

**The Returned and Services League of Australia (New South Wales Branch)  
ABN 78 368 138 161**



**R S L N S W**

**CONSTITUTION**

**“The Price of Liberty is Eternal Vigilance”**

**Approved 29 October 2019 to take effect from 1 December 2019**

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## **PREAMBLE**

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For more than a hundred years the Returned and Services League of Australia has cared for veterans of the Australian Defence Force and their families and perpetuated the memory of those who have fought, suffered and died in service of the Commonwealth of Australia.

Formed in 1916 as the Returned Sailors and Soldiers Imperial League of Australia (RSSILA), the League's name subsequently evolved to the Returned Sailors Soldiers and Airman's Imperial League of Australia (1941), the Returned Services League of Australia (1965) and the Returned and Services League of Australia (1990). Membership of the League is for those who have served in the Australian Defence Force.

The League's NSW branch was formed in 1916, became part of the federal RSSILA in 1917, and has maintained its association with the Returned and Services League of Australia for more than a century. The Returned and Services League of Australia (NSW Branch) was incorporated as a statutory corporation by the Parliament of NSW in 1935 and has been an advocate on behalf of veterans and their families since its founding. RSL NSW members commit to continuing the camaraderie of military service, serving each other and serving veterans and their families in need – to ensuring that veterans and their families are respected, supported and remembered.

The League is a grassroots organisation, led by its volunteers. The strong connections between sub-Branches and their local communities underpin every aspect of the League's work for veterans and their families.

Since its foundation the League has been a non-partisan and non-sectarian institution, dedicated to the highest patriotic ideals. League members are committed to advancing Australia's interests, upholding the Australian Constitution, ensuring Australia's national security and promoting the good name and standing of the members of the Australian Defence Force and their families. The League binds Australians to the promise of never forgetting the service and sacrifice of those who have served before us. The price of liberty is eternal vigilance.

## **1. RSL NSW**

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- 1.1 The Returned and Services League of Australia (New South Wales Branch) is a corporation constituted under the RSL NSW Act and is called The Returned and Services League of Australia (New South Wales Branch) or RSL NSW.
- 1.2 RSL NSW is a not-for-profit statutory corporation which was established, and continues to operate, as a charity.
- 1.3 RSL NSW is entitled to be and to remain a member of RSL National, and a part of the League as defined in the constitution of RSL National.

## **2. DEFINITIONS**

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- 2.1 Defined terms used in this Constitution have the meaning set out in Appendix A.

## **3. CHARITABLE PURPOSE**

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RSL NSW's Charitable Purpose is:

- 3.1 providing assistance, care and relief for current and former members of the Australian Defence Force and their families who are suffering from physical or mental ill health, social disadvantage and isolation, distress, poverty, homelessness or destitution including without limitation those who are elderly;
- 3.2 providing support and assistance for current and former members of the Australian Defence Force and their families including without limitation to obtain compensation, benefits and assistance to which they are entitled and in relation to all aspects of transitioning from military service to civilian life, particularly where the member has been detrimentally affected by their service;
- 3.3 providing validation of service and sacrifice by commemorating those who have served and preserving the memory of those who have suffered and died;
- 3.4 promoting and facilitating the prevention of social isolation as a cause of veteran ill health by fostering and enabling community engagement, social connection and camaraderie by and between former and current members of the Australian Defence Force and their families; and
- 3.5 doing all other things necessary, ancillary or incidental to pursuing and implementing its benevolent charitable purpose including without limitation:
  - (a) establishing, maintaining and regulating the operation of RSL NSW sub-Branched in New South Wales;
  - (b) researching, promoting and publicly advocating for the interests of former and current members of the Australian Defence Force and their families on matters of public policy;
  - (c) establishing and maintaining literary, social, educational and benevolent activities for the benefit, promotion and advancement of former and current members of the Australian Defence Force and their families particularly where the member has been detrimentally affected by their service; and
  - (d) promoting the defence of the Commonwealth of Australia and guarding the good name, interests and standing of serving members of the Australian Defence Force.

#### **4. RSL NSW POWERS**

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- 4.1 RSL NSW has all the powers:
- (a) of an individual;
  - (b) of a corporation;
  - (c) granted under this Constitution; and
  - (d) granted to it under the RSL NSW Act,
- all of which must only be used to carry out the Charitable Purpose.

#### **5. APPLICATION OF INCOME AND PROPERTY**

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- 5.1 RSL NSW is a not-for-profit entity and its income and assets:
- (a) must only be used to pursue the Charitable Purpose and to do all things necessary, ancillary or incidental to carry out the Charitable Purpose; and
  - (b) must not be distributed, paid or transferred, directly or indirectly, by way of profit to any RSL NSW Member.
- 5.2 Clause 5.1 does not prevent RSL NSW from making payments in good faith to any person including a person who is an RSL NSW Member if the payment is:
- (a) a payment to an RSL NSW Member or a sub-Branch for the purpose of carrying out, supporting or maintaining RSL NSW's Charitable Purpose;
  - (b) for goods or services supplied or provided to RSL NSW in the ordinary course of business;
  - (c) a commercial rent for property used by RSL NSW which has the prior approval of the Board;
  - (d) reimbursement for out of pocket expenses incurred as a Director, an RSL NSW Member, an employee or contractor of RSL NSW in connection with RSL NSW business and activities in accordance with any approved expenditure policy issued under this Constitution;
  - (e) a payment made to any RSL NSW Officer under the indemnity provisions in clause 18;
  - (f) a premium for insurance cover to indemnify an RSL NSW Officer; or
  - (g) remuneration for services as a Director or employee of RSL NSW provided that any remuneration to a Director may only be paid in accordance with the provisions of clause 10.
- 5.3 Without limiting clause 5.2, clause 5.1 does not prevent RSL NSW from making payments or providing benefits to an RSL NSW Member where that payment or benefit is made or provided in pursuing and implementing its Charitable Purpose.

## **6. LIMITED LIABILITY**

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- 6.1 The liability of RSL NSW Members is limited to an amount not exceeding \$10 which each RSL NSW Member must contribute to the property of RSL NSW if RSL NSW is wound up. This contribution will be used to pay:
- (a) any debts and liabilities of RSL NSW; and/or
  - (b) the costs associated with the winding up.

## **7. AMENDMENTS TO CONSTITUTION**

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- 7.1 This Constitution, and any provision in this Constitution may only be amended, repealed or replaced by a Special Resolution of Delegates present and entitled to vote at a general meeting.
- 7.2 Any amendment to, or repeal or replacement of, any provision under this Constitution will take effect:
- (a) from the close of the general meeting at which a resolution amending, repealing or replacing a provision of the Constitution is passed; or
  - (b) from a later date specified in this Constitution or in the resolution passing the amendment, repeal or replacement of a provision; and
- subject to any condition or requirement imposed by a resolution or under this Constitution being met.
- 7.3 If this Constitution is amended, repealed or replaced, a copy of the amended or replacement Constitution certified under the seal of RSL NSW must be registered by the New South Wales Registrar-General and provided to the ACNC and any other requisite regulatory body from time to time.

## **8. MEMBERS**

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- 8.1 All matters concerning membership of RSL NSW will be governed and regulated by the Board.

### **Membership**

- 8.2 RSL NSW has the following classes of membership:
- (a) Service Member;
  - (b) Affiliate Member; and
  - (c) Auxiliary Member.
- 8.3 Provisions and procedures relating to the following membership matters are set out in Appendix B and in the Standard Operating Procedures:
- (a) eligibility criteria for each class of membership;
  - (b) the procedure for membership applications and renewals;
  - (c) membership awards;
  - (d) membership fees (if any); and

- (e) termination, cessation and cancellation of membership.

### **Membership Register**

8.4 RSL NSW will establish and maintain a Membership Register.

### **Continuity of Membership**

8.5 This Constitution does not affect the continuity of membership of any person who was a current member at the Commencement Date.

### **Member Obligations**

8.6 By continuing to be an RSL NSW Member from the Commencement Date, or upon becoming an RSL NSW Member after the Commencement Date, an RSL NSW Member:

- (a) acknowledges that this Constitution has effect as a contract between:
  - (i) RSL NSW and an RSL NSW Member;
  - (ii) an RSL NSW Member and a sub-Branch to which an RSL NSW Member is attached; and
  - (iii) each RSL NSW Member.
- (b) agrees to be bound by, and to comply with this Constitution, any Policies, Standard Operating Procedures and any resolution of the Board, or any request or notice issued by RSL NSW or the Board under this Constitution; and
- (c) without limiting clause 8.6(b), agrees to support, maintain, uphold and pursue the Charitable Purpose.

### **Member Voting Rights**

8.7 Each Service Member has the right to one vote:

- (a) in an election for Elected Directors, including the President, held in accordance with the Election Standard Operating Procedures; and
- (b) on a resolution for the removal of an Elected Director.

### **Members' Meetings**

8.8 An Annual General Meeting must be held at least once in a calendar year and will take place on a date and at a time determined by the Board and at a venue agreed by the majority of Delegates at the immediately preceding Annual General Meeting, failing which the Board shall determine the venue.

8.9 At least six months' notice of the venue, date and time of the Annual General Meeting must be given to sub-Branches.

8.10 In addition to the Annual General Meeting, General Meetings may be called by the Board by giving at least three months' notice to sub-Branches of the date, time and place of the meeting.

8.11 A formal notice of meeting, including an agenda and notice of any proposed resolutions must be provided to sub-Branches or Service Members as appropriate at least four (4) weeks before an Annual General Meeting or a General Meeting.

