conducted, as far as practicable, in the same way as a general meeting called by the board.

### **31 Notice of general meeting**

- (1) The secretary must give each member notice of a general meeting:
  - (a) if a matter to be determined at the meeting requires a special resolution - at least 21 days before the meeting, or
  - (b) otherwise - at least 14 days before the meeting.
- (2) The notice must specify:
  - (a) the place and time at which the meeting will be held, and
  - (b) the nature of the business to be transacted at the meeting, and
  - (c) if a matter to be determined at the meeting requires a special resolution - that a special resolution will be proposed, and
  - (d) for an annual general meeting - that the meeting to be held is an annual general meeting.
- (3) The only business that may be transacted at the meeting is:
  - (a) the business specified in the notice, and
  - (b) for an annual general meeting - business referred to in clause 29 (4).
- (4) A member may give written notice to the secretary of business the member wishes to raise at a general meeting.
- (5) If the secretary receives a notice under subclause (4), the secretary must specify the nature of the business in the next notice calling a general meeting.

### **32 Quorum**

- (1) The quorum for a general meeting is 8 members of the group entitled to vote under this constitution.
- (2) No business may be transacted at a general meeting unless a quorum is present.
- (3) If a quorum is not present within half an hour of the time the meeting commences, the meeting:
  - (a) if called on the request of members - is dissolved, or
  - (b) otherwise - is adjourned:
    - (i) to the same time of the same day in the following week, and
    - (ii) to the same place, unless another place is specified by the member presiding at the meeting at the time of the adjournment or in a written notice given to members at least 1 day before the adjourned meeting.
- (4) If a quorum is not present within half an hour of the time an adjourned meeting commences, but there are at least 3 members present, the members present constitute a quorum.

### **33 Adjourned meetings**

- (1) The member presiding at a general meeting may, with the consent of the majority of the members present, adjourn the meeting to another time and place.
- (2) The only business that may be transacted at the adjourned meeting is the business remaining from the meeting at which the adjournment took place.
- (3) If a meeting is adjourned for at least 14 days, the secretary must give each member

oral or written notice, at least 1 day before the adjourned meeting, of:

- (a) the time and place at which the adjourned meeting will be held, and
- (b) the nature of the business to be transacted at the adjourned meeting.

### **34 Presiding member**

- (1) The following member presides at a general meeting:
  - (a) the president,
  - (b) if the president is absent - the vice-president,
  - (c) if both the president and vice-president are absent - 1 of the members present at the meeting, as elected by the other members.
- (2) The member presiding at the meeting has:
  - (a) a deliberative vote, and
  - (b) in the event of an equality of votes - a second or casting vote.

### **35 Voting**

- (1) A member is not entitled to vote at a general meeting unless the member:
  - (a) is at least 18 years of age, and
  - (b) has paid all money owed by the member to the group.
- (2) Each member has 1 vote, except as provided by clause 34(2)(b).
- (3) A question raised at the meeting must be decided by:
  - (a) a show of hands, or
  - (b) if clause 37 applies - an appropriate method as determined by the board, or
  - (c) a written ballot, but only if:
    - (i) the member presiding at the meeting moves that the question be decided by ballot, or
    - (ii) at least 5 members agree the question should be determined by ballot.
- (4) If a question is decided using a method referred to in subclause (3)(a) or (b), either of the following is sufficient evidence that a resolution has been carried, whether unanimously or by a majority, or lost, using the method:
  - (a) a declaration by the member presiding at the meeting,
  - (b) an entry in the group's minute book.
- (5) A written ballot must be conducted in accordance with the directions of the member presiding.
- (6) A member cannot cast a vote by proxy.

### **36 Postal, electronic or combined ballots**

- (1) The group may hold a postal, electronic or combined ballot, as determined by the board, to decide any matter other than an appeal under clause 8.
- (2) The ballot must be conducted in accordance with Schedule 2 of the Regulation.



### **37 Transaction of business outside meetings or by telephone or other means**

- (1) The group may transact its business by the circulation of papers, including by electronic means, among all members of the group.
- (2) If the group transacts business by the circulation of papers, a written resolution, approved in writing by a majority of members, is taken to be a decision of the group made at a general meeting.
- (3) The group may transact its business at a general meeting at which 1 or more members participate by telephone or other electronic means, provided a member who speaks on a matter can be heard by the other members.
- (4) The member presiding at the meeting and each other member have the same voting rights as they would have at an ordinary meeting of the group for the purposes of:
  - (a) the approval of a resolution under subclause (2), or
  - (b) a meeting held in accordance with subclause (3).
- (5) A resolution approved under subclause (2) must be recorded in the minutes of the meetings of the group.

