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Company Constitution
of
ACT Heritage Rail Holdings Limited
A Public Company Limited by Guarantee

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Company Constitution of ACT Heritage Rail Holdings Limited

Part A – Introductory Provisions

1. Interpretation

- 1.1 Words used in this Constitution shall take their meaning as set out in the clause *Specific Definitions*.
- 1.2 Any words not defined in this Constitution shall have their meaning as defined in the Act and if the words are not defined, shall take their ordinary meaning.
- 1.3 In this Constitution, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) each gender includes the other genders;
 - (c) the reference to persons includes a natural person and any partnership, association, body, an authority or entity whether incorporated or not;
 - (d) references to a person includes the legal personal representatives, employees, agents, contractors, successors, and permitted assigns of that person;
 - (e) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (f) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (g) a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it; and
 - (i) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution.
- 1.4 A clause that deals with an expression with a special meaning in a particular Part or Division of the Act, has the same meaning as that Part or Division of the Act, unless a contrary intention appears.

2. Specific definitions

- 2.1 In this Constitution, unless there is something in the subject or context which is inconsistent:
- (a) "Act" means the *Corporations Act 2001 (Cth)*;
 - (b) "Annual General Meeting" means the annual general meeting of the Company;

- (c) "Board" means the Board of Directors elected or appointed in accordance with this Constitution;
- (d) "By-laws" means the by-laws of the Company as created and amended from time to time in accordance with the clause **By-laws**;
- (e) "Chair" means the person appointed to preside at any General Meeting of the Company or any meeting of the Board of Directors as specified in this Constitution;
- (f) "Complementary member" means a non-voting member pursuant to the clause **Membership classes**;
- (g) "Constitution" means this Constitution as amended or supplemented from time to time;
- (h) "Company" means the Company referred to in the clause **Company name**;
- (i) "Corporate Member" means a non-voting member that is not a natural person;
- (j) "Director" means any person holding the position of a Director of the Company and Directors means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company;
- (k) "Financial Member" means a Member who has paid all annual membership fees due and payable under the clause **Membership fee**;
- (l) "General Meeting" means the Annual General Meeting or any Special General Meeting of the Company;
- (m) "ITAA 1997" means the Income Tax Assessment Act 1997 (Cth);
- (n) "Majority" means over fifty percent (50%);
- (o) "Member" means a Member of the Company pursuant to the clause **Admission** and includes the parties referred to in the Schedule;
- (p) "Non-Financial Member" means a Member who has not paid all the annual membership fees due and payable under the clause **Membership fee**;
- (q) "Non-Voting Member" means a Member who is not entitled to vote at a General Meeting under this Constitution;
- (r) "Ordinary Member Junior" means a non-voting member under 18 years of age;
- (s) "Ordinary Member Adult" means a voting member at least 18 years of age;
- (t) "Objects" means the Objects of the Company as set out in the clause **Objects**;
- (u) "Secretary" means the person appointed as the Secretary of the Company in accordance with this Constitution and includes any assistant or acting secretary;
- (v) "Special General Meeting" means a special general meeting of the Company;
- (w) "Special Resolution" means ninety percent (90%) or more; and

- (x) "Voting Member" means a Financial Member entitled to vote at a General Meeting under this Constitution.

3. Company name

- 3.1 The name of the Company is "ACT Heritage Rail Holdings Limited".

4. Company type

- 4.1 The Company is a public company limited by guarantee under the Act.

5. Replaceable rules

- 5.1 Subject to Part 2B.4 of the Act, the replaceable rules do not apply to the Company.

6. Objects

- 6.1 Subject to sub-clause 6.2, the Company is cultural promotion charity within the meaning of Subdivision 30-B of the ITAA 1997 and has the following Objects:

- (a) promoting the study, preservation, and cultural promotion of railway history in Australia;
- (b) safeguarding railway items of historical and cultural significance for the people of the Australian Capital Territory and elsewhere;
- (c) selling, purchasing, and acquiring items of historical and cultural significance relating to railways and railway infrastructure;
- (d) leasing railway assets to museums and other not-for-profit entities; and
- (e) undertaking and promoting any other thing in relation to the Objects as determined to be appropriate by the Board or the Members.

