

Company Constitution
of
ACT Heritage Rail Holdings Limited
ACN 625 904 627

A Public Company Limited by Guarantee

Amendment date 24 September 2024

Contents

1.	Interpretation	4
2.	Specific definitions.	4
3.	Company name.....	6
4.	Company type.....	6
5.	Replaceable rules.	6
6.	Objects.	6
7.	Company powers.	6
8.	Admission.....	7
9.	Membership classes.	7
10.	Eligibility.	7
11.	Membership process.....	7
12.	Rights of Members	8
13.	Members' obligations.....	9
14.	Membership fee.	9
15.	Non-payment of membership fees	9
16.	Cessation of membership.	9
17.	Appeal to cessation of membership.....	10
18.	Annual General Meeting	11
19.	Special General Meetings.....	11
20.	General Meetings.....	11
21.	Quorum for General Meetings.	12
22.	Presiding at meetings	12
23.	Adjourning meeting.	12
24.	Proceedings and voting	13
25.	Proxy.	14
26.	Resolution outside General Meeting	14
27.	Directors	14
28.	Initial Directors.(deleted)	
29.	Election of Directors.....	15
30.	Term of Directors.	15
31.	Remuneration of Directors.....	16
32.	Re-election	16
33.	Termination of Director.	16
34.	Casual vacancy.....	17

35.	Powers.....	17
36.	Board meetings.....	17
37.	Quorum for Board meetings.....	18
38.	Board voting.....	19
39.	Resolution outside Board meeting.....	19
40.	Delegation of powers — general committee.....	19
41.	Advisory committees.....	19
42.	Appointment of office bearers.....	19
43.	Chair.....	20
44.	Secretary.....	20
45.	Financial records.....	20
46.	Audit.....	20
47.	Inspection.....	21
48.	Registers.....	21
49.	Execution of documents.....	21
50.	Notices to Members.....	21
51.	Notices to Directors.....	22
52.	Time of service of notice.....	22
53.	Application of income.....	22
54.	Members' liability.....	23
55.	Members' contribution.....	23
56.	Sale of assets.....	23
57.	Not for profit.....	23
58.	Gift fund.....	23
59.	Revocation of deductible gift status.....	24
60.	Winding up.....	24
61.	Indemnity.....	25
62.	Alterations to Constitution.....	26
63.	By-laws.....	26

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, including electronic communication;
 - (ea) references to "signature" or "signing" includes a person authoring and sending an electronic communication to the same effect;
 - (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) "Complimentary 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*.
- (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" means a person admitted to membership of the Company pursuant to clause 10;
- (s) "Objects" means the Objects of the Company as set out in the clause *Objects*,
- (t) "Secretary" means the person appointed as the Secretary of the Company in accordance with this Constitution and includes any assistant or acting secretary;
- (u) "Special General Meeting" means a special general meeting of the Company;
- (v) "Special Resolution" means a resolution:
 - i. of which 21 days notice has been given to the Members, and

- ii. which is supported by not less than seventy-five percent (75%) of votes cast (including proxies);
- (w) "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) safeguarding railway items of historical and cultural significance for the people of the Australian Capital Territory and elsewhere;
 - (b) selling, purchasing, and acquiring items of historical and cultural significance relating to railways and railway infrastructure;
 - (c) leasing railway assets to museums and other not-for-profit entities;
 - (d) undertaking and promoting any other thing in relation to the Objects as determined to be appropriate by the Board or the Members; and
 - (e) promoting the study, preservation, and cultural promotion of railway history in Australia.
- 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 Board may introduce a membership class for entities which are not natural persons, and/or a class where membership is complimentary.

10. Eligibility

- 10.1 To be eligible to be an Ordinary Member of the Company a person must:
- (a) be a member of, or have applied for membership of, Capital Region Heritage Rail Limited (provided that Capital Region Heritage Rail Limited does not become insolvent or otherwise cease to exist as a functioning entity); and
 - (b) be interested in pursuing the objects of the Company.
- 10.2 To be eligible to be a Voting Member of the Company a person must be an Ordinary Member who has attained eighteen (18) years of age.

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) specify the applicant's date of birth if the applicant is less than 18 years of age;
- (d) provide contact details for the applicant;
- (e) identify the membership class to which the application relates; and
- (f) be accompanied by the appropriate membership fee (and joining fee if applicable).

11.2 The preceding subclause does not apply to Complimentary membership.

11.3 The Board must consider any valid application for membership no later than 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 Approval of an application for membership from a person who has applied to be, but is not yet, a member of Capital Region Heritage Rail Limited, does not take effect until their membership of Capital Region Heritage Rail Limited has been approved by the board of that company.