**Note:** The Act, section 37(3) and (4) contains requirements relating to meetings held at 2 or more venues using technology.

## **Part 6 Administration**

### **38 Change of name, objects or constitution**

An application for registration of a change in the group's name, objects or constitution made under the Act, section 10 must be made by:

- (a) the public officer, or
- (b) a board member.

### **39 Funds**

- (1) Subject to a resolution passed by the group, the group's funds may be derived from the following sources only:
  - (a) annual subscription fees payable by members,
  - (b) donations,
  - (c) other sources as determined by the board.
- (2) Subject to a resolution passed by the group, the group's funds and assets must be used to pursue the group's objects in the way that the board determines.
- (3) As soon as practicable after receiving money, the group must:
  - (a) deposit the money, without deduction, to the credit of the group's authorised deposit-taking institution account, and
  - (b) issue a receipt for the amount of money received to the person from whom the money was received.
- (4) A cheque or other negotiable instrument must be signed by 2 authorised signatories.

**Note:** The Act, section 36 provides for the appointment of authorised signatories.

## **40 Insurance**

The group may take out and maintain insurance as appropriate for the group's assets and liabilities.

## **41 Non-profit status**

Subject to the Act and the Regulation, the group must not conduct the group's affairs in a way that provides a pecuniary gain for a member of the group.

**Note:** See the Act, section 40.

## **42 Service of notices**

- (1) For the purposes of this constitution, a notice may be given to or served on a person:
  - (a) by delivering the notice to the person personally, or
  - (b) by sending the notice by pre-paid post to the address of the person, or
  - (c) by sending the notice by electronic transmission to an address specified by the person for giving or serving the notice.
- (2) A notice is taken to have been given to or served on a person, unless the contrary is proved:
  - (a) for a notice given or served personally - on the date on which the notice is received by the person, or
  - (b) for a notice sent by pre-paid post - on the date on which the notice would have been delivered in the ordinary course of post, or
  - (c) for a notice sent by electronic transmission:
    - (i) on the date the notice was sent, or
    - (ii) if the machine from which the transmission was sent produces a report indicating the notice was sent on a later date—on the later date.

## **43 Custody of records and books**

Except as otherwise provided by this constitution, all records, books and other documents relating to the group must be kept in New South Wales:

- (a) at the group's main premises, in the custody of either of the following persons, as determined by the board:
  - (i) the public officer,
  - (ii) a member of the group, or
- (b) if the group has no premises - at the group's official address, in the custody of the public officer.

## **44 Inspection of records and books**

- (1) The following documents must be available for inspection, free of charge, by members of the group at a reasonable time:
  - (a) this constitution,
  - (b) minutes of board meetings and general meetings of the group,
  - (c) records, books and other documents relating to the group.
- (2) A member may inspect a document referred to in subclause (1):

- (a) in hard copy, or
  - (b) in electronic form, if available.
- (3) A member may obtain a hard copy of a document referred to in subclause (1) on payment of a fee of not more than \$1, as determined by the board, for each page copied.
- (4) The board may refuse to allow a member to inspect or obtain a copy of a document under this clause:
- (a) that relates to confidential, personal, commercial, employment or legal matters, or
  - (b) if the board considers it would be prejudicial to the interests of the group for the member to do so.

## 45 Financial year

The group's financial year is:

The period commencing on the date of incorporation of the group and ending on the following 30 June, and

- (a) each period of 12 months after the expiration of the previous financial year, commencing on 1 July and ending on the following 30 June.

**Note:** The Regulation, section 21 contains a substitute clause 44 for certain groups incorporated under the *Groups Incorporation Act 1984*.

## 46 Distribution of property on winding up

- (1) Subject to the Act and the Regulation, in a winding up of the group, the surplus property of the group must be transferred to another organisation:
- (a) with similar objects, and
  - (b) which is not carried on for the profit or gain of the organization's members.
- (2) In this clause:

**surplus property** has the same meaning as in the Act, section 65.