



**Address:** PO Box 710 Sydney Markets NSW 2129 Phone: 02 8736 1256  
**email:** [stateoffice@rdansw.org.au](mailto:stateoffice@rdansw.org.au) **website:** [www.rdansw.org.au](http://www.rdansw.org.au)



***NOTICE OF MOTION  
FOR  
ANNUAL GENERAL MEETING  
17 May 2025***

**Amendment of Constitution**

**Purpose:**

The purpose of this document is to provide Members with information to assist them with decisions relating to the adoption of amendments to the Constitution.

**Summary of items:**

The following modifications (as suggested by Hundt Law engaged by the Board) are proposed to the current Constitution (adopted on 11 November 2024):

1. Changes to Clause 6 to restore Clause 6 of the previous (2018) Constitution with some minor amendments agreed at Mediation on 17 December 2024;
2. Changes to ensure that the membership of Members Centres, whether incorporated or unincorporated associations, are properly covered by the Constitution;
3. Other minor amendments to reflect best practice governance.

**Background:**

RDA NSW is continually seeking to strengthen its corporate governance framework and practices.

This is to ensure that it adopts best practices in corporate governance and is meeting its regulatory compliance obligations, including under:

- ✓ the Corporations Act 2001 (Cth),
- ✓ the Charities Act 2013 (Cth),
- ✓ the Australian Charities and Not-for-profits Commission Act 2012 (Cth), and
- ✓ the Income Tax Assessment Act 1997 (Cth).

The members of the Company may amend a constitution in accordance with section 136(1)(b) of the Corporations Act 2001 (Cth) and Clause 7 of the Company's constitution and towards meeting the Company's regulatory obligations under ACNC Governance Standard 2.



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The board considered the review of the Company's constitution by Hundt Law and has recommended that the members consider and, if thought fit, adopt the new constitution set out in Attachment 4.

For ease of reference and full transparency, the proposed revisions have been presented in 'track changes' (i.e. with 'mark up'). If the Special Resolution is approved by the members, then the revisions will be taken as approved and the track changes accepted.

A summary of the proposed amendments is set out in the Explanatory Memorandum (Attachment 1).

### **Proposed Motion**

To consider and, if thought fit, pass the following resolution as a Special Resolution at the AGM on 17 May 2025:

***That, the members of the Company modify, effective immediately, the Current Constitution by adopting the Proposed Amended Constitution as made available to the members and set out in the Annexure.***

### **Notes:**

1. A Special Resolution of the Company must be passed by at least 75% of the votes cast by members entitled to vote on the relevant resolution.
2. An Ordinary Resolution of the Company must be passed by more than 50% of the votes cast by members entitled to vote on the relevant resolution.
3. A member who is entitled to attend and cast a vote at a general meeting of the Company is entitled to appoint a proxy.
4. A member must complete and return the proxy form that is distributed with the Notice of AGM and provide it to the Company Secretary if the member wishes to appoint a proxy.

**By order of the Board of Directors**  
**Greg Urand**  
**Board Chair**

### **Attachments:**

1. Explanatory Memorandum
2. Current Constitution
3. Proposed Amended Constitution (with 'mark up')
4. Proposed Amended Constitution



## Attachment 1 – Explanatory memorandum

### Special Business – Adoption of new constitution

Item	Clause	Commentary
<b>Overview</b>	-	<p>The constitution for a company limited by guarantee registered under the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>) documents a set of rules to govern the company, including the nature and purpose of the company as a charity, along with the rights and obligations of the company directors and members. The constitution is based on the 'model' constitution made available by the Australian Charities and Not-for-profits Commission (<b>ACNC</b>), but amended to suit the company's objectives and purposes.</p> <p>Since the company is registered as a charity and Public Benevolent Institution (<b>PBI</b>) with the ACNC, the constitution must also set out the charitable purposes in accordance with the <i>Charities Act 2013</i> (Cth) (<b>Charities Act</b>) and other standard rules that are necessary for contemporary charitable not-for-profit organisations in Australia.</p> <p>The following table summarises the proposed amendments to constitution with the existing constitution.</p>
<b>Reinstate and include references to incorporated bodies under the constitution</b>		<p>The Company's constitution must not be contrary to the operable provisions of the Corporations Act (i.e. a company cannot contract out of legislation). Relevantly, section 231 of the Corporations Act provides that a 'person' is a member of a company if they are:</p> <ul style="list-style-type: none"> <li>(a) a member of the company on registration; or</li> <li>(b) agree to be member of the company after its registration and their name is entered on the register.</li> </ul> <p>Importantly, a 'person' in this context may include (for example):</p> <ul style="list-style-type: none"> <li>(a) an individual (natural person) with legal capacity, e.g. over 18 years old;</li> <li>(b) a corporation, e.g. company limited by guarantee or incorporated association; or</li> <li>(c) a trustee in its capacity as trustee of a trust (although the trust itself is not a person).</li> </ul> <p>Whilst the Corporations Act does not expressly prohibit unincorporated associations from being members, the absence of separate legal personality means the unincorporated association is unable to provide consent or agree in its own name to the constitution (including the express guarantee amount of \$5).</p>