11.6 If the board accepts a person's application for membership the Secretary or the Membership Officer (if one has been appointed) must notify the applicant in writing.

11.7 If the Board refuses a person's application for membership, the Secretary or Membership Officer must:

- (a) notify the applicant in writing; and
- (b) return the applicant's membership fee (and joining fee if applicable).

11.8 Notwithstanding that their membership may not have been approved pursuant to clause 10 and the preceding subclauses of this clause, all persons who were recorded as by the Secretary as members of the Company on 1 October 2024 are deemed to be members approved pursuant to the provisions of this clause.

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 An application for membership constitutes a contract between the Member and the Company whereby 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, such fee being due by the last day of June each year. The Board may determine different membership fees for different classes of membership.
- 14.2 The Board may grant exemption to payment of the membership fee from time to time.
- 14.3 The Board may from time to time determine that new members joining during the year may only pay some fraction of the determined annual fee, such fraction being determined by the date of their application for membership.
- 14.4 The board may from time to time determine that Members be given the option of paying their annual membership fees one or more years in advance at an amount the Board has determined.
- 14.5 The Board may from time to time determine that in addition to the annual membership fee an additional joining fee may be charged to newly-joining members, the amount being as determined by the Board.

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, providing always that that company is not insolvent or has otherwise ceased to exist as a functioning entity.
- 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 the By-laws, 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 clause 16 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 Chair 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 Chair 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 Subject to subclause 21.4, the quorum for a General Meeting is fifteen percent (15%) of the Voting Members.

21.3 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.

21.4 If a quorum is not met within thirty (30) minutes of the start of an adjourned meeting, the quorum for the meeting is ten percent (10%) of the Voting Members.

21.5 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,

any Deputy Chair elected by the Board, if present and willing to act, presides at the General Meeting.

- 22.3 If no officer referred to in the preceding subclause is present and willing to act within fifteen (15) minutes after the time appointed for the General Meeting, 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) Voting Members present in person.
- 24.2 A resolution (other than a Special Resolution) is carried if supported by a Majority of Voting Members present at a General Meeting.
- 24.3 The Chair of that General Meeting has a second or casting vote if the vote on any resolution is tied.
- 24.4 Any poll must be taken in such a manner as the Chair directs, subject to the following subclause.
- 24.5 Notwithstanding the preceding subclause, a poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- 24.6 The result of any poll is the resolution of the General Meeting at which the poll was demanded.
- 24.7 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.

24.8 A Non-Financial Member cannot vote at any General Meeting.

24.9 A Special Resolution may not be amended at a General Meeting.

25. Proxy

25.1 A Voting Member may by written instrument appoint another person (including the Chair) to act as their proxy to attend, speak, and vote in their place on any Special Resolution 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, is in the form approved by the Board from time to time, and has been signed and dated by the member.

25.3 An instrument appointing a proxy must be received by the Secretary at least forty-eight (48) hours before the time for holding the General Meeting or adjourned General Meeting.

25.4 An instrument appointing a proxy is not valid unless it directs the holder of the proxy to do one of the following in relation to a Special Resolution to be considered at a General Meeting or adjourned General Meeting:

- a) vote in favour of
- b) vote against, or
- c) exercise his or her judgement in deciding whether to vote in favour of or against the Special Resolution.

This direction must be followed.

25.5 The instrument appointing a proxy confers no authority on the proxy holder to demand or join in demanding a poll, or to speak on the Member's behalf on any other issue.

26. Resolution outside General Meeting

26.1 The Members may make a resolution other than at a General Meeting providing that the resolution:

- a) is supported by the requisite majority, and
- b) is evidenced by the signatures of the requisite majority on a written copy or copies of the resolution, or by the approval by the requisite majority of the resolution in electronic form, or by a combination of these methods.

26.2 In this clause, "requisite majority" means the majority of all the Voting Members of the Company required for the motion to pass according to the terms of this Constitution.

PART E - BOARD OF DIRECTORS

27. Directors

- 27.1 The Board of Directors shall consist of five (5) elected Directors who must be elected by the Members in accordance with the clause *Election of Directors*.
- 27.2 To be elected, a Director must be a Voting Member and not be a concurrent director of Capital Region Heritage Rail Limited. Where a Director ceases to be a Voting Member, thier right to exercise any of the powers or duties of a Director (including attending or voting at board meetings) is suspended until such time as they are again a Voting Member.
- 27.3 The Board may, in order to secure such expertise as it may require, appoint no more than two (2) additional 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 under subclause 3, the Board must have regard to a candidate's suitable professional qualifications and/or other skills needed by the Board of the Company.

28. Initial Directors

This clause has been deleted.

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.
- 29.3 If the number of Directors falls below that required to form a quorum, the Board must meet and determine, notwithstanding that it is inquorate, the arrangements for a Special General Meeting at which sufficient Directors will be elected to ensure that the Board becomes quorate.

