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| **CONSTITUTION**  **of**  **Blind Citizens Australia** |
| Australian Company Number (ACN) 006-985-226  Australian Business Number (ABN) 90 006 985 226  A company limited by guarantee |

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# Preliminary

# Name

## The name of the Organisation is Blind Citizens Australia (BCA).

# Type of company

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

# Limited liability of members

## The liability of members is limited to an amount not exceeding $20 (the guarantee) which each member must contribute to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member. This contribution is required to pay for the:

#### debts and liabilities of the company incurred before the member stopped being a member, or

#### costs associated with winding up.

# Reading this constitution with the Corporations Act

## The replaceable rules set out in the Corporations Act are displaced by this constitution and do not apply to BCA.

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

## If the company is not a registered charity (even if it remains a charity under section 5 of the ACNC Act), the Corporations Act overrides any clause in this constitution which is inconsistent with the ACNC Act.

## A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning in this constitution.

# Definitions

## In this constitution, words and phrases have the meaning set out in clauses 54 and 55.

# Charitable purposes and powers

# Purpose and activities

## Blind Citizens Australia is the national representative organisation of people who are blind or vision impaired. Its purpose is to achieve equity for people who are blind or vision impaired, so that they can live their lives in any way they choose, in a place that respects, recognises and responds to their uniqueness and diversity.

## BCA achieves its purpose by:

#### informing, connecting and empowering people who are blind or vision impaired and the wider community,

#### representing and advocating for the interests of people who are blind or vision impaired,

#### providing high quality support, services, projects and events, and

#### increasing access, awareness, and expectations across the broader community.

# Powers

Subject to clause 8, the company has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

#### the powers of an individual, and

#### all the powers of a company limited by guarantee under the Corporations Act.

# Not-for-profit

## The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.3 and 30.5.

## The income and assets of the company shall be applied solely to further its purpose(s) in clause 6.

## Clause 8.1 does not stop the company from doing the following things, provided they are done in good faith:

#### paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or

#### making a payment to a member in carrying out BCA’s charitable purpose(s).

# Revision or amendment of this constitution

## This constitution may only be revised or amended at a general meeting by a 75% majority vote.

## No revision or amendment of this constitution shall be put to a general meeting unless it has been approved by the board.

## The notice of a general meeting at which revision or amendment of this constitution is to be considered must include an explanatory memorandum detailing the proposed changes.

## The members must not pass a special resolution that amends this constitution if passing it causes BCA to no longer be a charity.

# Members

# Membership categories

## BCA has three categories of members, as follows:

#### **full members** - people who are blind or vision impaired over the age of 18 years whose usual place of residence is within Australia, including people who are in Australia for at least six months for the purposes of work or study;

#### **associate members** - people who identify with the aims of BCA, but who are ineligible to be full members;

#### **junior members** - people who meet the requirements of clause (a) but who are under 18 years of age.

## On attaining 18 years of age and notifying the Company Secretary accordingly, junior members may become full members of BCA.

## Members of BCA must be individual people. No organisation is eligible for membership.

# Membership fees and register

## BCA may levy a once-only fee on newly joining full, junior and associate members. Such a fee will be determined by the board and must be ratified at the following annual general meeting.

## BCA must establish and maintain a register of members. The register of members must be kept by the Company Secretary and for each current member, must contain:

#### name

#### address

#### any alternative address nominated by the member for the service of notices, and

#### date the member was entered on to the register.

## BCA must give current members access to the register of members.

## Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

# Ceasing to be a member

## A person immediately stops being a member if:

#### they die;

#### they resign, by giving written notice to the Company Secretary; or

#### they are expelled under clause 14.

## A member whose membership of BCA is terminated shall be liable for all monies due by them, in addition to any sum for which they are liable under clause 3.

## A member whose membership is terminated shall not have any claim, monetary or otherwise, on BCA, its funds or property except as a creditor.

# Dispute resolution and disciplinary procedures

# Dispute resolution

## The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:

#### one or more members

#### one or more directors, or

#### BCA.

## This clause does not apply to disputes arising from the provision of services by BCA, which shall be governed by BCA's Service Charter and other policies and processes relating to service provision.