- 6.2 In pursuing the Objects of the Company and to the extent permitted by law, the Company must act in such a way as to further the objects of Capital Region Heritage Rail Limited.

7. Company powers

- 7.1 The Company can only exercise the powers in section 124(1) of the Act to:

- (a) carry out the Objects of the Company set out in the clause *Objects*; and
- (b) do all things incidental or convenient in relation to the exercise of power under this clause.

Part B – Membership

8. Admission

- 8.1 The Members of the Company are:

- (a) the persons who are specified in the application for registration of the Company as persons who consent to becoming Members; and

- (b) any other person admitted to membership by the Board in accordance with this Constitution.

8.2 A Member may include an entity that is not a natural person.

9. Membership classes

9.1 The Directors may, from time to time, determine:

- (a) the various classes of membership of the Company;
- (b) any restriction in the number of Members or the number of Members within each class;
- (c) the qualifications for admission to each class; and
- (d) the rights attached to being a Member in each class.

9.2 The initial membership classes of the Company are:

- (a) Ordinary Members - adult – voting;
- (b) Ordinary Members - Junior – non-voting;
- (c) Corporate Members – non-voting; and
- (d) Complimentary Members - non-voting.

9.3 Complimentary Membership is limited to less than five percent (5%) of the number of Ordinary Members of the Company.

10. Eligibility

10.1 To be eligible to be an Ordinary Member of the Company:

- (a) a person must be a member of Capital Region Heritage Rail Limited;
- (b) must be a resident individual interested in pursuing the objects of the Company and
- (c) to be a voting member must be at least 18 years of age.

10.2 The Board may only admit a person who meets the criteria in the preceding subclause to be a voting Member of the Company.

11. Membership process

11.1 Every applicant for membership of the Company must submit an application to the Board in a form approved by the Board from time to time which must:

- (a) be in writing;
- (b) be signed by the applicant;
- (c) identify the membership class to which the application relates;
- (d) include membership of Capital Region Heritage Rail Limited, if required in terms of clause

- 10.1; and
- (e) be accompanied by the appropriate membership fee.
- 11.2 The preceding subclause does not apply to Complementary membership.
- 11.3 The Board must consider any valid application for membership at the next Board meeting of the Company after the Board receives the application.
- 11.4 The Board is not required to give any reason for the rejection of an application.
- 11.5 Ordinary Membership is not considered as granted until it is also approved by the Board of Capital Region Heritage Rail Limited.
- 11.6 If the Board accepts a person's application for membership the Secretary must notify the applicant in writing.
- 11.7 If the Board refuses a person's application for membership, the Secretary must:
- (a) notify the applicant in writing; and
 - (b) return the applicant's membership fee (if any).

12. Rights of Members

- 12.1 Voting Members will have:
- (a) the right to attend, speak and vote at all General Meetings;
 - (b) the right to stand for nomination to the Board; and
 - (c) such further and other rights as the Board determines from time to time.
- 12.2 Non-voting Members will have:
- (a) the right to attend and speak but not vote at all General Meetings;
 - (b) no right to stand for nomination to the Board; and
 - (c) such further rights as the Board determines from time to time.

13. Members' obligations

- 13.1 The Constitution constitutes a contract between each Member and the Company and each Member agrees to be bound by the Constitution and By-laws.
- 13.2 All Members must comply with and observe the Constitution and By-laws and any determination or resolution which may be made or passed by the Company or the Board.
- 13.3 All Members submit to the jurisdiction of the Australian Capital Territory in respect of any disputes between a Member and the Company or a Member and another Member.

14. Membership fee

- 14.1 Each Member must pay an annual membership fee as determined by the Board from time to time.
- 14.2 Subject to the following subclause, the initial annual membership fee for Ordinary and Corporate Members is \$10. Complementary Membership fee is at the discretion of the Board.
- 14.3 The Board may change, or grant exemption to, the membership fee from time to time.
- 14.4 The Board may set a joining or entrance fee from time to time.

15. Non-payment of membership fees

- 15.1 A Member whose membership fees are in arrears:
- (a) by less than three (3) months – is a Non-Financial Member; or
 - (b) by three (3) months or more – ceases to be a Member.
- 15.2 The Board may, at its sole discretion and on such terms as it thinks fit, reinstate a Member if the Member pays all their arrears of membership fees.