30. Term of Directors

- 30.1 A Director's term of office commences at the end of the Annual General Meeting at which they are elected, or in the case of a Director appointed pursuant to subclause 27.3, at the end of the Board meeting at which they are appointed.
- 30.2 An elected Director holds office until the second Annual General Meeting following the Annual General Meeting at which they were elected.
- 30.3 Subject to subclause 30.4, an appointed Director holds office for such period as the Board determines, and such appointment may be terminated at any time pursual to subclause 33.2(k). Appointments of such Directors should normally be reviewed by the Board at intervals not exceeding 24 months, but may be renewed.
- 30.4 The Board shall, as far as practical, ensure that at least two (2) Directors are elected at each Annual General Meeting. To this end, and notwithstanding the provision of subclause 30.2, the Board may determine prior to an Annual General Meeting that a Director or Directors shall be elected for the period only until the next Annual General Meeting. In such a case, the Members will be notified as the number to serve as Directors until the following Annual General Meeting and the number to serve until the second

succeeding Annual General Meeting.

- 30.5 To give effect to the provisions of subclause 30.4, the candidate or candidates receiving the greater number of votes will be elected for the longer period, and the candidate or candidates receiving the lesser number of votes will be elected for the shorter term, as the case requires. If there are no elections (the number of candidates not exceeding the number of vacancies) the new Directors shall draw lots to determine the length of their terms.

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 their 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 has not been a Voting Member for one (1) month - providing that the Board may, in exceptional circumstances, reinstate such a Director to their original term of office once they have again become a Voting Member; or
 - (h) the Director (excluding Board appointed Directors) ceases to be a Member; or

- (i) the Director (excluding Board appointed Directors) ceases to be a member of Capital Region Heritage Rail Limited; providing always that Capital Region Heritage Rail Limited is not insolvent or has otherwise ceased to exist as a functioning entity; or
- (j) the Director is directly or indirectly interested in any contract or proposed contract with the Company, except as permitted under this Constitution; or.
- (k) In the case of a Director appointed to the Board pursuant to subclause 27.3 - the Director is removed by resolution of the Board; or
- (l) the Director is removed by Special Resolution.

34. Casual vacancy

- 34.1 The Board may appoint any eligible Voting Member as a Director to fill a casual vacancy of an elected Director.
- 34.2 A Director appointed under the preceding subclause holds office until the next Annual General Meeting and, if an eligible Voting Member, may seek re-election.
- 34.3 Where a Director is appointed to fill a casual vacancy on the Board after the close of nominations for an Annual General Meeting, that Director is eligible to nominate for re-election notwithstanding that nominations have closed.

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 personal legal liability lies against any Director for any act or decision of the Board made 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 a Majority of the Directors, provided that a Majority of the Directors present are elected Directors pursuant to subclause 27.1 of appointed pursuant to clause 34.
- 37.3 If a quorum is not formed within fifteen (15) minutes, the Directors at such an inquorate meeting may act only to call a General Meeting of the Company.
- 37.4 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.
- 37.5 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 subclause 36.6 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 The Directors may make a resolution of the Board other than at a Board meeting providing that the resolution:
 - (a) is supported by a Majority of the Board, and
 - (b) is evidenced by the signatures of the majority on a written copy or copies of the resolution, or by the approval by the majority of the resolution in electronic form, or by a combination of these methods.

40. Delegation of powers - general committee

- 40.1 The Board may form any general committees it sees fit.
- 40.2 The Board may appoint such delegates as it sees fit.
- 40.3 The Board must only appoint Voting Members as general committee members or delegates.
- 40.4 The Board may delegate to any general committee or delegate any of its powers and/or functions (not being duties imposed on the Board as Directors of the Company by the Act or the general law) as it thinks fit.
- 40.5 Any general committee or delegate must comply with any directions given by 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 The Board may form any advisory committees as it sees fit.
- 41.3 An advisory committee must only act in an advisory capacity and cannot bind the Company or the Board.

PART H - OFFICE BEARERS

42. Appointment of office bearers

- 42.1 At the first meeting of the Board following each Annual General Meeting the Board must by Majority

elect one of the Directors:

- (a) Chair;
- (b) Secretary,
- (c) such other position or positions as it thinks fit. on such terms as it thinks fit.

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 The Board may appoint a properly qualified auditor or auditors.

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 API 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 Documents or transactions to which this clause applies may be executed electronically.

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/or
- (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

56.1 The Company may not sell or dispose of any item of heritage rolling stock unless a Special Resolution has been passed to that effect.

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 (if that company is not insolvent or has otherwise ceased to exist as a functioning entity) 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.