## A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 14 until the disciplinary procedure is completed.

## Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

## If those involved in the dispute do not resolve it under clause 13.4, they must within 10 days:

#### tell the directors about the dispute in writing,

#### agree or request that a person be appointed to act as mediator, and

#### attempt in good faith to settle the dispute by mediation.

## The mediator must:

#### be chosen by agreement of those involved, or

#### where those involved do not agree:

##### for disputes between members, a person chosen by the directors, or

##### for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the Law Institute of Victoria.

## A mediator chosen by the directors under clause 13.6:

#### may be a member or former member of BCA, appropriately qualified to mediate disputes,

#### must not have a personal interest in the dispute, and

#### must not be biased towards or against anyone involved in the dispute.

## When conducting the mediation, the mediator must:

#### allow those involved a reasonable chance to be heard,

#### ensure those who are involved have access in an accessible format and a reasonable chance to review any written statements,

#### ensure that those involved are given natural justice, and

#### not make a decision on the dispute.

# Disciplining members

## In accordance with this clause, the directors may resolve to warn, suspend or expel a member from BCA if the directors consider that:

#### the member has breached this constitution, or

#### the member’s behaviour is causing, has caused, or is likely to cause harm to BCA.

## At least 14 days before the directors’ meeting at which a resolution under clause 14.1 will be considered, the Company Secretary must notify the member in writing:

#### that the directors are considering a resolution to warn, suspend or expel the member,

#### that this resolution will be considered at a directors’ meeting and the date of that meeting,

#### what the member is said to have done or not done,

#### the nature of the resolution that has been proposed, and

#### that the member may provide an explanation to the directors, and details of how to do so.

## Before the directors pass any resolution under clause 14.1, the member will be supported to gain access in an accessible format to all relevant documents and must be given a chance to explain or defend themselves by:

#### sending the directors a written explanation before that directors’ meeting, and/or

#### speaking at the meeting, where they can be accompanied by a support person of their choosing so long as that person has no association with the matter under consideration.

## After considering any explanation under clause 14.3, the directors may:

#### take no further action,

#### warn the member,

#### suspend the member’s rights as a member for a period of no more than 12 months,

#### expel the member,

#### refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or

#### require the matter to be determined at a general meeting.

## The directors cannot fine a member.

## The Company Secretary must give written notice to the member of the decision under clause 14.4 as soon as possible.

## Disciplinary procedures must be completed as soon as reasonably practical.

## There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## BCA's provision of service to a member is not affected by this clause, but is governed by BCA's Service Charter and other policies and processes related to service provision. The denial of service to a member by BCA does not affect their membership of BCA, unless this clause is separately applied.

# Branches and State Divisions

# Branches and State Divisions

## **Preamble**

### BCA's national unity is its strength, and its active branches, the NSW/ACT State Division ("the State Division") and members meeting in groups to explore a common interest promote BCA's vision, purpose and values.

### All branches, the State Division and member groups are bound to this Constitution and to any relevant by-laws, policies and practices of BCA.

### Subject to 15.1.2, branches and the State Division may exercise autonomy, advocate on local issues or issues of special interest and arrange activities and events to inform, connect and empower their members and their communities.

## **Accreditation**

### The board may:

#### establish geographic or special interest branches of BCA anywhere in Australia where there are at least ten full members in favour of its establishment and who wish to join the branch; and

#### maintain the State Division, in accordance with the terms of the Memorandum of Understanding which established it, when BCA and Blind Citizens New South Wales merged in 2018.

### No branch or State Division is permitted to incorporate or adopt any other corporate structure.

### The board, by a 75% majority vote, may close down or suspend any branch, the State Division or any member group, where:

#### there are no members willing to manage it or it has remained inactive for more than twelve months; or

#### its members have met and voted by a 75% majority to request that it be closed down or suspended.

## **Membership**

### The members of a branch shall be only the full, associate and junior members of BCA, who choose to join the branch, and who meet any membership requirements set out by the board or the relevant branch in their by-laws.

### Each member of BCA normally resident in New South Wales or the Australian Capital Territory shall be a member of the State Division, unless they inform BCA that they do not wish to be a member of it.

### A person may be a member of several branches and member groups concurrently. A member can only have voting rights in one geographic branch at any time.

## **By-laws for branch administration and the State Division**

### Branches and the State Division may adopt their own operational by-laws, provided that they do not conflict with by-laws made under this constitution.

# Member forums

# Member forums

## **Principles**

## Member forums (formerly called conventions) provide opportunities for the members of BCA to come together to give and receive presentations, to exchange information and opinion, to engage in peer support, and to make recommendations on policy and development for consideration by the board. Member forums have an important informative and advisory role within BCA.