- 8.12 A sub-Branch may submit proposed resolutions to its District Council for endorsement and if endorsed, may submit the proposed resolution to the Board for inclusion on the Annual General Meeting agenda provided that any proposed resolution must be submitted to the State Secretary no later than 10 weeks prior to the date of Annual General Meeting. Any proposed resolutions from a District Council or the Board must also be submitted to the State Secretary no later than 10 weeks prior to the date of Annual General Meeting.
- 8.13 A General Meeting must be called by the Board if the Board receives a written request from:
- (a) the District Presidents' Council (supported by a Special Resolution of the District Presidents' Council);
  - (b) at least 10% of Service Members; or
  - (c) at least 75 sub-Branches.
- 8.14 A request under clause 8.13 must be signed (and may be signed in multiple counterparts) by each person or body comprising the specified required percentage or number making the request and be accompanied by the proposed resolution.
- 8.15 The Board must give notice of a General Meeting validly requested under clause 8.13:
- (a) to sub-Branches; and
  - (b) Service Members, if the request is accompanied by a resolution proposing the removal of a Director,
- within one month of receiving the written and signed request.
- 8.16 The General Meeting referred to in clause 8.13 must be held within two months of the notice being given under clause 8.15.
- 8.17 The persons or body making a request under clause 8.13 may call a General Meeting if the Board fails to do so following a valid request.
- 8.18 Notice of a General Meeting called under clause 8.17 must be given to:
- (a) the Board;
  - (b) sub-Branches; and
  - (c) Service Members, if the meeting involves a resolution proposing the removal of a Director,
- within one month of the Board failing to give notice under clause 8.15 and the General Meeting must be held within two months of notice being given under this clause 8.18.

### **Members' Meeting Conduct and Voting Procedures**

- 8.19 Procedures for the conduct and voting at the Annual General Meeting and a General Meeting are set out in the Appendix C.

### **Annual Congress**

- 8.20 An Annual Congress will be held in conjunction with each Annual General Meeting, immediately before or immediately after the commencement or conclusion respectively of the Annual General Meeting.



8.21 An Annual Congress will include a wreath laying ceremony, pledges of allegiances, awards (if any) and may include presentations, addresses, education and training seminars and strategic planning sessions.

## **9. RSL NSW BOARD OF DIRECTORS**

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### **The Board**

9.1 RSL NSW is governed by a board of not less than seven and not more than ten directors. The Board may, in its discretion, prescribe the number of directors within this range from time to time, failing which the prescribed number of directors will be deemed to be ten.

9.2 At least one but no more than two directors must be an Independent Director.

9.3 An Independent Director will be appointed by the Board in accordance with clause 9.15.

9.4 In addition to Independent Directors, the remainder of the Board will comprise:

- (a) a President who will be elected by Service Members as an Elected Director to hold the position of President in accordance with the Standard Operating Procedures; and
- (b) Elected Directors elected in accordance with the Standard Operating Procedures.

9.5 The Board may appoint one Director to be deputy president.

9.6 The Board may also appoint one Director, who may be the President or any other Director, to be the Chair.

9.7 This section is to be read in conjunction with the provisions in clause 23.

### **Eligibility to be an Elected Director**

9.8 To accept and continue to hold office as an Elected Director, a person must:

- (a) be a Service Member of at least 18 years of age;
- (b) within six months of being elected, successfully complete a governance training course or a governance training refresher course as the Board considers appropriate and as prescribed by the Board;
- (c) possess and demonstrate a level of appropriate training, study, skills or experience relevant to the position of Elected Director; and
- (d) be a Fit and Proper Person.

9.9 To accept and continue to hold office as an Elected Director, a person must not:

- (a) be a sub-Branch Executive, Trustee, District Council President, District Council Executive or a District Council Delegate;
- (b) be an employee of RSL NSW;
- (c) subject to clause 9.10, have previously held office as a State Councillor or Director for a cumulative period of more than nine years (either continuously or in separate periods) after the first date of election as a State Councillor or Director;
- (d) have had their RSL NSW membership, RSL membership in any other state or their RSL National membership cancelled at any time;

- (e) have been removed from holding any office within:
  - (i) RSL NSW, a sub-Branch or a District Council,
  - (ii) any RSL in any other state; or
  - (iii) RSL National,
 at any time;
- (f) be bankrupt, insolvent or have ever been convicted of an indictable offence;
- (g) have been disqualified by any means from managing a corporation under the Corporations Act, suspended, removed or disqualified as a responsible person under the ACNC Act or fined, convicted or found by the Minister not to be a fit and proper person under the Charitable Fundraising Act or other applicable charitable fundraising legislation which may be in force from time to time.

9.10 An Elected Director who has previously held office as a State Councillor or Director for a cumulative period of nine years or more (either continuously or in separate periods) after their first date of election, is eligible, notwithstanding clause 9.9(c), to stand and be elected if a continuous period of at least five years has lapsed from the date they last ceased to hold office.

#### **Election of Elected Directors**

9.11 An election for Elected Directors will be held in accordance with the Standard Operating Procedures in the three months prior to the Annual General Meeting in an Election Year.

#### **Eligibility to be an Independent Director**

- 9.12 To be appointed and continue to hold office as an Independent Director, a person must:
- (a) if the Board in its discretion considers it necessary and appropriate, within six months of being appointed, successfully complete a governance training course or governance training refresher course prescribed by the Board;
  - (b) possess and demonstrate a level of appropriate professional qualifications, training, skills and experience as the Board considers necessary and desirable;
  - (c) be a Fit and Proper Person; and
  - (d) consent in writing to be appointed as an Independent Director.
- 9.13 To be appointed and continue to hold office as an Independent Director, a person must not:
- (a) currently be an RSL NSW Member;
  - (b) have been an RSL NSW Member, or a member of any RSL body in another state or a member of RSL National at any time in the five years preceding an appointment;
  - (c) be an employee of RSL NSW;
  - (d) subject to clause 9.14, have previously held office as a Director for a cumulative period of more than nine years (either continuously or in separate periods) after the date of first appointment as a Director;
  - (e) have had RSL NSW membership, RSL membership in any other state or their RSL National membership cancelled at any time;

- (f) have been removed from holding any office within:
  - (i) RSL NSW, a sub-Branch or a District Council,
  - (ii) any RSL in any other state; or
  - (iii) RSL National,
 at any time;
- (g) be bankrupt, insolvent or have ever been convicted of an indictable offence;
- (h) have been previously removed as a Director under this Constitution; or
- (i) have been disqualified by any means from managing a corporation under the Corporations Act, suspended, removed or disqualified as a responsible person under the ACNC Act or fined, convicted, or found by the Minister not to be a fit and proper person under the Charitable Fundraising Act or other applicable charitable fundraising legislation which may be in force from time to time.

9.14 An Independent Director who has previously held office as a State Councillor or Director for nine years or more (either continuously or in separate periods) after their first date of election, is eligible, notwithstanding clause 9.13(d), to stand and be elected if a continuous period of at least five years has lapsed from the date they last ceased to hold office.

#### **Appointment of Independent Director**

- 9.15 The Board will appoint an Independent Director (at least one but no more than two) from a shortlist of candidates compiled by a committee of the Board based on consultation with, and recommendations from, an independent executive recruitment agency.
- 9.16 Prior to the appointment of an Independent Director in accordance with clause 9.15, the proposed appointment must be approved by majority resolution of the District Presidents' Council.
- 9.17 The District Presidents' Council must inform the Board whether or not it approves the appointment of a person selected by the Board to be appointed as an Independent Director as soon as practicable after the Board requests approval and in any event within 14 days of receiving a request for approval, failing which the appointment will be deemed to be approved.

#### **Term of Office**

- 9.18 An Elected Director will hold office until the earlier of:
  - (a) the close of the third Annual General Meeting after the Elected Director was elected;
  - (b) their death, incapacity or them becoming of unsound mind;
  - (c) their resignation as a Director;
  - (d) the Elected Director ceasing to fulfil the eligibility criteria in clauses 9.8-9.10 including but not limited to them no longer being a Service Member; or
  - (e) their removal as a Director under this Constitution.
- 9.19 An Independent Director will hold office from the date of appointment agreed in writing with the Board, until the earlier of:

- (a) the expiration of the fixed term for which they are appointed (which term must not be longer than three years);
- (b) their death, incapacity or them becoming of unsound mind;
- (c) their resignation as a Director;
- (d) the Independent Director ceasing to fulfil the eligibility criteria in clauses 9.12-9.14; or
- (e) their removal as a Director under this Constitution.

### **Resignation of Directors**

9.20 A Director may resign by giving a written notice of resignation to the Company Secretary. The resignation will take effect from the date specified in the written notice or, in the absence of a specified date, the date of receipt by the Company Secretary of the resignation.

### **Removal of Directors**

9.21 A Director may be removed by:

- (a) a resolution of a 75% majority of a joint meeting of the Board and the District Presidents' Council called and convened by either the Board or the District Presidents' Council; or
- (b) a Special Resolution of Service Members entitled to vote at a General Meeting on a motion for removal of a Director.

### **Elected Director Vacancy**

9.22 If an Elected Director:

- (a) ceases to hold office on any of the grounds set out in clauses 9.18 (b)-(e),
- (b) is absent from meetings of the Board for a continuous period of three months without prior consent of the Board; or
- (c) resigns in accordance with clause 9.20,

causing the number of directors to fall below the number prescribed by the Board in accordance with clause 9.1, their position will become vacant and a casual vacancy will be created.

9.23 The Board may fill a vacancy created under clause 9.22 by appointing any person who is eligible to be an Elected Director under clauses 9.8 to 9.10. The person appointed to fill the casual vacancy will hold office until the expiry of the term of the Elected Director creating the vacancy. The appointment must be approved by majority resolution of a meeting of the District Presidents' Council prior to being made.

9.24 The District Presidents' Council must inform the Board whether or not it approves the appointment of a person selected by the Board to fill a casual vacancy as soon as practicable after the Board requests approval and in any event within 14 days of receiving a request for approval, failing which the appointment will be deemed to be approved.