16. Cessation of membership

- 16.1 In addition to the first subclause in the preceding clause, a Member ceases to be a Member if they:
- (a) give the Secretary written notice of their resignation; or
 - (b) becomes of unsound mind or whose estate becomes liable to be dealt with in any way under a law relating to mental health; or
 - (c) enter into liquidation (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or official manager or provisional liquidator is appointed; or
 - (d) commit an act of bankruptcy; or
 - (e) in the case of Ordinary Members, cease to be a member of Capital Region Heritage Rail Limited.
- 16.2 The Board may, at its sole discretion, withdraw Complimentary Membership by giving one (1) month's notice in writing to the Member.
- 16.3 A Member also ceases to be a Member if they refuse or neglect to comply with the provision of this Constitution or are guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company.
- 16.4 The Secretary must notify a Member in writing if the membership is terminated as a result of the preceding subclause and provide the reason for the termination.

17. Appeal to cessation of membership

- 17.1 If any Member ceases to be a Member as a result of subclause 16.3 in the preceding clause ("Terminated Member"), the Terminated Member may lodge a written appeal ("the Appeal") to the Secretary to be reinstated.

- 17.2 The Board must review the Appeal at the next Board meeting after the Secretary receives the Appeal.
- 17.3 If the Board decides to reinstate the Terminated Member, the Secretary must notify the Member in writing, of their reinstatement within seven (7) days of the Board making its decision.
- 17.4 If the Board affirms the decision to cancel a Member's membership, the Board must call and hold a Special General Meeting within three (3) months of their decision.
- 17.5 The only business at the Special General Meeting under the preceding subclause will be to determine whether the Terminated Member should be reinstated.
- 17.6 The Board must, at least two (2) weeks prior to the Special General Meeting, provide the Terminated Member with a written notice of the intended resolution to affirm their decision to terminate the member's membership.
- 17.7 The Special General Meeting will be held in accordance with this Constitution.
- 17.8 Notwithstanding the preceding subclause, the Chair of the Special General Meeting must allow the Terminated Member to present their case for reinstatement, orally or in writing at the Special General Meeting.
- 17.9 If the Voting Members at the Special General Meeting affirms the Board's decision to terminate the member, the Terminated Member will continue to be a non-member.
- 17.10 If the Voting Members at the Special General Meeting overturns the Board's decision, the Terminated Member is reinstated as a Member.

PART C - GENERAL MEETINGS

18. Annual General Meeting

- 18.1 The Company must hold an Annual General Meeting in accordance with the Act.

19. Special General Meetings

- 19.1 All general meetings, other than the Annual General Meetings is a Special General Meeting.
- 19.2 The Board may convene a Special General Meeting:
- (a) as required under this Constitution;
 - (b) as required under the Act; and
 - (c) at any time it thinks fit.
- 19.3 The Directors of the Company must call and arrange to hold a Special General Meeting on the request of members with at least 5% of the votes that may be cast at the meeting, in accordance with the requirements of Section 249D of the Corporations Act.

20. General Meetings

20.1 The Board must give at least twenty-one (21) days' notice of every General Meeting to:

- (a) every Member, except those Voting Members who (having no registered address within Australia) have not supplied to the Company an address within Australia;
- (b) every Director; and
- (c) the auditor or auditors of the Company,

except:

- (d) for special resolutions which require notice in accordance with the Act; and
- (e) where there is an agreement for shorter notice between the Voting Members.

20.2 A notice of a General Meeting must include:

- (a) the place of the meeting;
- (b) the date of the meeting;
- (c) the time of the meeting; and
- (d) the business to be transacted at the General Meeting.

20.3 A General meeting may, at the sole discretion of the Board, be held in two or more places linked together by any technology that:

- (a) gives the Members present at those places a reasonable opportunity to participate in proceedings;
- (b) enables the Chairperson to be aware of proceedings in each place; and
- (c) enables the Members in each place to vote on a show of hands and on a poll.

20.4 If a General meeting is held in two (2) or more places in accordance with the preceding subclause:

- (a) a Member present at one of the places is taken to be present at the General meeting; and
- (b) the Chairperson of that General meeting may determine at its sole discretion which place the meeting is taken to have been held.