#### They can be conducted virtually, using appropriate conferencing technology, as a face-to-face event, or as a combined event;

#### They can involve BCA members and others on a national basis or draw participants from a defined geographic area, such as a State.

## **Frequency**

The board shall convene member forums as it considers appropriate but must provide at least one opportunity for members nationally to assemble virtually or in person at least once every two years.

## **Voting rights**

### Full members shall have the right to one vote each at member forums.

# General meetings of members

# Annual general meeting of members

## A general meeting, called the annual general meeting, must be held at least once in every calendar year.

## The board shall arrange for the annual general meeting to be held each year at a time and place which is conducive to attendance by members.

## The agenda for the annual general meeting shall include:

#### to confirm by a roll call the names of full members present at the meeting;

#### to receive and approve the minutes of the previous annual general meeting;

#### to receive the annual review of BCA’s activities;

#### to receive the audited financial statement and the auditor's report on BCA's financial affairs;

#### to receive the report of the Company Secretary on the election of directors pursuant to subclause 32.6.4;

#### to appoint the Auditor pursuant to clause 40;

#### to consider any special business for which due notice has been given pursuant to the Corporations Act; and

#### to carry out all other requirements of an annual general meeting pursuant to the Corporations Act or this Constitution.

# Other general meetings of members

## The directors may call a general meeting.

## Full members may request that a general meeting be held. If full members with at least 5% of the votes that may be cast at a general meeting make a written request for a general meeting to be held, the directors must:

(a) within 21 days of the members’ request, give all members notice of a general meeting, and

(b) hold the general meeting within 2 months of the members’ request.

## The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.

## The members who make the request for a general meeting must:

(a) state in the request any resolution to be proposed at the meeting,

(b) sign the request, and

(c) give the request to the Company Secretary.

## Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

# Procedure of general meetings

# Notice of general meetings

## Notice of every general meeting shall be given in the manner set out in clause 48 to:

#### every member; and

#### the auditor.

## No other persons shall be entitled to receive notices of general meetings.

## The accidental omission to give notice of a meeting to a member or the non-receipt of a notice of a meeting by any member shall not invalidate the proceedings at any meeting.

## The notice shall specify the place the day and the time of the meeting and, in the case of special business, the general nature of that business.

## Subject to the provisions of the Corporations Act relating to special resolutions and to consent to short notice, the notice period shall be:

#### 60 days for the annual general meeting; and

#### 21 days for all other general meetings.

## If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

# Quorum

## No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

## Twenty full members present shall be a quorum.

## If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies.

## If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

# Minutes

The Company Secretary shall cause minutes to be taken of all proceedings at general meetings.

# Chairing

## The President shall preside as chairperson at all general meetings.

## If there is no President, or if they are not present within 15 minutes after the time appointed for the holding of the meeting, or if they are unwilling to act, the Vice-President shall be the chairperson.

## If the Vice-President is not present, or is present but unwilling to act, then the members shall elect a member to chair the meeting.

## The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

# Adjournment

## If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.

## Only unfinished business may be dealt with at a meeting resumed after an adjournment.

# How meetings of members may be held

## The company may hold a general meeting at:

#### one physical venue, or

#### one or more physical venues and using virtual technology, or

#### using only virtual technology.

## The members as a whole must be given a reasonable opportunity to participate, including to hear and be heard.

## Anyone using virtual technology is taken to be present in person at the meeting.

# Voting at general meetings

# Voting rights

## Each full member shall be entitled to one vote at general meetings, providing they are present at the meeting, either in person or by proxy.

## Associate members and junior members do not have voting rights.

# Method of voting

## Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

## At a general meeting a resolution put to the vote shall be decided by a show of hands or by the voices, unless a poll is demanded either by the chairperson or by at least 10% of the members present in person or by proxy who are entitled to vote.

## On a show of hands or on the voices, the chairperson’s decision is conclusive evidence of the result of the vote.

## The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands or on the voices.

# Conduct of a poll

## The demand for a poll, as outlined in clause 26.2, may be withdrawn.

## If a poll is duly demanded (and the demand not withdrawn), it must be taken how and when the chairperson directs.

## The result of the poll is the resolution of the meeting at which the poll was demanded.

# Tied votes

In the event of a tied vote at a general meeting, the chairperson shall have a casting vote in addition to their deliberative vote.

# Proxy voting at general meetings

## A full member who is entitled to attend a general meeting and vote, may appoint the chairperson or another full member as a proxy.