### **Independent Director Vacancy**

9.25 If an Independent Director:

- (a) ceases to hold office on any of the grounds set out in clauses 9.19 (b)-(e);

- (b) is absent from meetings of the Board for a continuous period of three months without prior consent of the Board; or
- (c) resigns in accordance with clause 9.20,

their position will become vacant and the Board must, as soon as practicable, if it is necessary to ensure that there remains at least one Independent Director, appoint a new Independent Director in accordance with the procedure set out in clauses 9.15 to 9.17.

### **Directors' additional power of appointment**

9.26 In addition to the powers to fill vacancies in clauses 9.23 and 9.25 above, if the number of Directors falls below the minimum number required for a quorum as prescribed in clause 9.36, the remaining Directors may act to take any steps necessary to increase the number of Directors to the number required to constitute a quorum, to fill the vacancies and/or for calling a General Meeting, but for no other purpose.

### **Powers of the Board**

9.27 Subject to the RSL NSW Act, any other act applicable from time to time and this Constitution, the Board has the power to manage, control and direct the affairs and conduct of RSL NSW and may exercise all the powers granted to RSL NSW by this Constitution or any applicable law, except any power which the RSL NSW Act, any other applicable act or this Constitution expressly provide must be exercised by Service Members or Delegates (or Alternate Delegates).

9.28 Without limiting clause 9.27, the Board has the express power to:

- (a) do all things necessary for carrying out the Charitable Purpose, and all things ancillary or incidental to carrying out the Charitable Purpose;
- (b) govern and regulate the functions of sub-Branches, and the application, management and use of property, funds, income and assets held by sub-Branches, to the extent permitted by law, to ensure that sub-Branches are applying sub-Branch Property to further the Charitable Purpose;
- (c) without limiting clause 9.28(b) and, subject to the provisions of clause 5, require sub-Branches to apply property, funds, income and assets in a particular manner to further and fulfil the Charitable Purpose;
- (d) make decisions and issue directions to ensure the responsible financial management of RSL NSW;
- (e) govern and regulate all matters relating to membership including admission, refusal to admit, renewal, refusal to renew, imposing conditions, waiver of conditions, eligibility, transfer, suspension, revocation and cancellation;
- (f) govern and regulate the rights and obligations of RSL NSW Members, Directors, District Council Delegates, District Councils, District Council Executives, sub-Branches and sub-Branch Executives and Trustees under this Constitution including by dealing with matters relating to Disputes between any and each of them; and
- (g) regulate and determine the rights of RSL NSW Members, Directors, District Council Delegates, District Councils, District Council Executives, sub-Branches and sub-Branch Executives and Trustees in accordance with the disciplinary powers in clause 17.2.

- 9.29 In giving effect to the powers and functions in clause 9.28 and without limiting the general powers in clause 9.27 the Board may issue Policies and Standard Operating Procedures, notices or requests to sub-Branches.
- 9.30 At any time and for any reason, the Board may request or direct a sub-Branch (including any of the sub-Branch Executives or Trustees) to provide to the Board, or as directed by the Board, within a reasonable time, Documents and any other information within a reasonable time to be specified by the Board.

### **Delegation Powers**

- 9.31 Except as provided in clause 9.33, the Board may delegate any of its powers to:
- (a) a committee or committees comprising:
    - (i) Directors;
    - (ii) at least one Director and any other person; or
    - (iii) employees of RSL NSW;
  - (b) a single Director;
  - (c) the Chief Executive Officer;
  - (d) any employee/s of RSL NSW;
  - (e) District Councils and/or District Council Executives; and/or
  - (f) the District Presidents' Council.
- 9.32 A delegation under clause 9.31 must:
- (a) be given by a Board resolution;
  - (b) be in writing;
  - (c) expressly specify the power and function delegated, and any limitations, restrictions and conditions on any delegation, including the time for which the delegation will be in force.
- 9.33 The Board may not delegate the power to delegate.
- 9.34 The Board may also establish advisory bodies or working parties consisting of any person it thinks fit, but an advisory body or working party must not be given any delegated power.

### **Directors' Meetings**

- 9.35 Subject to the provisions of this Constitution, the Board will meet as and when it considers necessary and appropriate.
- 9.36 Unless the Board resolves otherwise, the quorum for a Directors' meeting is a majority (more than 50%) of Directors entitled to receive notice of the meeting (which excludes only those Directors currently on a leave of absence previously granted or Directors overseas) provided that the quorum must not be less than four.
- 9.37 A quorum must be present when a vote is taken.
- 9.38 A Directors' meeting may be called by:

- (a) the President or the Chair on causing reasonable notice to be given to each Director;  
or
  - (b) any other Director requesting the Company Secretary to convene a Directors' meeting in which case the Company Secretary must convene a meeting at a time and place convenient to the majority of Directors.
- 9.39 Notice of a meeting may be given by any reasonable means of communication to each Director (provided however that the failure to give notice will not invalidate any decision or resolution made at the meeting).
- 9.40 At each Directors' meeting, the Chair will chair the meeting. This appointment may be a standing (ongoing) one.
- 9.41 Each Director has one vote and matters for decision by the Board will be determined by resolution passed by a majority of votes cast at the meeting. If the votes cast are equal, the Chair will have a second and casting vote.
- 9.42 The Board may hold its meetings by using any technology (such as video or teleconferencing) that has previously been agreed to by all the Directors, which agreement may be a standing (ongoing) one.
- 9.43 A Director may only withdraw the consent given pursuant to clause 9.42 within a reasonable period before the meeting and in any event no later than seven days before a meeting.
- 9.44 The Board may pass a written resolution without a meeting being held.
- 9.45 All directors entitled to receive notice of a meeting (which excludes only those Directors currently on a leave of absence previously granted or Directors overseas) must be given notice of the proposed written resolution and to vote on a written resolution, a Director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, if the wording of the resolution is identical in each copy.
- 9.46 The Company Secretary may send a resolution by email or other electronic means to the Directors and the Directors may vote on, or abstain from voting on, the resolution by sending a reply email or electronic communication indicating their vote or abstention.
- 9.47 A written resolution is passed when the majority (more than 50%) of Directors entitled to receive notice and vote sign or otherwise agree to the resolution in the manner set out in clauses 9.45 and 9.46 (provided that the number of Directors constituting this majority is not less than the minimum quorum required in clause 9.36 of this Constitution).

### **Conflicts of Interest**

- 9.48 A Director must disclose to the Board any pecuniary or other material interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) which raises, or may appear to raise, an actual or perceived conflict of interest.
- 9.49 A Director's disclosure may be a standing (ongoing) one.

- 9.50 If all the Directors have the same conflict of interest, the Directors must disclose the nature of the actual or perceived conflict of interest to Delegates at the next Annual General Meeting, or at an earlier time if reasonable to do so.
- 9.51 The disclosure of a conflict of interest by a Director and the particulars of the disclosure must be recorded in the minutes of the meeting at which the disclosure is given.
- 9.52 A Director who has disclosed the nature of an interest in any matter, must not, unless the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter; or
  - (b) take part in any decision of the Board with respect to the matter.
- 9.53 Whilst the Board is making a determination under clause 9.52, a Director who has disclosed an interest in a matter must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making of the determination by the Board.
- 9.54 A contravention of this section does not invalidate any decision of the Board.

### **Code of Conduct**

- 9.55 The Board must adopt and adhere to a Code of Conduct for Directors which must be made publicly available.

### **Directors' Access to documents**

- 9.56 A Director has a right of access at all reasonable times to the financial reports or financial records of RSL NSW however compiled, recorded or stored and working papers and other Documents needed to explain the methods by which the financial statements are made up and any adjustments to be made in preparing the financial statements.
- 9.57 RSL NSW must give a Director or former Director access to all such Documents at reasonable times for the purpose of a legal proceeding:
- (a) to which the Director or former Director is a party;
  - (b) that the Director or former Director in good faith proposes to bring; and/or
  - (c) that the Director or former Director has reason to believe will be brought against them.
- 9.58 A person authorised to have access to and inspect such documents under clause 9.57 for the purposes of a legal proceeding may make copies of the documents for the purpose of those proceedings.
- 9.59 The right to inspect documents under clause 9.56 continues for a period of seven years after the person ceases to be a Director.
- 9.60 Any request by a Director or former Director for access to documents will be addressed to the Company Secretary or the Chief Executive Officer.
- 9.61 The Board may resolve to enter into a deed with a Director giving effect to the rights of access to documents in accordance with clause 9.56 and clause 9.57 or such other documents as the Board may decide.



## **10. DIRECTORS' REMUNERATION**

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- 10.1 Subject to the provisions of clauses 10.2 and 10.3 and the RSL NSW Act, the Directors may receive remuneration for their services as a Director.
- 10.2 The Directors may only receive remuneration if the sub-Branch Delegates at an Annual General Meeting pass a resolution to that effect.
- 10.3 The aggregate amount of remuneration, if any, which may be paid to Directors pursuant to a resolution of sub-Branch Delegates is also to be determined by a resolution of sub-Branch Delegates at an Annual General Meeting.

## **11. CHIEF EXECUTIVE OFFICER**

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- 11.1 The Board may appoint a person, other than a Director, to be the Chief Executive Officer of RSL NSW for the period and on terms, including as to remuneration, performance and functions as the Board determines.
- 11.2 The Chief Executive Officer need not be an RSL NSW Member. If the Chief Executive Officer is an RSL NSW Member, he or she is not entitled to exercise the voting rights of an RSL NSW Member whilst holding the position as Chief Executive Officer and may be required by the Board to suspend RSL NSW membership without loss of membership continuity recognition, if held, for the period of employment of Chief Executive Officer.
- 11.3 The Chief Executive Officer is accountable to the Board and the Directors may, subject to the provisions of any contract between the person and RSL NSW:
  - (a) define the Chief Executive Officer's powers, fix their remuneration and duties and from time to time, vary any of the powers conferred; and/or
  - (b) revoke that person's appointment as Chief Executive Officer and appoint another person to that position.
- 11.4 The Directors may delegate to the Chief Executive Officer the power to conduct the day-to-day management and control of the business and affairs of RSL NSW.
- 11.5 The Chief Executive Officer may attend Board meetings at the invitation of the Board.