PART D - PROCEEDINGS AT GENERAL MEETINGS

21. Quorum for General Meetings

- 21.1 No business can be transacted at a General Meeting unless a quorum is present.
- 21.2 The quorum for any General Meeting is more than fifteen percent (15%) of Voting Members.
- 21.3 For the purpose of this clause, "Voting Member" includes a person attending as a proxy or a representative of a Voting Member.
- 21.4 If a quorum is not met within thirty (30) minutes of the start of the meeting, the meeting:
- (a) if convened by the requisition of Voting Members – is dissolved; and
 - (b) in any other case - stands adjourned to:
 - (i) the same day in the following week at the same time and place; or
 - (ii) to such other day, time and place as the Chair may determine.
- 21.5 If a quorum is not met within thirty (30) minutes of the start of an adjourned meeting, two (2) or more Voting Members present in person or by proxy will constitute a quorum.
- 21.6 The business transacted at any adjourned meeting must only be the business left unfinished at the General Meeting from which the adjournment took place.
-

22. Presiding at meetings

- 22.1 The Chair presides at every General Meeting.
- 22.2 If:
- (a) there is no Chair; or
 - (b) the Chair is not present within fifteen (15) minutes after the time appointed for the General Meeting; or
 - (c) the Chair is unwilling to act,
- the Voting Members present will elect a Voting Member to be Chair for that meeting only.
-

23. Adjourning meeting

- 23.1 The Voting Members present at a General Meeting may by Majority resolution adjourn the meeting from time to time and place to place.
- 23.2 If a General Meeting is adjourned for thirty (30) days or more, the Secretary must give all Members notice of the time and place of the adjourned General Meeting twenty-one (21) days prior to the adjourned General Meeting.
- 23.3 A notice of an adjourned meeting does not need to state the business to be transacted.
- 23.4 The business transacted at any adjourned meeting must only be the business left unfinished at the

General Meeting from which the adjournment took place.

24. Proceedings and voting

- 24.1 At any General Meeting a resolution put to the vote will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (a) by the Chair; or
 - (b) by at least two (2) Members present in person.
- 24.2 A declaration by the Chair that a resolution has on a show of hands been carried (unanimously or by a particular majority) or lost and entry in the minutes of the Company showing the result of the resolution is conclusive evidence of the result of the resolution, except where a poll is demanded.
- 24.3 A resolution is carried if support by a Majority of Voting Members present at a General Meeting in person or by proxy.
- 24.4 The Chair of that General Meeting has a second or casting vote if the vote on any resolution is tied.
- 24.5 Any poll must be taken in such a manner as the Chair directs, subject to the following subclause.
- 24.6 Notwithstanding the preceding subclause, a poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- 24.7 The result of any poll is the resolution of the General Meeting at which the poll was demanded.
- 24.8 A Non-Financial Member cannot vote at any General Meeting.

25. Proxy

- 25.1 A Voting Member may by written instrument appoint another person to act as their proxy to attend, speak and vote in their place at a General Meeting.
- 25.2 An instrument appointing a proxy is not valid and must not be recognised by the Chair of the General Meeting unless it complies with this clause **Proxy**.
- 25.3 A Non-Voting Member can appoint a person to act as their proxy but only to attend and speak in their place at a General Meeting.
- 25.4 An instrument appointing a proxy must be sent by the Voting Member to the Secretary at least forty-eight (48) hours before the time for holding the General Meeting or adjourned General Meeting at which the Voting Member proposes to vote.
- 25.5 The instrument appointing a proxy must be in the form approved by the Board from time to time.
- 25.6 An instrument appointing a proxy must be in writing and signed by:
- (a) the Voting Member; or
 - (b) the Voting Member's attorney; or
 - (c) if a corporation – in accordance with the Act or authorised representative of the company.

25.7 An instrument appointing a proxy must include the power of attorney or other authority (or a certified copy of that power or authority), under which it is signed.

25.8 A Voting Member may instruct his proxy in favour of or against any proposed resolutions.

25.9 A proxy may vote as he thinks fit, unless otherwise instructed.

25.10 On a show of hands every person present who is a:

(a) Voting Member; or

(b) an authorised representative, attorney or proxy of a Voting Member,

has one vote.