## Subject to the terms of the appointment, a proxy has the same right as a member to speak and vote at the meeting.

## An instrument appointing a proxy must be in a form prescribed or accepted by the board, signed by the full member giving the proxy or their attorney and is to be received by the Company Secretary at least 48 hours before the meeting at which it is to be used.

## Where a proxy is signed by an attorney, a copy of the instrument appointing the attorney must be provided with the instrument appointing the proxy.

## A member may instruct their proxy to vote in a particular way. Unless so instructed the proxy may vote as they consider appropriate.

## There shall be no proxy voting at any meetings other than general meetings.

## At an adjourned general meeting, a proxy may be appointed in relation to the meeting's unfinished business, if the notice appointing the proxy is received by the Company Secretary at least 24 hours before the meeting resumes.

## A vote given in accordance with a proxy instrument or a power of attorney is valid, even if it may later be discovered that the appointment of the proxy or attorney was defective.

# Directors

# Powers and duties of directors

## **General powers**

### The affairs of BCA shall be managed by the board of directors which may, subject to any directive given to it by a general meeting, exercise all powers of BCA that are not by the Corporations Act or by this Constitution required to be exercised by BCA in a general meeting.

### Any rule, regulation or by-law made by the board may be disallowed by a general meeting, provided that no resolution of or regulation made by BCA at a general meeting shall invalidate any prior act of the board which would have otherwise been valid.

## **Duties of directors**

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

#### to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of BCA,

#### to act in good faith in the best interests of BCA and to further the charitable purpose(s) of BCA set out in clause 6,

#### not to misuse their position as a director,

#### not to misuse information they gain in their role as a director,

#### to disclose any perceived or actual material conflicts of interest in the manner set out in clause 42,

#### to ensure that the financial affairs of BCA are managed responsibly, and

#### not to allow BCA to operate while it is insolvent.

## **Borrowing powers and financial management**

### The board may exercise all the powers of BCA to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of BCA.

### The directors must decide on the responsible financial management of the company including:

#### any suitable written delegations of power under clause 30.4, and

#### how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

## **Delegation of directors’ powers**

### The directors may delegate any of their powers and functions to a committee, a director, an employee of BCA (such as a Chief Executive Officer) or any other person, as they consider appropriate.

### The delegation must be recorded in the board minutes.

### The exercise of the power by the delegate is as effective as if the directors had exercised it.

## **Payments to directors**

### BCA must not pay fees to a director for acting as a director.

### BCA may:

#### pay a director for work they do for BCA, other than as a director, if the amount is no more than a reasonable fee for the work done, or

#### reimburse a director for expenses properly incurred by the director in connection with the affairs of BCA.

### Any payment made under clause 30.5.2 must be approved by the directors.

### BCA may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution, in clauses 49 and 50.

## The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members’ resolution at a general meeting.

### **Election and appointment of directors**

# Composition of the board

## The minimum number of directors is three. The maximum number of directors is nine.

## The directors comprising the board shall be:

#### The President; and

#### up to eight other directors.

# Election of directors

## **Procedure**

### The President and the other directors shall be elected by ballots of eligible members, as defined in 32.3.

### Each ballot shall be arranged by the Company Secretary, and the appointment of directors, and when relevant the President, shall be declared at the next annual general meeting.

### The procedures for nominations and for voting, as well as the key dates, shall be detailed in the notice of the annual general meeting.

## **Eligibility for appointment**

### A person is eligible for election as a director of BCA if they:

#### are a full member of BCA,

#### are nominated by two other full members entitled to vote,

#### give BCA their signed consent to act as a director of the company, and

#### are not ineligible to be a director under the Corporations Act or the ACNC Act.

### The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

#### is a full member of BCA,

#### gives BCA their signed consent to act as a director of the company, and

#### is not ineligible to be a director under the Corporations Act or the ACNC Act.

## **Eligibility to vote** To be eligible to vote in the ballots for the President or the other directors, a person must be a full member on 30 June of the year in which the election is taking place.

## **Nominations procedure**

### Members shall receive twenty-one days’ notice of the closing date for nominations of directors and, when relevant the President, by which time completed nominations must be received by the Company Secretary.

### Nominations must be:

#### in a form prescribed or accepted by the board;

#### signed by two eligible members other than the nominee; and

#### signed by the nominee.

### Nominations may be submitted in any electronic form prescribed or accepted by the board.

### Nominations may be accompanied by a written statement, in support of the nomination by nominee, submitted to the Company Secretary in an electronic form prescribed or accepted by the board.