## **12. STATE SECRETARY**

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- 12.1 The Board may appoint a Service Member who is both sufficiently qualified in the discretion of the Board and willing to be appointed, to be the State Secretary, for the period and on terms, including as to remuneration, performance and functions as the Board determines.
- 12.2 If there is no Service Member who is both qualified and willing to be appointed as State Secretary, the Board may, in its discretion appoint some other person.
- 12.3 The Board shall have power to terminate the employment of the State Secretary.
- 12.4 The State Secretary may attend Board meetings at the invitation of the Board.

## **13. DISTRICT COUNCILS**

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- 13.1 Unless otherwise determined in accordance with this Constitution, the sub-Branch network will be divided into Districts as defined from time to time in the Standard Operating Procedures.

- 13.2 The Board may establish a District Council of the sub-Branches in each District. Each District Council will be governed by and operate subject to the direction of the Board and must report to the Board in accordance with this Constitution and the Standard Operating Procedures.

### **Composition of District Councils**

- 13.3 Each District Council will consist of two District Council Delegates elected by each sub-Branch within the relevant District.
- 13.4 Each sub-Branch may elect two District Council Delegates and may also elect two alternate District Council Delegates (to act only in the event that the Delegates are unable or unwilling to act) in the manner set out in the Standard Operating Procedures.
- 13.5 The District Council Delegate and any alternate District Council Delegates must be Service Members attached to the sub-Branch.

### **District Council Executives**

- 13.6 Each District Council will elect (in accordance with the Standard Operating Procedures) from the District Council Delegates, a committee comprising the following district council executives:
- (a) a District Council President;
  - (b) one or more District Council Vice-President(s);
  - (c) a District Council Secretary, and
  - (d) a District Council Treasurer,
- provided that one person may, if the District Council decides, be appointed as both Secretary and Treasurer.
- 13.7 To hold office as a District Council Executive, a person must be a Service Member of at least 18 years of age.
- 13.8 To accept and continue to hold office as a District Council Executive, a person must not:
- (a) be a Director or an employee of RSL NSW;
  - (b) subject to clause 13.12, have held office as a District Council President for a cumulative period of more than nine years (either continuously or in separate periods) after the first date of election as a District Council President, if that person is to hold office as a District Council President;
  - (c) have had their RSL NSW membership suspended or cancelled at any time or have been removed from holding any office within RSL NSW at any time;
  - (d) be bankrupt, insolvent or have ever been convicted of an indictable offence; or
  - (e) have been disqualified by any means from managing a corporation under the Corporations Act, suspended, removed or disqualified as a responsible person under the ACNC Act or fined, convicted or found not to be a fit and proper person under the Charitable Fundraising Act.

### **Term of Office of District Council Executives**

- 13.9 A District Council Executive will hold office until the earlier of:

- (a) the end of the third calendar year after being elected;
- (b) their death, incapacity or them becoming of unsound mind;
- (c) their resignation as a District Council Delegate or a District Council Executive;
- (d) the District Council Delegate no longer fulfilling the eligibility criteria in clause 13.7 and clause 13.8 including but not limited to them ceasing for any reason to be a Service Member;
- (e) their removal as a District Council Delegate by their sub-Branch;
- (f) their removal as a District Council Executive in accordance with clause 13.14; or
- (g) their removal otherwise under this Constitution.

13.10 A District Council Executive (other than a District Council President) who remains eligible to hold office in accordance with clauses 13.7 and 13.8 is eligible to stand for re-election and may be re-elected for a further term or terms.

13.11 A District Council President who remains eligible to hold office in accordance with clauses 13.7 and 13.8 is eligible to stand for re-election and may be re-elected as District Council President for further terms of three years provided that a District Council President must not hold the position of District Council President for a period exceeding nine years in total.

13.12 A District Council President who has previously held office as a District Council President for a cumulative period of nine years or more (either continuously or in separate periods) after their first date of election, is eligible, notwithstanding clause 13.11 to stand and be elected for a further cumulative period of nine years if a continuous period of at least six years has lapsed from the date they last ceased to hold office.

13.13 A District Council Executive may resign by giving a written notice of resignation to the Board and to the remaining District Council Executives. The resignation will take effect from the date specified in the written notice or, in the absence of a specified date, the date of receipt of the written notice by the Board or its representative.

13.14 A District Council Executive may be removed from holding that position by a majority resolution of the Board in accordance with the Disciplinary Procedures.

13.15 This section is to be read in conjunction with the provisions in clause 23.

#### **District Council Executive vacancy**

13.16 If a District Council Executive ceases to hold office for any of the reasons in clauses 13.9(b) – (g) or resigns in accordance with clause 13.13 during the term of their appointment, then the District Council may elect to either:

- (a) fill the vacancy created by the District Council Executive at a special meeting of the District Council convened for that purpose; or
- (b) (unless the District Council Delegate was removed by resolution pursuant to the Disciplinary Procedures in Appendix D) allow the District Council Executive to continue in the position until the next election with no right to vote.

13.17 Any vacancy in the office of a District Council Executive must be filled by a resolution of the District Council passed by the majority of District Council Delegates present and voting at the

meeting and the person appointed to fill the vacancy will hold office until the end of the term of the District Council Executive they are replacing.

### **District Council Meetings**

- 13.18 District Councils will meet as and when they consider necessary and appropriate, provided that they will meet not less than twice a year at six monthly intervals at a time and place to be agreed by the District Council.
- 13.19 District Council meetings must be conducted in accordance with the Standard Operating Procedures.
- 13.20 Each District Council must provide to the Board a schedule of when and where meetings will be held.
- 13.21 A District Council meeting may be called by:
- (a) the District Council President on giving reasonable notice to each District Council Delegate; or
  - (b) a majority of District Council Delegates requesting the President to convene a District Council meeting in which case the President must convene a meeting at a time and place convenient to the majority of District Council Delegates.
- 13.22 Notice of a meeting may be given by any reasonable means of communication to each District Council Delegate.
- 13.23 Each District Council Delegate has one vote and matters for decision by the District Council will be determined by resolution passed by a majority of votes cast at the meeting.
- 13.24 The quorum for a District Council meeting is a majority of District Council Delegates, excluding those who have been granted a leave of absence.
- 13.25 The District Council may hold its meetings by using any technology (such as video or teleconferencing) that has previously been agreed to by all of the District Council Delegates, which agreement may be a standing (ongoing) one.
- 13.26 A District Council Delegate may only withdraw the consent given pursuant to clause 13.25 within a reasonable period before the meeting and in any event no later than seven days before the meeting.
- 13.27 The District Council may pass a written resolution without a meeting being held.
- 13.28 All District Council Delegates entitled to receive notice of a meeting must be given notice of the proposed written resolution and to vote on a written resolution, a District Council Delegate may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, if the wording of the resolution is identical in each copy.
- 13.29 The chair may send a resolution by email or other electronic means to the District Council Delegates and the District Council Delegates may vote on or abstain from voting on the resolution by sending a reply email indicating their vote or abstention.

13.30 A written resolution is passed when a majority (more than 50%) of District Council Delegates entitled to receive notice and vote, sign or otherwise agree to the resolution in the manner set out in clauses 13.28 or 13.29.

13.31 District Councils must adopt and apply the same conflict of interest principles as are set out in clauses 9.48 to 9.54 above

### **Board attendance at District Council Meetings**

13.32 The Board, its nominated Director/s or representatives of RSL NSW management, may attend District Council meetings upon the giving of reasonable notice to the District Council President or Secretary.

### **Powers, Responsibilities and functions of District Councils**

13.33 Each District Council will represent sub-Branches in its own District by:

- (a) consulting with, and representing the interests of RSL NSW Members and sub-Branches within their District;
- (b) escalating matters concerning a sub-Branch or its members in their District to the District Presidents' Council;
- (c) providing support and encouragement to the sub-Branches in the District and encouraging participation by the sub-Branches in District events and meetings;
- (d) assisting sub-branches to engage the community within the District and enhancing the standing of RSL NSW within the local community;
- (e) generally acting as a means of communication between sub-Branches and the District Presidents' Council on all matters;
- (f) formulating motions to be proposed for inclusion at an Annual General Meeting on topical or urgent matters presented by District Council Delegates on behalf of a sub-Branch (including any amendments to this Constitution proposed by a sub-Branch);
- (g) receiving, considering, consulting with sub-Branches on proposed sub-Branch resolutions and determining whether to endorse proposed resolutions for submission to RSL NSW for determination at an Annual General Meeting or General Meeting;
- (h) formulating motions:
  - (i) on matters that may arise out of a report from the Board;
  - (ii) on matters that may arise out of RSL NSW communications; and
  - (iii) on matters concerning amendments to this Constitution.

13.34 To assist in fulfilling its functions, a District Council:

- (a) may appoint or engage other RSL NSW Members to assist with the management and operations of RSL NSW activities in its District if deemed necessary to properly perform the functions and responsibilities of the District Council; and
- (b) may coordinate RSL NSW related activities within their District.

13.35 Each District Council must provide a copy of the minutes of each District Council meeting to the Board and to the District Presidents' Council in a format to be determined and prescribed by the Board in consultation with all District Councils.