25.11 The instrument appointing a proxy confers authority on the proxy to demand or join in demanding a poll.

25.12 On a poll every Voting Member present:

(a) in person; or

(b) by proxy; or

(c) by attorney; or

(d) by other duly authorised representative,

has one vote on their own behalf and one vote for every proxy they hold.

25.13 A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding:

(a) the previous death or unsoundness of mind of the Voting Member; or

(b) the revocation of the instrument or the authority under which the instrument was executed,

if no indication in writing of such death, unsoundness of mind or revocation has been received by the Secretary before the commencement of the General Meeting or adjourned General Meeting at which the instrument is used.

26. Resolution outside General Meeting

26.1 A written resolution signed by all Members entitled to vote is valid and effectual as if it had been passed at a General Meeting duly convened and held.

26.2 Any such resolution may consist of several documents in like form, each signed by one or more Members.

PART E - BOARD OF DIRECTORS

27. Directors

- 27.1 Following the first Annual General Meeting, the Board of Directors must consist of at least three (3) Directors which must be appointed by the Members in accordance with the clause *Election of Directors*.
- 27.2 An elected Director must be a Financial Voting Member and must not be a concurrent director of Capital Region Heritage Rail Limited.
- 27.3 The Board may appoint an additional two (2) Directors who must not be members of the Company but may be a concurrent director of Capital Region Heritage Rail Limited.
- 27.4 For the appointment of Directors, the Board will establish a referral committee to confirm and review the qualifications of directors using an appropriate merit-based selection process designed as far as reasonably possible to:
- (a) reflect the appropriate mix of skills and experience required at Board level.
 - (b) have regard to suitable professional qualifications and the required skill set.

28. Initial Directors

- 28.1 The initial Directors of the Company are the persons specified in the application for registration of the Company as directors.
- 28.2 The Initial Directors must resign after the appointment of new Directors at the first Annual General Meeting of the Company.

29. Election of Directors

- 29.1 Subject to the clause *Term of Directors*, at every Annual General Meeting of the Company, the Voting Members will elect to fill the vacancies for Directors.
- 29.2 The election of the Directors will take place in the manner the Board determines from time to time.

30. Term of Directors

- 30.1 Except for the initial Director's at incorporation of the Company, a Director's term of office commences from the end of the Annual General Meeting in which they were elected.
- 30.2 For the Directors appointed at the first Annual General Meeting:
- (a) two (2) of the elected Directors will be appointed for a period of twenty-four (24) months;
 - (b) one (1) of the elected directors will be appointed for a period of twelve (12) months; and
 - (c) the Board appointed Directors will be appointed for a period of twenty-four (24) months.
- 30.3 For the appointment of Directors following the first Annual General Meeting, all directors will be appointed for a term of twenty-four (24) months from the date on which they were elected.

31. Remuneration of Directors

- 31.1 A Director is not entitled to be remunerated by the Company except for reimbursement of expenses incurred by the Director and approved by the Board.
- 31.2 The Company may in the discretion of the Board pay travelling and other expenses that a Director properly incurs on the Company's business.

32. Re-election

- 32.1 There is no restriction on the number of times a Director can be re-elected.

33. Termination of Director

- 33.1 Subject to the Act, the Voting Members may by ordinary resolution remove any Director before the expiration of his or her period of office.
- 33.2 The office of a Director becomes vacant if:
- (a) the Director becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (b) the Director becomes prohibited from being a Director of a Company by reason of any order made under the Act; or
 - (c) the Director becomes of unsound mind; or
 - (d) the Director's estate is liable to be dealt with in any way under the law relating to mental health; or
 - (e) the Director resigns their office by notice in writing to the Company; or
 - (f) the Director for more than six (6) months is absent without permission of the Board from meetings of the Board held during that period; or
 - (g) the Director holds any office of profit under the Company without the Board's consent; or
 - (h) the Director (excluding Board appointed Directors) ceases to be a Member;
 - (i) the Director (excluding Board appointed Directors) ceases to be a member of Capital Region Heritage Rail Limited; or
 - (j) the Director is directly or indirectly interested in any contract or proposed contract with the Company, except as permitted under this Constitution.