### Nominees' statements should be less than 300 words long.

## **Voting procedure**

### The form of the ballot paper shall be determined by the Company Secretary, provided that candidates are listed in the alphabetical order of their family names and it includes a mechanism that clearly shows which of the director candidates are also a candidate for the position of president.

### The board shall determine in what accessible formats members shall be able to record their votes.

### The Company Secretary shall send the voting papers and nominees' statements to all full members as at June 30 of the current year, within fourteen days of the close of nominations or as soon as practicable.

### Failure by the Company Secretary to send out the nominees' statements, for whatever reason, shall not invalidate the election.

### Members shall be given a minimum of 14 days to complete their votes.

### Any ballot papers received after the date specified by the Company Secretary shall not be counted.

## **Returning officer's role**

### An independent returning officer shall be appointed by the board to oversee the counting of the votes.

### Following the close of the ballot, the returning officer shall arrange and supervise the tallying of the votes.

### In the case of a tied vote, the returning officer shall draw lots to decide between the tied candidates.

### The returning officer shall prepare a report of the election results for the Company Secretary.

# President and Vice-President

## The full members shall elect a full member as President to lead BCA for a three year term. The President has the same responsibilities as all other directors. In addition, the President shall provide leadership within the board and to BCA more broadly. They must ensure that the board functions effectively and works diligently and consistently for BCA and its members. The President shall:

#### preside at all general meetings and all meetings of the board;

#### monitor and ensure the effective functioning of the board and its committees;

#### provide strategic direction to BCA;

#### review the performance of BCA's Chief Executive Officer.

## At its first meeting after an annual general meeting, the board shall appoint one of the elected board members as Vice-President of BCA. The Vice-President's role shall be:

#### to support the President;

#### to act in place of the President if they are unable or unwilling to act; and

#### to carry out tasks assigned to the Vice-President by the board.

# Terms of office of directors

## A term of office for directors (including the President) shall be for three years.

#### A director shall serve continuously for no more than three consecutive terms of three years. A President may continue to serve for one further three year term of office, in line with clause 32.

#### This period of continuous service does not include any period of service to fill a casual vacancy that occurred prior to election to the board or presidency respectively.

#### A director who has served for three continuous terms and a President who has served four continuous terms shall not be eligible for re-appointment to the Board until the annual general meeting following the annual general meeting at which their term concluded.

## Nothing in this clause shall invalidate the election or limit the term of a director elected before 2023.

# Vacancies

# Casual vacancies

## If the President or Vice-President's position becomes vacant, it shall be filled by the board from among the directors.

## The term of office of a person appointed as president under subclause 35.1 shall commence at the time of their appointment and shall last until the close of the person's current term as a director.

## The directors may appoint a person as a director to fill a casual vacancy, in line with clause 32.2.2.

## Any person appointed by the directors to fill a casual vacancy shall retire at the end of the next annual general meeting, but is eligible to stand for election as a director if they satisfy clause 32.

# Disqualification as a director

The office of a director shall become vacant if the person:

#### becomes ineligible to be a director of BCA under the Corporations Act or the ACNC Act;

#### is removed as a director by a resolution of the members;

#### resigns by notice in writing to the Company Secretary;

#### is absent from Board meetings for more than six months without the board's approval;

#### becomes a paid employee of BCA;

#### ceases to be a full member; or

#### is directly or indirectly interested in any contract or proposed contract with BCA, and does not declare such interest pursuant to clause 42, provided that nothing in this paragraph affects the operation of clause 8.

# Effect of vacancy on board action

## Continuing members of the board may act notwithstanding any vacancy on the board.

## If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

# Responsibilities of the board

# Financial responsibilities

## The board must cause proper accounting and other records to be kept in accordance with the Corporations Act, including:

#### the co-ordination and responsibility for the proper recording and reporting procedures for all bank and similar accounts;

#### the receipt of all money paid or donated to BCA, the issuing of receipts as appropriate, and the deposit of such money in the BCA's bank accounts within seven days of its receipt;

#### the preparation and presentation of a financial report for adoption at each board meeting; and

#### the preparation and presentation of an audited financial report to each annual general meeting.

## The financial year of BCA, all of its branches and the State Division, shall begin on 1 July and end on 30 June.

## True accounts shall be kept of the sums of money received and expended by BCA and the matters in respect of which such receipt and expenditure takes place, and of the property credits and liabilities of BCA.