### **Delegated Powers**

13.36 The Board may delegate other powers to a District Council as required or may delegate any of its powers to a District Council, on such terms as required, from time to time, under its delegation powers in this Constitution.

13.37 District Councils must carry out any powers of the Board which the Board has, by written notice, delegated to District Council.

### **District Council Funding and reporting requirements**

13.38 In addition to any funding which a District Council receives from its constituent sub-Branches, the District Councils may be allocated funds by RSL NSW to facilitate the performance of their powers, responsibilities and functions. The amount of funds available to a District Council will be determined by RSL NSW in consultation with the District Council based upon an annual budget which must be submitted to RSL NSW by the District Council on an annual basis in conjunction with RSL NSW's financial year and approved by the Board. The District Council Treasurer must prepare and provide periodic reports at least quarterly, and more frequently if requested by sub-Branches or the Board, to each sub-Branch Treasurer of its constituent sub-Branches and to the Board, accounting for all income and expenditure within the reporting period.

## **14. DISTRICT PRESIDENTS' COUNCIL**

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14.1 The District Presidents' Council will consist of each of the District Council Presidents holding office from time to time, one of whom will be appointed by the District Presidents' Council as the chair. The District Presidents' Council may also appoint a deputy chair and a secretary. Each of these appointments may be standing (ongoing) appointments.

14.2 A District Council President will hold their position on the District Presidents' Council in an ex officio capacity and not in a personal capacity.

### **Role of the District Presidents' Council**

14.3 The District Presidents' Council will represent sub-Branches and District Councils and will exercise the following functions and powers:

- (a) making submissions, proposals and recommendations and providing reports, guidance and feedback to the Board on matters regarding matters of sub-Branch and District Council governance, RSL NSW membership and sub-Branch issues and concerns;
- (b) making representations to the Board on matters of public policy;
- (c) giving approval to the Board's proposed appointments for Independent Directors and any proposed appointments for the filling of vacancies on the Board;
- (d) periodically reviewing the Standard Operating Procedures and proposing amendments and/or approving amendments to the Standard Operating Procedures; and
- (e) any other functions which the Board and the District Presidents' Council may from time to time determine.

- 14.4 The District Presidents' Council must provide a copy of the minutes of each District President's Council meeting to the Board in a format to be determined and prescribed by the Board.
- 14.5 The Board must consider all submissions, reports, policy proposals, recommendations and representations made by the District Presidents' Council and consult, provide feedback and provide a written report or response to the District Presidents' Council within a reasonable time on all matters raised.

### **Delegated Powers**

- 14.6 The Board may delegate powers to the District Presidents' Council in consultation with the District Presidents' Council.

### **Dispute Resolution functions**

- 14.7 The District Presidents' Council will be responsible for the performance of the dispute resolution functions assigned to it in the Dispute Resolution provisions in Appendix D.

### **Power to Call General Meeting**

- 14.8 The District Presidents' Council by Special Resolution may resolve to make a request under clause 8.13 that the Board call a general meeting:
- (a) of Delegates (and Alternate Delegates) including in relation to constitutional amendments; and
  - (b) of Service Members, in relation to a resolution proposing the removal of a Director.
- 14.9 A request made under clause 14.8 must:
- (a) be made in writing; and
  - (b) be accompanied by the resolution to be proposed at the meeting; and
  - (c) be signed (and may be signed in multiple counterparts) by not less than two-thirds of the District Presidents' Council.

### **District Presidents' Council Meetings**

- 14.10 The District Presidents' Council will meet as and when it considers necessary and appropriate, provided that it will meet not less than quarterly at a time and place to be agreed by the District Presidents' Council.
- 14.11 The District Presidents' Council must provide to the Board a schedule of when and where meetings will be held.
- 14.12 A District Presidents' Council meeting may be called by:
- (a) the District Presidents' Council chair as appointed under clause 14.1 on giving reasonable notice to each member of the District Presidents' Council; or
  - (b) any other member of the District Presidents' Council requesting the District Presidents' Council chair to convene a meeting of the District Presidents' Council in which case the District Presidents' Council chair must convene a meeting at a time and place convenient to the majority of the members of the District Presidents' Council.
- 14.13 Notice of a meeting may be given by any reasonable means of communication to each member of the District Presidents' Council.

- 14.14 Each member of the District Presidents' Council has one vote and matters for decision by the District Presidents' Council will be determined by resolution passed by a majority of votes cast at the meeting.
- 14.15 The quorum for a meeting of the District Presidents' Council is a majority of its members, excluding those who have been granted a leave of absence.
- 14.16 The District Presidents' Council may hold its meetings by using any technology (such as video or teleconferencing) that has previously been agreed to by all of the District Presidents' Council, which agreement may be a standing (ongoing) one.
- 14.17 A member of the District Presidents' Council may only withdraw the consent given pursuant to clause 14.16 within a reasonable period before the meeting and in any event by not less than seven days.
- 14.18 The District Presidents' Council may pass a written resolution without a meeting being held.
- 14.19 All members of the District Presidents' Council entitled to receive notice of a meeting and to vote on the resolution receive notice of the resolution must be given notice of the proposed written resolution and to vote on a written resolution, a member of the District Presidents' Council may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, if the wording of the resolution is identical in each copy.
- 14.20 The chair may send a resolution by email or other electronic means to the members of the District Presidents' Council and the members of the District Presidents' Council may vote on or abstain from voting on the resolution by sending a reply email indicating their vote or abstention.
- 14.21 A written resolution (other than a Special Resolution) is passed when a majority (more than 50%) of members of the District Presidents' Council entitled to receive notice and to vote sign or otherwise agrees to the resolution in the manner set out in clauses 14.19 or 14.20.
- 14.22 The District Presidents' Council must adopt and apply the same conflict of interest principles as are set out in clauses 9.48 to 9.54 above.

### **Board Meetings with District Presidents' Council**

- 14.23 The Board, or its nominated Directors, may attend meetings of the District Presidents' Council.
- 14.24 The Board and the District Presidents' Council must hold no fewer than two joint meetings in a calendar year, one of which will be held at the time of the Annual Congress. An agenda will be mutually agreed between the Board and the District Presidents' Council and minutes will be kept.

### **Board's obligation to District Presidents' Council**

- 14.25 The Board must consider all submissions, reports, policy proposals, recommendations and representations made by the District Presidents' Council and consult, provide feedback and provide a written report or response to the District Presidents' Council within a reasonable time on all matters raised.



## **Funding for District Presidents' Council**

14.26 The District Presidents' Council will be allocated funds by RSL NSW to facilitate the performance of its powers, responsibilities and functions. The amount of funds available to the District Presidents' Council will be determined by RSL NSW in consultation with the District Presidents' Council based upon an annual budget which must be submitted to RSL NSW by the District Presidents' Council on an annual basis in conjunction with RSL NSW's financial year and approved by the Board. The District Presidents' Council must prepare and provide periodic reports to the Board at least quarterly, and more frequently if the Board requests, accounting for all income and expenditure within the reporting period. These periodic reports must also be made available on request to District Councils and, through the District Councils, to sub-Branches.

## **15. SUB-BRANCHES**

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### **Establishment of a sub-Branch**

- 15.1 RSL NSW may establish a sub-Branch by issuing a Charter in accordance with this Constitution.
- 15.2 Any incorporated or unincorporated body or entity formed by and consisting of persons eligible to be RSL NSW Members may apply to the Board to become a sub-Branch.
- 15.3 Upon approval of an application to become a sub-Branch, the Board will issue a Charter to the new sub-Branch which will record:
- (a) the name of the sub-Branch which will be as close as possible to the name of the District or area in which the sub-Branch is to be established;
  - (b) the boundaries of the sub-Branch within the District or area; and
  - (c) to which District Council the sub-Branch will belong.
- 15.4 To be eligible to be approved as an RSL NSW sub-Branch, a sub-Branch must:
- (a) form a sub-Branch executive committee comprising:
    - (i) a President who must be a Service Member; and
    - (ii) a Treasurer and a Secretary each of whom must be a Service Member or Affiliate Member (provided that one person may, if the sub-Branch decides, be appointed as both Treasurer and Secretary); and
    - (iii) in the sub-Branch's discretion, at least one Vice-President who must be a Service Member,
  - (b) initially have at least ten Service Members which may include the sub-Branch Executives provided however that the Board may in its absolute discretion consent to a sub-Branch already holding a Charter having fewer than ten Service Members from time to time;
  - (c) demonstrate to the satisfaction of the Board that it is capable of complying with the requirements and obligations set out in this Constitution including the Standard Operating Procedures, and of operating as a sub-Branch for the purposes of carrying out the functions necessary to support and fulfil the Charitable Purpose.

15.5 If a sub-Branch is an incorporated body or becomes incorporated, the board or management committee of the incorporated entity as the case may be, must also hold the sub-Branch executive positions set out in clause 15.4.

### **Obligations of a sub-Branch**

15.6 By accepting a new Charter and/or by continuing to operate under an existing Charter and representing itself as a sub-Branch, a sub-Branch expressly acknowledges and agrees that:

- (a) this Constitution applies as a contract between RSL NSW and a sub-Branch;
- (b) it is bound by, and will comply with the provisions of this Constitution;
- (c) it is not to distribute, pay or transfer, directly or indirectly, any income or assets to an RSL NSW Member provided that this does not prevent the sub-Branch from making payments in good faith to any person including a person who is an RSL NSW Member if the payment is:
  - (i) for goods or services supplied or provided to the sub-Branch in the ordinary course of business;
  - (ii) reimbursement for out of pocket expenses incurred as a sub-Branch Executive or sub-Branch committee member or RSL NSW Member in connection with sub-Branch business and activities in pursuit of the Charitable Purpose and in accordance with any approved expenditure policy of the sub-Branch;
  - (iii) a payment made to any person under the indemnity provisions in clause 18; or
  - (iv) a premium for insurance cover to indemnify a member of the sub-Branch Executive or a Trustee;
- (d) it will comply with any direction, notice or request issued by the Board under this Constitution and any Policies and Standard Operating Procedures issued from time to time; and
- (e) without limiting the provisions of clause 15.6(d) a sub-Branch must comply with any request or direction issued by the Board to provide to the Board or as directed by the Board all Documents and any other information.