34. Casual vacancy

- 34.1 The Board may appoint any financial voting member as a Director to fill a casual vacancy of an elected director.
- 34.2 Any Director appointed under the preceding subclause will hold office until the next Annual General Meeting and if a Voting member is eligible to seek re-election.

PART F - POWERS OF DIRECTORS

35. Powers

35.1 The Board will:

- (a) control and manage the business and affairs of the Company; and
- (b) exercise all such power and do all such things as may be exercised or done by the Company,

except for anything which the Constitution or the Act is required to be exercised or implemented by the Company in General Meeting.

35.2 No action must be taken against the Board for any act or decision it makes in accordance with this Constitution, if there is a subsequent resolution by the Company in General Meeting invalidating the act or decision.

PART G - MEETING OF DIRECTORS

36. Board meetings

36.1 The Board must meet at least four (4) times each calendar year to carry out its duties and responsibilities.

36.2 The Board may adjourn and otherwise regulate its meetings and proceedings as it thinks fit.

36.3 A Director may at any time and the Secretary will on the request of a Director summon a meeting of the Board.

36.4 All Directors must be given at least seven (7) days' notice of a Board meeting, unless agreed otherwise by the Directors.

36.5 The Secretary must give each Director a written notice of a Board meeting in accordance with the preceding subclause and the notice must:

- (a) specify the day, time and place of the meeting; and
- (b) state the business to be transacted.

36.6 A Board meeting may be held using any technology consented to by all the Directors.

36.7 The consent to use of technology may be a standing one and a Director may only withdraw consent within a reasonable period before the meeting.

36.8 The Chair presides at every Board meeting.

36.9 If:

- (a) there is no Chair; or
- (b) at any Board meeting he is not present within ten minutes after the time appointed for

holding the meeting; or

(c) being present, he is unwilling to preside,

then the Directors will choose one of the Directors present to be Chair for that meeting.

37. Quorum for Board meetings

37.1 No business can be transacted at a Board meeting unless a quorum is present.

37.2 The quorum for any Board meeting is three (3) Directors, of which at least two (2) must be elected directors or such greater number as determined by the Board from time to time.

37.3 If there are not enough Directors in office to form a quorum, the remaining Directors may act only:

(a) to increase the number of Directors to a quorum; or

(b) to call a General Meeting of the Company.

38. Board voting

38.1 All decisions of the Board are determined by Majority vote of Directors present in person or via technology approved under clause 36.6 above at the Board meeting.

38.2 The Chair of the Board meeting has a second or casting vote if the vote on a resolution is tied.

39. Resolution outside Board meeting

39.1 A written resolution signed by all Directors entitled to vote is valid and effectual as if it had been passed at a Board meeting duly convened and held.

39.2 Any such resolution may consist of several documents in like form, each signed by one or more Directors.

40. Delegation of powers – general committee

40.1 The Board may form any general or advisory committees it sees fit.

40.2 The Board must only appoint Voting Members as committee members.

40.3 The Board may delegate to one or more general committees, any of its powers and/or functions (not being duties imposed on the Board as the Directors of the Company by the Act or the general law) as it thinks fit.

40.4 Any general committee must comply with any directions given by the Board.

40.5 The general committee must operate in accordance with the directions of the Board.

41. Advisory committees

41.1 The Board may appoint one or more advisory committees consisting of such persons as the Board thinks fit.

41.2 An advisory committee must only act in an advisory capacity and cannot bind the Company or the

Board.

41.3 Any advisory committee must comply with any directions given by the Board.

41.4 The advisory committee must operate in accordance with the directions of the Board.

PART H - OFFICE BEARERS

42. Appointment of office bearers

42.1 At the first meeting of the Board following each election or appointment of the Directors the Board must by Majority elect one of the Directors:

(a) Chair;

(b) Secretary.

on such terms as they think fit.

43. Chair

43.1 The Board may suspend or remove the Chair.

43.2 The Board may vest in the Chair such powers and authority as it may from time to time determine.

43.3 The Chair will exercise all such powers and authority in accordance with the Board's direction.

43.4 If the Chair ceases to be a Director, they will also cease to be the Chair.

43.5 If the Chair becomes incapable of performing his or her duties, the Board may appoint another Director to act as Chair on a temporary basis.

44. Secretary

44.1 The first Secretary of the Company is the person specified in the application for registration of the Company as Secretary.