## **Inspection of accounts**

### The accounts of BCA shall be open to inspection by the members.

### The board shall determine the times and places, and under what conditions or regulations, the inspection shall take place.

## At least once in every financial year, the accounts of BCA shall be examined by the auditor, who shall report to the members pursuant to the Corporations Act.

# Establishment and operation of gift fund

## BCA may, but is not required to, establish and maintain a special account called the gift fund. Any such gift fund must be established and maintained in accordance with the law and all relevant Australian Taxation Office taxation rulings.

# Auditor

A properly qualified auditor shall be appointed by the annual general meeting and their duties regulated pursuant to the Corporations Act.

# Board meetings

## **Frequency and regulation**

### The board shall decide how often, where and when they meet, but they shall meet at least 4 times a year.

### The board may meet to carry out its business, adjourn and otherwise regulate its meetings as it considers appropriate.

### Board meetings may be held either in person or by any appropriate form of electronic media or by a combination of both.

## **Quorum**

### A quorum for board meetings shall be a majority of directors.

## **Requisition**

Three members of the board may, at any time, and the Company Secretary shall, on the requisition of those members, summon a meeting of the board.

## **Voting at board meetings**

All directors present may vote at board meetings.

## **Passing resolutions**

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

## **Circular resolutions**

### The directors can pass a circular resolution without holding a directors' meeting, if all the directors entitled to vote record their agreement to the resolution.

### Circular resolutions must be recorded in the minutes of the following meeting.

## **Minutes of board meetings**

### The board shall cause minutes to be made at all board meetings:

#### of the names of directors present; and

#### of all proceedings.

### Such minutes shall be signed by the chairperson of the meeting at which the proceedings were held, or by the chairperson of the next meeting.

# Conflict of interest

# Conflict of interest

## A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution), except provided under clause 42.2:

#### to the other directors, or

#### if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.

## A director does not need to disclose an actual or perceived material conflict of interest to the other directors under clause 42.1 if:

#### their interest arises because they are a member of BCA, and the other members have the same interest

#### their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of BCA (see clause 49)

#### their interest relates to a payment by BCA under clause 30.5, or any contract relating to an indemnity that is allowed under the Corporations Act

## The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

## Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 42.5:

#### be present at the meeting while the matter is being discussed, or

#### vote on the matter.

## A director may still be present and vote if:

#### the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or

#### the directors who do not have a material personal interest in the matter pass a resolution that:

##### identifies the director, the nature and extent of the director’s interest in the matter and how it relates to the affairs of BCA, and

##### says that those directors are satisfied that the interest should not stop the director from voting or being present.

# Committees and sub-committees

# Committees and sub-committees

## The board shall maintain:

#### The National Policy Council as a standing committee, responsible for guiding and developing BCA's public policy work. The board shall ensure that the membership of the National Policy Council reflects the breadth and diversity of the membership which BCA represents nationally.

#### The Finance, Audit and Risk Management (FARM) committee, as a standing committee which has responsibility for advising the board on matters related to financial reporting and risk management. The FARM may meet or advise the board with or without its request and shall meet when requested by the auditor. The FARM shall be chaired by a director, and its membership shall include directors, and others who have expertise in finance and risk management.

#### Any other committee the board considers necessary to achieve BCA's purpose.

## The board shall retain its authority on all matters, even if vested in a committee by this constitution.

## The board and its committees may form sub-committees and determine their terms of reference as they consider appropriate.

# Validation of acts

## The acts of the board or any of its committees and the acts of their members or meetings are valid, even if it is later found that there was a defect in the appointment of any of the members or that any of them were ineligible.

## If any requirement of this Constitution is inadvertently not met, the omission does not invalidate any resolution or act, unless evidence is provided which satisfies the board that the omission is contrary to the interests of BCA as a whole, or oppressive, prejudicial or discriminatory to a member or class of members. The decision of the board is final and binding on all members.

**Company Secretary**

# Company Secretary

## BCA must have at least one Company Secretary, who may also be a director, the Chief Executive Officer, or other employee of BCA.

## A Company Secretary must be appointed by the directors (after giving BCA their signed consent to act as secretary of the company) and may be removed by the directors.

## The directors must decide the terms and conditions under which the Company Secretary is appointed, including any remuneration.