### **Sub-Branch Property applied to the RSL NSW Charitable Purpose**

15.7 Without limiting clause 15.6, a sub-Branch:

- (a) must ensure that all sub-Branch Property is applied to further the Charitable Purpose, and
- (b) must conduct and manage sub-Branch activities and financial operations solely to support, maintain and pursue the Charitable Purpose,

and agrees at all times to do so.

### **Sub- Branch Executive**

15.8 The functions, duties and obligations of a sub-Branch are controlled and managed by the sub-Branch Executives and in the case of an incorporated sub-Branch the Board or management committee as the case may be who will:

- (a) be responsible for the management of the operations of the sub-Branch;
  - (b) have the power to manage, control and direct the affairs and conduct of the sub-Branch;
  - (c) be responsible for ensuring that the sub-Branch complies with its obligations under this Constitution including but not limited to ensuring that sub-Branch Property is applied to further the Charitable Purpose; and
  - (d) have the power to act on behalf of the sub-Branch and to bind the sub-Branch.
- 15.9 The sub-Branch President must be a Service Member, and all other sub-Branch Executives, RSL NSW Members attached to the sub-Branch. The sub-Branch Executives are to be elected by the sub-Branch Members in accordance with the procedures set out in the Standard Operating Procedures.
- 15.10 A Service Member who has previously been the subject of a Disciplinary Resolution or who was a sub-Branch Executive at the time that sub-Branch was the subject of a Disciplinary Resolution may not hold office as a sub-Branch Executive unless approval is given by the Board.
- 15.11 A sub-Branch Executive will hold office until the earlier of the following:
- (a) the closing of the third sub-Branch annual general meeting to be held after the election of the sub-Branch Executives (at which time the position will become vacant and elections will be held in accordance with the Standard Operating Procedures);
  - (b) their resignation as a sub-Branch Executive (notice of which may be given in writing to any other sub-Branch Executive or, if none, the State Secretary of RSL NSW, to be effective immediately);
  - (c) their death, or incapacity or them becoming of unsound mind;
  - (d) their ceasing for any reason to be an RSL NSW Member;
  - (e) their transfer of their RSL NSW Membership to another sub-Branch; or
  - (f) their removal by the Board as a sub-Branch Executive.
- 15.12 If a sub-Branch Executive ceases to hold office on any of the grounds set out in clause 15.11(b)-(f) or is absent for a continuous period of three months without prior consent of the sub-Branch Executives, a casual vacancy is created. The casual vacancy must be filled by a person eligible to be a sub-Branch Executive by a resolution of sub-Branch members at the next general meeting of the sub-Branch. The person filling the casual vacancy will hold the position until the expiration of the term of office of the previous sub-Branch Executive creating the vacancy.
- 15.13 A disqualification, defect or vacancy in appointment of any member of a sub-Branch Executive will not invalidate any otherwise valid act of the sub-Branch Executive or any sub-Branch committee formed by the sub-Branch Executives.

### **Sub-Branch Committees**

- 15.14 A sub-Branch may also form sub-Branch committees. The sub-Branch Executives can jointly delegate powers to a sub-Branch committee. The sub-Branch committee must provide a report to the sub-Branch Executives and the sub-Branch Members at a general meeting or by other means and at other intervals as the sub-Branch Executives may direct.

### **Sub-Branch Meetings**

- 15.15 The sub-Branch Executives may meet as and when it considers necessary and appropriate. A meeting may be called by the President on giving reasonable notice to the other members of the sub-Branch Executives.
- 15.16 The sub-Branch Executives may call sub-Branch general meetings as and when required in accordance with Appendix C provided that they must call sub-Branch general meetings at least quarterly one of which must be an annual general meeting.
- 15.17 All meetings held by a sub-Branch must be conducted in accordance with the relevant provisions of Appendix C.
- 15.18 A sub-Branch must not associate, attend or take part in any sectarian or political gathering or meeting. The chair of any sub-Branch meeting may refuse to hear any issue or matter which the chair reasonably considers to be sectarian or political in nature.
- 15.19 Any sub-Branch committee may meet as and when the members of the committee deem fit and in accordance with any terms of reference imposed by the sub-Branch Executives.

### **Conflicts of Interest**

- 15.20 The sub-Branch Executives must adopt and apply the same conflict of interest principles as are set out in clauses 9.48 to 9.54 above.

### **Amalgamation of sub-Branches**

- 15.21 Subject to fulfilling all relevant legal requirements, this Constitution and the prior written consent of the Board, a sub-Branch may by special resolution at a general meeting of the sub-Branch, resolve:
- (a) to amalgamate with another sub-Branch with the consent and agreement of that other sub-Branch and form a new amalgamated sub-Branch; and
  - (b) that the legal and beneficial ownership of all sub-Branch Property be transferred to the amalgamated sub-Branch.
- 15.22 Following the resolution to amalgamate, confirmation that all legal requirements have been undertaken and notification of the granting of consent by the Board:
- (a) the Charter issued to each sub-Branch will be deemed to have been revoked by RSL NSW;
  - (b) RSL NSW will issue a new Charter to the amalgamated sub-Branch; and
  - (c) each member of a former sub-Branch will no longer be attached to the former sub-Branch but will become attached to the amalgamated sub-Branch and the Membership Register will be updated by RSL NSW accordingly.
- 15.23 The newly amalgamated sub-Branch will elect sub-Branch Executives in accordance with the procedure in clause 15.9.

### **Establishment of a Chapter**

- 15.24 A sub-Branch may establish a Chapter in consultation with RSL NSW and with the prior approval of the Board in a neighbouring area that does not have a sub-Branch.

## **Sub-Branch Incorporation**

- 15.25 Subject to clause 15.26, nothing in this Constitution precludes a sub-Branch from forming and becoming an incorporated body and requesting that RSL NSW transfer its Charter to the newly incorporated body.
- 15.26 A sub-Branch may apply to have its sub-Branch Charter transferred to an incorporated body once the following steps have occurred:
- (a) a majority resolution of the sub-Branch Members having been passed resolving that the sub-Branch incorporate;
  - (b) the sub-Branch complying with all legal and regulatory requirements necessary to effect the winding up of the existing unincorporated sub-Branch body and the formation of an incorporated body;
  - (c) the adoption by the incorporated body of the Model sub-Branch Constitution;
  - (d) the provision to the Board of the certificate of incorporation and registered Model sub-Branch Constitution;
  - (e) all sub-Branch Property having been transferred by the Trustees to the incorporated sub-Branch body and the Board having received confirmation of this transfer having been completed;
  - (f) the incorporated sub-Branch body having been registered as a charity with the ACNC; and
  - (g) the sub-Branch having complied with any reasonable directions or conditions imposed by the Board in relation to the incorporation.
- 15.27 Transfer of a sub-Branch charter to a newly incorporated sub-Branch will be completed upon the Board being satisfied that all the requirements in clause 15.26 have been met, following which it will confirm its consent to the incorporation in writing and effect the transfer of the Charter.
- 15.28 An incorporated sub-Branch must at all times comply with the Model sub-Branch Constitution and not amend or vary the Model sub-Branch Constitution without the prior written consent of the Board.

## **Sub-Branch accounts and financial management**

- 15.29 Each sub-Branch must maintain proper accounts of all sub-Branch Property including but not limited to all money received and expended by the sub-Branch, all assets and liabilities of the sub-Branch, and details of all sub-Branch Property transactions including any mortgages, leases, charges or securities affecting its property and must ensure that it does so in accordance with its legal obligations.
- 15.30 The sub-Branch Executives must ensure that the sub-Branch complies with all financial accounting, record keeping, and reporting obligations prescribed under the ACNC Act and the ACNC Regulation.
- 15.31 If a sub-Branch undertakes fundraising activities it must comply with all financial accounting and reporting obligations under the Charitable Fundraising Act, the Charitable Fundraising Regulation, the conditions of any charitable fundraising authority the sub-Branch holds and

any other financial accounting and reporting obligations arising as a result of any other legislation and regulations which may apply from time to time.

- 15.32 The sub-Branch at a general meeting must ratify the payment by the sub-Branch of any administrative and operating costs owed by the sub-Branch.
- 15.33 A sub-Branch must not incur any debt for services or goods unless authorised in writing by the sub-Branch Executives.

#### **Sub-Branch audit**

- 15.34 The sub-Branch Executives must ensure that the sub-Branch complies with any financial audit and/or financial review obligations it has under the ACNC Act, the ACNC Regulation, the Charitable Fundraising Act, the Charitable Fundraising Regulation, the conditions of any charitable fundraising authority the sub-Branch holds, all relevant accounting and auditing standards and all other legislation and regulations which may apply from time to time.
- 15.35 If a sub-Branch is required to have its annual financial statements and reports audited or reviewed as a result of an obligation referred to in clause 15.34, a sub-Branch must at the annual general meeting of the sub-Branch appoint an independent auditor or reviewer who meets the prescribed requirements in the ACNC Act from time to time.
- 15.36 The sub-Branch must give the auditor or reviewer access at all times to the books, accounts, receipts and vouchers of the sub-Branch.
- 15.37 The sub-Branch auditor or reviewer appointed in accordance with clause 15.35 must not be a member of the sub-Branch.
- 15.38 In circumstances where a sub-Branch is not required to have its financial statements audited as a result of an obligation referred to in clause 15.34, the sub-Branch members may resolve that the financial statements be audited in any event and appoint an auditor in accordance with clause 15.35. If the members of the sub-Branch resolve that the financial statements be audited, the sub-Branch Executives must ensure that audited financial statements are prepared.