44.2 The Board may suspend or remove the Secretary.

44.3 The Secretary must act in accordance with the Act.

44.4 The Secretary must discharge all functions conferred on the Secretary under this Constitution or the Act.

44.5 The Secretary is the public officer of the Company unless the Board determines otherwise.

PART I - RECORDS

45. Financial records

- 45.1 The Company must keep the financial records required by the Act and in accordance with the ITAA 1997.
- 45.2 The financial records must be audited as required by the Act.
- 45.3 The audited financial records must be provided to Members as required by the Act.

46. Audit

- 46.1 A properly qualified auditor(s) must be appointed and his or their duties regulated in accordance with the Act.

47. Inspection

- 47.1 A Member is not entitled to inspect the Company's books, unless authorised by:
- (a) the Board;
 - (b) the Voting Members by Majority resolution; or
 - (c) the Act.

48. Registers

- 48.1 The Company must keep the registers required by the Act.
- 48.2 The Company must make the registers available to Members as required by the Act.
- 48.3 The Secretary must ensure the registers of the Company are accurate and up to date.

PART J - OTHER

49. Execution of documents

- 49.1 The Company may execute any agreement, deed or other document in accordance with section 127 of the Act.
- 49.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be, by:
- (a) any two (2) Directors; or
 - (b) in such other manner as the Board from time to time determines.
- 49.3 Notwithstanding the previous subclause, the Company may execute documents or transactions electronically provided that at least two (2) Directors electronically approve or sign such

documents and transactions.

50. Notices to Members

50.1 The Company may give notice to a Member:

- (a) personally; or
- (b) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member; or
- (c) by sending it by post to the registered office of the Member if the Member is a company or association; or
- (d) by sending it to the fax number or electronic address (if any) nominated by the Member.

51. Notices to Directors

51.1 The Company may give notice to a Director:

- (a) personally;
- (b) by sending it by post to the Director's usual residential or business address or any other address nominated by them; or
- (c) if a notice calling a meeting – by sending it to the fax or electronic address (if any) nominated by the Director, only if all the Directors have consented to the use of that technology; or
- (d) if any other notice – by sending it to the fax or electronic address (if any) nominated by the Director.

52. Time of service of notice

52.1 A notice sent by post is taken to be given three (3) business days after posting.

52.2 A notice sent by fax or other electronic means, is taken to be given on the business day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic address).

53. Application of income

53.1 The income and property of the Company must be applied solely towards the promotion of the Objects.

53.2 The Company must not pay or transfer (directly or indirectly) by way of dividend, bonus or otherwise any portion of the income or property to any Member.

53.3 Notwithstanding the preceding subclause, the Company may pay in good faith to any Member:

- (a) for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (b) for any out of pocket expenses incurred by any Member on behalf of the Company; and
- (c) for any other bona fide reason or purpose for the attainment of the Objects.

53.4 Notwithstanding the second subclause in this clause *Application of Income*, the Company may pay in good faith to any Director:

- (a) for out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (b) for any service rendered to the Company by the Director in a professional or technical capacity as approved by the Board, other than in their capacity as Director.

53.5 Any payment under this clause must be commercially reasonable for the service.

54. Members' liability

54.1 The liability of the Members is limited.

55. Members' contribution

55.1 Every Member of the Company agrees to contribute to the assets of the Company in the event of the Company being wound up:

- (a) while they are a Member; or
- (b) within one year after ceasing to be a Member,

for:

- (c) payment of the debts and liabilities of the Company (contracted before the time at which the Member ceases to be a Member);
- (d) the costs, charges and expenses of winding up; and
- (e) the adjustment of the rights of the contributories among themselves.

55.2 The maximum a Member is required to contribute under the preceding subclause is five dollars (\$5.00).

56. Sale of assets formerly belonging to ARHS (ACT Division)

56.1 The Company will maintain a register of assets it acquired from the wind up of ARHS (ACT Division) Inc.

56.2 Where the Company has acquired assets formerly belonging to ARHS (ACT Division) Inc, the Company must obtain a Special Resolution of its members to:

- (a) sell or dispose of such assets; or
- (b) change the status (i.e. operational, displayed or stored etc) of such assets.