## The duties of the Company Secretary shall include:

#### maintaining a register of the company’s members;

#### ensuring that all returns required to be lodged with the relevant regulatory bodies are prepared and filed within appropriate time limits;

#### maintaining the minutes and other records of general meetings (including notices of meetings), directors’ meetings and circular resolutions.

# Financial records

## The company must make and keep written financial records that:

#### correctly record and explain its transactions and financial position and performance, and

#### enable true and fair financial statements to be prepared and to be audited.

## The company must also keep written records that correctly record its operations.

## The company must retain its records for at least 7 years.

## The directors must take reasonable steps to ensure that the company's records are kept safe.

# By-laws

# By-laws

## The directors may pass a resolution to make by-laws to give effect to this constitution, including in relation to branches, the State Division, member forums, the National Policy Council and any committees.

## Members and directors must comply with by-laws as if they were part of this constitution.

# Notice

# Notices

## **Method of giving notice**

A notice shall be given by BCA to a member in writing, in their preferred accessible format where practicable:

#### personally;

#### by sending it to the postal address nominated by the member; or

#### by sending it to the email address nominated by the member.

## **Notice to the company**

Written notice or any communication under this constitution may be given to BCA, the directors or the Company Secretary by:

#### delivering it to the company’s registered office

#### posting it to the company’s registered office or to another address chosen by the company for notice to be provided, or

#### sending it to an email address or other electronic address notified by the company to the members as the company’s email address or other electronic address.

## **When notice is taken to be given**

### A notice:

#### delivered in person, or left at the recipient’s address, is taken to be given on the day it is delivered

#### sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs, and

#### sent by email or other electronic method, is taken to be given on the business day after it is sent.

# Indemnity and insurance

# Indemnity

## BCA indemnifies each officer of BCA out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of BCA.

## In this clause, ‘officer’ means a director or Company Secretary and includes a director or Company Secretary after they have ceased to hold that office.

## In this clause, ‘to the relevant extent’ means:

#### to the extent that BCA is not precluded by law (including the Corporations Act) from doing so, and

#### for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

## The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of BCA.

# Insurance

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

# Winding up

# Procedure for winding up

## BCA may only be dissolved by resolution of a general meeting called to discuss the matter and a 75% majority vote shall be needed.

## The Company Secretary shall distribute with the meeting notice an explanatory memorandum summarising the arguments for and against the proposed dissolution. Any motion proposing the dissolution of BCA must be submitted by full members with at least 5% of the votes that may be cast, or by the board.

# Surplus assets not to be distributed to members

## If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company.

# Distribution of surplus assets

## Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including ‘gift funds’ defined in clause 53.4) that remain after the company is wound up must be distributed to one or more charities:

#### with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6

#### which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and

#### that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).

## The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court of Victoria to make this decision.

## If the company’s deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 53.1(a), (b) and (c), as decided by the directors.

## For the purpose of this clause:

#### ’gift funds’ means:

##### gifts of money or property for the principal purpose of the company

##### contributions made in relation to a fundraising event held for the principal purpose of the company, and

##### money received by the company because of such gifts and contributions.

(b) ‘contributions’ and ‘fundraising event’ have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

## Definitions and interpretation

# Definitions

In this constitution:

**accessible format** means formats such as audio, braille, electronic and large print.

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

**associate member** means a member of BCA as defined in paragraph 10.1(b).

**blind** means having no or little useable sight.

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

**full member** means a member of BCA as defined in clause 10.

**junior member** means a member of BCA as defined in clause 10.

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

**vision impaired** refers to a person whose loss of visual acuity and or of visual field which cannot be corrected, impacts the way they undertake daily activities, such as self-care, communication and mobility, education, work and community participation.

**writing** or **written** includes all modes of representing or reproducing words, figures, drawings or symbols in a form that is accessible to people who are blind or vision impaired.

# Interpretation

In this constitution:

#### the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and

#### reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

#### reference to any officer of BCA includes any person acting for the time being as such officer;

#### words importing the singular include the plural and vice versa;

#### Where the term ‘sign’, ‘signed’ or ‘signing’ is used in this Constitution, that term must, in so far as it is permitted by law, be interpreted as meaning a person is to apply their own signature, or is to use electronic authentication, which must include:

##### a method of identifying the person by personal details (for example, the person’s name, address and date of birth); and

##### an indication of the person’s approval of the information communicated by a form of security protection (for example, the entering of a confidential identification number such as a member identification number).