#### **Sub-Branch annual returns to RSL NSW**

- 15.39 Each sub-Branch must, and will be in default of its obligation to comply with this Constitution if it does not, by 31 March each year (unless agreed otherwise in writing by RSL NSW):
- (a) lodge with RSL NSW in the prescribed form, all financial or other returns as may be requested from time to time by the Board including but not limited to copies of any annual financial returns and statements and auditor's or reviewer's reports which the sub-Branch is required to provide as a result of an obligation referred to in clause 15.34 from time to time;
  - (b) pay any fees or moneys owing to RSL NSW; and
  - (c) pay any affiliation fees due to the District Council of the sub-Branch.
- 15.40 RSL NSW must provide written notice to a sub-Branch in default of its obligations under clause 15.39, requesting that the sub-Branch comply with its obligations within 28 days of the date of the notice.
- 15.41 If a sub-Branch fails to comply with the notice provided under clause 15.40, the sub-Branch will remain in default under clause 15.39 and will not be eligible to:

- (a) have a District Council Delegate attend meetings of its District Council; or
- (b) have a Delegate or Alternate Delegate attend and/or vote at the Annual General Meeting, Congress or any General Meeting.

### **Sub-Branch termination by resolution**

15.42 A sub-Branch may resolve, by Special Resolution of all sub-Branch Members:

- (a) to cease to be a sub-Branch and to return its Charter to RSL NSW;
- (b) to terminate its operation as a sub-Branch, to return its Charter to RSL NSW and to apply to RSL NSW to be issued with a new Charter which will allow the terminating sub-Branch to operate as a Chapter within its current boundaries; or
- (c) to amalgamate with another sub-Branch in accordance with the provisions of clause 15.21 above.

### **Termination or revocation of Charter**

15.43 The Board may revoke the Charter of any sub-Branch:

- (a) on any of the grounds set out in clause 17.2, including but not limited to a failure to comply with any of the provisions of this Constitution; or
- (b) if the sub-Branch entity is wound up for any reason other than in circumstances where the sub-Branch proposes to incorporate under clause 15.25 and has requested that the Charter be transferred.

### **Consequences of termination or revocation**

15.44 Upon the termination, revocation or surrender of a Charter in accordance with clause 15.42 or clause 15.43, the Charter will be terminated and:

- (a) a sub-Branch must cease operating and holding itself out as an RSL NSW sub-Branch including to cease using the RSL NSW name and logo;
- (b) all sub-Branch Property held legally or beneficially by the sub-Branch, and/or by the Trustees for the sub-Branch at the date of termination, revocation or surrender must be transferred, after payment of any debts and liabilities of the sub-Branch, to RSL NSW or as it may direct; and
- (c) the sub-Branch, the sub-Branch Executives and Trustees must do all things necessary to effect the transfer referred to in clause 15.44(b).

15.45 All property and assets transferred to RSL NSW by a sub-Branch upon termination, revocation or surrender of a Charter must be applied by RSL NSW to further the Charitable Purpose.

15.46 Upon the termination of a Charter, any remaining RSL NSW Members attached to the sub-Branch will be transferred to a sub-Branch nominated by the RSL NSW Member or if no sub-Branch is nominated, to ANZAC House.

### **Sub-Branch indemnity**

15.47 A sub-Branch may indemnify its sub-Branch Executives, any sub-Branch committee members and Trustees on terms identical to the RSL NSW Board indemnity provisions in clause 18 and

must provide to RSL NSW, upon request, a copy of a resolution by the sub-Branch adopting the provisions of this clause.

### **Sub-Branch voting rights**

- 15.48 A sub-Branch, provided it has complied with all its obligations, duties and responsibilities under this Constitution, is entitled to appoint one Delegate and one Alternate Delegate to attend the Annual General Meeting, Annual Congress and any General Meeting.
- 15.49 Subject to clause 15.50 each Delegate or (in the Delegate's absence from an Annual General Meeting or General Meeting) Alternate Delegate is entitled to one vote on all resolutions, including constitutional resolutions.
- 15.50 A Delegate is not entitled to vote in their capacity as Delegate:
- (a) in an election for Elected Directors; or
  - (b) at an Annual General Meeting or General Meeting on a resolution for the removal of a Director.
- 15.51 A sub-Branch may appoint a Delegate and Alternate Delegate in accordance with the process set out in the Standard Operating Procedures.
- 15.52 A sub-Branch may appoint a proxy in accordance with the provisions set out in Appendix C.

### **Sub-Branch Property dealings**

- 15.53 Subject to clause 15.55, a sub-Branch whether incorporated or unincorporated, or a Trustee holding sub-Branch Property must not:
- (a) deal with any sub-Branch Property or interest in any sub-Branch Property; or
  - (b) acquire any new property or interest in property on behalf of the sub-Branch, without having obtained the prior written consent of the Board.
- 15.54 The power of a sub-Branch or Trustee to sell, dispose, alienate, gift, lease, mortgage, charge, create a security interest over or otherwise deal with any sub-Branch property must be exercised pursuant to the consent requirement in clause 15.53 above.
- 15.55 Clause 15.53 will not apply to dealings in sub-Branch Property that have a market value of less than \$5,000.
- 15.56 The Trustees and sub-Branches must not:
- (a) make a donation or gift of \$5,000 or more and may not make donations or gifts totalling \$50,000 or more in any one calendar year;
  - (b) incur an expense of \$20,000 or more on any single item, activity or event and may not incur expenses totalling \$50,000 or more in any one calendar year;
  - (c) lend to any person or body or invest money totalling \$5,000 or more in any one calendar year (except in investments authorised by the terms of any trust deed relating to such money),
- without the prior written consent of the Board or its Delegate.



- 15.57 Where the Board has provided written consent to an investment exceeding the sum of \$5,000, the sum may be re-invested with the same investee without further consent being obtained.
- 15.58 Sub-Branch Executives and Trustees must ensure:
- (a) that the sub-Branch receives fair and reasonable market rent or other fees in respect to any sub-Branch property which is used by any third party, unless otherwise approved by the Board;
  - (b) that on any sale of sub-Branch property the sub-Branch receives a fair and reasonable price based upon a fair market value; and
  - (c) that the sub-Branch receives fair and reasonable investment returns in respect to any sub-Branch investments.
- 15.59 The Board must have regard to ensuring that the sub-Branch and Trustees have taken into account and complied with the matters set out in clause 15.58 in considering a request that it consent to any dealing or transaction by the Trustees.
- 15.60 Sub-branch Executives and Trustees may, provided that they have received the prior written consent of the Board, guarantee, indemnify or act as surety for the payment of moneys or performance of contractual obligations (whether of pecuniary nature or not) of any person or body.

## **16. TRUSTEES**

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### **Appointment of Trustees**

- 16.1 Each unincorporated sub-Branch must elect and at all times have either:
- (a) three Service Members;
  - (b) RSL Custodian; or
  - (c) two Service Members and RSL Custodian,
- as trustees of the sub-Branch to hold and receive sub-Branch Property on behalf of the sub-Branch, and to act in this regard strictly in accordance with the sub-Branch's duties and obligations as a sub-Branch under this Constitution.
- 16.2 The President of the sub-Branch will be the appointor and must formally appoint sub-Branch trustees as elected by a majority resolution of the sub-Branch Members at a general meeting.
- 16.3 Any sub-Branch Executive may be appointed to hold the position of, and act as a Trustee.
- 16.4 A sub-Branch may, at a general meeting of the sub-Branch nominate RSL Custodian as a Trustee or as the sole Trustee of sub-Branch property and the President as appointor may appoint RSL Custodian provided that RSL Custodian consents to being appointed.
- 16.5 A Trustee will continue to be trustee of the sub-Branch until their death, resignation, transfer to another sub-Branch, mental incapacity, bankruptcy, removal from office as a trustee by a sub-Branch or the Board in accordance with this Constitution or expulsion or suspension, cancellation or cessation of RSL NSW Membership.
- 16.6 A Trustee must not, directly or indirectly, receive any commission, remuneration or profit from their role as Trustee.

- 16.7 The requirement to appoint Trustees and for all sub-Branch Property to be held by Trustees does not apply to sub-Branches which are or become incorporated.
- 16.8 The terms upon which the Trustees appointed in accordance with clause 16.2 will hold sub-Branch Property are the terms set out in this Constitution.

### **Declaration of Trust**

- 16.9 Each Trustee must make a declaration of trust in respect to all sub-Branch property that they hold on trust for the sub-Branch.
- 16.10 The Trustees making a declaration must, if the declaration relates to:
- (a) land or interest in land under the Torrens Title system, or
  - (b) other land or interests in other land,
- lodge the declaration with the Registrar-General in accordance with the provisions of section 82 of Real Property Act.
- 16.11 The terms set out in the declaration of trust referred to in clause 16.10, read together with the terms of this Constitution constitute the terms upon which the Trustees hold sub-Branch Property.