57. Not for profit

57.1 Any income and property of the Company must be applied solely towards promoting the Objects, and not towards remuneration of Members.

58. Gift fund

58.1 At all times while the Company is:

- (a) a cultural promotion charity in terms of Section 30-100 of the ITAA 1997 (Cth); or
- (b) endorsed as a deductible gift recipient pursuant to the ITAA 1997,

the Company will establish and maintain a gift fund solely for the promotion of the Objects and in accordance with the requirements of the ITAA 1997.

58.2 The gift fund will receive money or property credited to the Company for the purpose of promoting the Objects and must not receive any other money or property.

58.3 The name of the gift fund will be "ACT Heritage Rail Holdings Gift Fund" or such other name as determined by the Directors from time to time.

58.4 During any period while the Company is required to maintain a gift fund under this clause **Gift Fund**, the Directors shall establish rules for the operation of the gift fund and at any time may vary, modify, revoke or replace those rules in whole or in part in their absolute discretion.

58.5 Upon whichever is the earlier of:

- (a) the winding up or dissolution of the Company;
- (b) the winding up or dissolution of the gift fund; or
- (c) when the endorsement of the Company as a deductible gift recipient is revoked,

all money, investments and property then forming the gift fund and remaining after the payment of all debts, expenses and liabilities properly payable out of the gift fund shall be applied in accordance with the clause **Winding up** as if the Company has been wound up or dissolved.

59. Revocation of deductible gift status

59.1 If the Company is endorsed as having deductible gift recipient status and that endorsement is subsequently revoked, the Company must transfer to another organisation to which income tax deductible gifts can be made, any surplus:

- (a) gifts of money or property for the principal Objects of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal Objects of the Company; and
- (c) money received by the Company because of such gifts and contributions above.

60. Winding up

- 60.1 If, upon the winding up or dissolution of the Company by any means and for any reason, there remains any property whatsoever, after satisfaction of all its debts and liabilities, the property must not be paid to or distributed among the members but must:
- (a) be transferred to Capital Region Heritage Rail Limited so long as it is not carried on for profit or gain of its members and is endorsed as a deductible gift recipient; or otherwise
 - (b) be given or transferred to some other organisation:
 - (i) having objects similar to the Objects of the Company;
 - (ii) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under this Constitution; and
 - (iii) which is endorsed as a deductible gift recipient pursuant to the ITAA 1997.
- 60.2 The Members must determine before the time of the winding-up or dissolution the organisation which the property will be transferred to under the preceding subclause.
- 60.3 If no organisation is determined by the Members in accordance with this clause *Winding up*, a Director must apply to the Supreme Court for a determination on the organisation which the property will be transferred to.

61. Indemnity

- 61.1 Every person who is or has been a:
- (a) Director;
 - (b) Secretary; or
 - (c) other officer of the Company,
- is indemnified, to the maximum extent permitted by the Act and law, out of the property of the Company.
- 61.2 Subject to the last subclause in this clause Indemnity, the Company indemnifies the persons referred to in the preceding subclause against any liability for costs and expenses incurred by that person:
- (a) in defending any proceedings (whether civil or criminal) relating to that person's position with the Company; or
 - (b) in connection with any administrative proceedings (whether civil or criminal) relating to that person's position with the Company; or
 - (c) in connection with any application in relation to any proceedings (whether civil or criminal) relating to that person's position with the Company.
- 61.3 The indemnity in the preceding subclause only applies if:
- (a) judgment is given in that person's favour; or

- (b) the person is acquitted; or
- (c) the proceedings is withdrawn before judgment; or
- (d) relief is granted to that person under the Act by a court.

61.4 The indemnity in this clause does not apply to a liability arising out of conduct involving a lack of good faith or dishonesty.

62. Alterations to Constitution

62.1 The Constitution may be altered, repealed and expanded by the Voting Members by a Special Resolution in a General Meeting in accordance with the Act.

63. By-laws

63.1 The Board may formulate, approve, issue, adopt, interpret and amend such by-laws for:

- (a) the proper advancement, management and administration of the Company; and
- (b) the advancement of the Objects,

as it thinks necessary or desirable.

63.2 All by-laws must be consistent with this Constitution and the Act.

63.3 All by-laws made under this clause are binding on the Company and its Members.