Item	Clause	Commentary
		<p>Where unincorporated associations are seeking to engage in membership of companies limited by guarantee, the company should adopt a 'representative model' where an individual (natural person) is required to technically maintain the membership status and represent its associated unincorporated body.</p> <p>The proposed revisions aim to reflect incorporated bodies as members on that basis and clarify the nomination of a natural person to act on behalf of eligible unincorporated bodies.</p>
<b>Objects / Purposes</b>	4	The proposed amendments aim to better reflect the Company's charitable purpose as a Public Benevolent Institution under the Charities Act and distinguish its charitable purposes from its activities.
<b>Not-for-profit</b>	6	<p>Revised the Company's not-for-profit rule to clarify that the Company may make a payment to:</p> <ul style="list-style-type: none"> <li>(a) a member for reasonable and proper rent for premises leased by a member to the company, or</li> <li>(b) reimburse a member, including a Body Representative Member on behalf an Unincorporated Centre, for an amount incurred by such persons in carrying out the Company's charitable purposes (subject always to the prior written approval of the directors of the company being obtained first).</li> </ul> <p>Further revisions aim to ensure expressly contemplate that:</p> <ul style="list-style-type: none"> <li>(a) The company will apply its income and property only in undertaking or promoting the objects set out under clause 4.</li> <li>(b) No portion of the income or property of the company may be paid or transferred, directly or indirectly, to a member by way of dividend, bonus, or other similar payment.</li> </ul>
<b>Who can be a member</b>	9	<p>Clarified the basis upon which a person is eligible to apply to be a member of the company if:</p> <ul style="list-style-type: none"> <li>(a) the person supports the purposes of the company;</li> <li>(b) the person agrees to comply with the company's constitution, including paying the guarantee, if required; and</li> <li>(c) the person meets the criteria under this constitution to be admitted to the membership.</li> </ul>



Item	Clause	Commentary
		<p>For this rule, the term 'person' means an incorporated body or individual defined in clause 8.1 (including a Body Representative Member on behalf of an Unincorporated Centre).</p> <p>To be eligible to apply to be admitted as a Body Representative Member, the person must:</p> <ul style="list-style-type: none"> <li>(a) be an individual that is an authorised representative on behalf of an Unincorporated Centre; and</li> <li>(b) meet all other eligibility criteria under this constitution and as otherwise required by the board.</li> </ul> <p>For the avoidance of doubt, there must be not more than one Body Representative Member in respect of each Unincorporated Centre.</p>
<b>How to apply to a be a member</b>	10	The proposed amendments aim to clarify how a person may apply to be a member in the context of the company.
<b>Quorum at general meetings</b>	21	It was determined that the level of quorum for general meetings was greater than required. It is proposed to be reduced from 40% of the members to be present to 25% of the members in order to satisfy the quorum requirements.
<b>Representatives</b>	23	<p>The proposed amendments set out a mechanism under which proposed incorporated members will appoint 'Corporate Member Representatives' for the purposes of practically engaging with the Company on its behalf.</p> <p>Further, it also contemplates that where a Member Centre is constituted as an unincorporated body of individuals, then it must appoint a Body Representative Member to act on its behalf for the purposes of technically holding the membership interest on behalf of the Unincorporated Centre. The proposed amendments clearly set out the mechanism to reflect this position.</p>
<b>Eligibility as a director</b>	38.11-12	The proposed amendments clarify and simplify the eligibility to be elected or appointed as a director.
<b>When a director stops being a director</b>	41	The proposed amendments also removed rules 41.1(d)-(f) on the basis that they are not applicable.
<b>Distribution of surplus assets</b>	69	The proposed amendment also clarify the terminology under rule 69 involving the distribution of surplus assets upon the Company's winding up to ensure compliance with the requisite 'revocation' rule under the Commonwealth tax law.



Item	Clause	Commentary
<b>Consequential amendments</b>	Various	The amendments make various consequential changes to the definitions and throughout to give effect to the various proposed revisions.