### **Duties, Powers and Obligations of a trustee**

- 16.12 Trustees will hold sub-Branch Property on trust as joint tenants for the sub-Branch for the express purpose of pursuing the Charitable Purpose and must act at all times in the best interests of the sub-Branch.
- 16.13 Without limiting clause 16.12, the sub-Branch trustees must at all times deal with sub-Branch Property:
- (a) in the best interests of the sub-Branch and in accordance with and in a manner consistent with the sub-Branch's obligation to ensure that all sub-Branch Property is used only to further, support and pursue the Charitable Purpose and to apply sub-Branch Property to the Charitable Purpose;
  - (b) in accordance with any resolution, instruction or direction made by the sub-Branch in all matters relating to the Trust including, without limitation, the management and control of the Trust; and
  - (c) with the prior written approval of the Board where required under this Constitution.
- 16.14 The Trustees may in their capacity as Trustees:
- (a) sell, mortgage, lease (including to grant leases for terms which may exceed five years) and otherwise dispose of the sub-Branch Property in Trust in accordance with the Constitution;
  - (b) take, maintain or defend any legal action necessary to protect the sub-Branch Property.
- 16.15 Trustees must keep the sub-Branch Executives regularly and fully informed on all matters regarding sub-Branch Property held on trust and must attend at least three general meetings including the annual general meeting convened and held by the sub-Branch in a calendar year. The appointment of an RSL NSW Member as a Trustee will not otherwise affect their rights and obligations as an RSL NSW Member.

16.16 The Trustees must not deal with sub-Branch Property other than in accordance with the rights and obligations of a sub-Branch under this Constitution and it is a term of their appointment that the Trustees must act in their capacity as trustees in accordance with the direction of the sub-Branch provided that any direction of the sub-Branch must be in accordance with and comply with the obligations of the sub-Branch under this Constitution.

16.17 Each Trustee must ensure that:

- (a) detailed records of all transactions relating to any sub-Branch Property under their control are kept by the sub-Branch;
- (b) all records including title documents, securities, mortgages, charges, leases, licences, agreements and all other records relating to sub-Branch Property are provided to the sub-Branch Executives;
- (c) they provide all information requested by any auditor or reviewer appointed by the sub-Branch; and
- (d) they attend any meeting of the sub-Branch to answer questions if requested by the sub-Branch Executives to do so.

16.18 The Trustees are entitled to be given access upon request to all Documents, records and information kept by the sub-Branch relating to any sub-Branch Property under their control.

16.19 Immediately upon ceasing to be a Trustee, the Trustee must:

- (a) sign all documents and do all things necessary to transfer all sub-Branch Property; and
- (b) to provide, produce and hand over all Documents and other information, documents of title, accounts, books or records held by the Trustee,

to the remaining or incoming Trustees (as applicable), or as otherwise directed by the sub-Branch, or to RSL NSW if the sub-Branch Charter has been terminated, revoked or surrendered and take all necessary and reasonable steps to ensure this occurs as soon as practicable.

16.20 In the event that a sub-Branch becomes an incorporated body, the Trustees must transfer all sub-Branch Property and hand over all documents of title, accounts, books or records held by the Trustee to the newly incorporated body upon confirmation of the transfer of the sub-Branch Charter to the newly incorporated body.

16.21 The duties and obligations of a Trustee under this Constitution and at law continue to apply in relation to all sub-Branch Property held on trust until the obligations in clause 16.20 are fulfilled.

### **Conflict of Interest**

16.22 The Trustees must adopt and apply the same conflict of interest principles as are set out in clauses 9.48 to 9.54 above.

### **Removal of Trustees**

16.23 The Trustees jointly and severally recognise the right of the President as appointor, the sub-Branch by Special Resolution and/or the Board to remove the Trustees (or any of them) from office at any time in accordance with the Constitution, and each of them agree to cooperate and act in accordance with any lawful or reasonable direction by the Board in the event of such removal.

- 16.24 A Trustee may at any time be removed as Trustee by the President acting upon a majority resolution of the sub-Branch at a general meeting of the sub-Branch.
- 16.25 A Trustee may also be removed by a resolution of the Board upon the suspension, expulsion, dissolution or termination or cessation of the sub-Branch in accordance with the disciplinary procedures set out in clause 17.2.
- 16.26 A Trustee will be deemed to have resigned as Trustee at the end of a calendar year, if the Trustee fails to attend at least three general meetings of the sub-Branch within that calendar year.
- 16.27 A Trustee may also be removed in accordance with the terms of any other document appointing the Trustee.
- 16.28 The Trustees agree, upon their removal from or other cessation of office:
- (a) to do all things necessary to deal with any sub-Branch property in accordance with the provisions of clause 16.19; and
  - (b) to execute all such documents and to perform and to attend to all such matters and things as the President or Secretary of the sub-Branch or any new trustee or trustees may reasonably require to enable vesting of the trust property in such new trustee or trustees.

#### **Action against Trustees by RSL NSW**

- 16.29 Any Trustee who is in breach of his or her obligations as a Trustee under this Constitution or under any other trust instrument appointing the Trustee or at law will be liable for the loss suffered by the sub-Branch. RSL NSW may take action including legal proceedings against any Trustee on behalf of the sub-Branch seeking to recover any loss or damage suffered or incurred by the sub-Branch.

## **17. DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES**

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### **Dispute Resolution**

- 17.1 Disputes about any matter arising in connection with or relating directly or indirectly to this Constitution between any one or more of:
- (a) a Member;
  - (b) a Director;
  - (c) a sub-Branch;
  - (d) a sub-Branch Executive;
  - (e) a Trustee;
  - (f) a District Council Delegate;
  - (g) a District Council Executive;
  - (h) a District Council;
  - (i) the District Presidents' Council; and/or
  - (j) RSL NSW;

will be subject to the dispute resolution provisions contained in the Dispute Resolution and Disciplinary Procedures at Appendix D.

### **Disciplinary Procedures**

17.2 The Board has the power to:

- (a) warn or suspend an RSL NSW Member;
- (b) cancel or revoke membership;
- (c) warn or suspend a sub-Branch Executive or Trustee,
- (d) warn or suspend a District Council President or other District Council Executive;
- (e) remove any sub-Branch Executive or Trustee or District Council President or District Council Executive from office; and/or
- (f) revoke a Charter issued to a sub-Branch.

17.3 The procedures which must be adopted by the Board in exercising these powers are set out in the Dispute Resolution and Disciplinary Procedures at Appendix D.

### **18. INDEMNITY AND INSURANCE**

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18.1 Subject to clause 18.2 and clause 18.3, RSL NSW indemnifies each RSL NSW Officer out of the assets of RSL NSW against all losses and liabilities (including costs, expenses and charges) incurred by that person as an RSL NSW Officer.

18.2 The indemnity in clause 18.1 does not apply to indemnify any RSL NSW Officer to the extent that RSL NSW is precluded by law from giving such an indemnity, including but not limited to circumstances where:

- (a) a liability is owed to RSL NSW or a Related Body Corporate;
- (b) a liability arises as a result of a pecuniary penalty order;
- (c) any loss or liability owed to someone other than RSL NSW or a Related Body Corporate did not arise out of conduct in good faith;
- (d) the RSL NSW Officer has incurred legal costs in defending an action for a liability incurred in the capacity as an RSL NSW Officer if the costs are incurred:
  - (i) in defending or resisting proceedings in which the RSL NSW Officer is found to have a liability for which they cannot be indemnified pursuant to sub-clauses 18.2(a)-(c);
  - (ii) in defending or resisting criminal proceedings in which the RSL NSW Officer is found guilty;
  - (iii) in defending or resisting proceedings brought by any regulator or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - (iv) in connection with proceedings for relief to the RSL NSW Officer in which the court denies the relief.

- 18.3 The indemnity in clause 18.1 does not apply to indemnify any RSL NSW Officer for any amount which the RSL NSW Officer is otherwise entitled to be indemnified and is indemnified by another person (including an insurer under any insurance policy).
- 18.4 Notwithstanding the provisions in clause 18.2 and clause 18.3, RSL NSW may:
- (a) indemnify an RSL NSW Officer for the costs of responding to an investigation by a regulator before any proceedings are, or may be, commenced; or
  - (b) pay legal costs to an RSL NSW Officer in advance of any finding of guilt, wrongdoing, lack of bad faith, denial of relief or confirmation of indemnity from a third party provided that any advancement will be conditional upon the RSL NSW Officer agreeing in writing to repay any amount paid if indemnity is ultimately not payable in accordance with the provisions of clauses 18.2 or 18.3.
- 18.5 The provision of the indemnity in this clause will continue and is enforceable by an RSL NSW Officer even though that person is no longer an RSL NSW Officer.
- 18.6 RSL NSW may enter a deed with any RSL NSW Officer on terms confirming and reflecting the indemnity provisions in clauses 18.1 to 18.5.
- 18.7 To the extent permitted by law, RSL NSW may pay or agree to pay a premium for a contract insuring an RSL NSW Officer against any losses and liabilities (including costs, expenses and charges) incurred by that person as an RSL NSW Officer.

## **19. EXECUTION OF DOCUMENTS**

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- 19.1 RSL NSW may execute a document without using the common seal if the document is signed by:
- (a) two Directors; or
  - (b) one Director and an employee of RSL NSW authorised by the Board to do so.

## **20. WINDING UP AND DISSOLUTION**

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- 20.1 If RSL NSW is wound up, any surplus property or assets remaining after payment of any debts and liabilities must not be paid or distributed to RSL NSW Members or former RSL NSW Members unless that RSL NSW Member or former RSL NSW Member is a charity which meets the criteria set out in clause 20.2 and/or clause 20.3 as applicable.
- 20.2 Subject to any applicable Act or court order, any surplus property or assets remaining after payment of any debts and liabilities must be distributed to one or more charitable bodies:
- (a) with charitable purposes similar to, or inclusive of, those of RSL NSW as set out in clause 3;
  - (b) which have governing rules which also prohibit the distribution of any surplus assets to its members on winding up in the same manner or to the same extent as the prohibition in clause 20.1; and
  - (c) which, if RSL NSW holds Deductible Gift Recipient (DGR) status, also has or have DGR status.

- 20.3 The RSL NSW Members will determine by majority resolution the charity or charities to which any surplus assets shall be given on winding up and failing this RSL NSW may apply to the Supreme Court.

## **21. RSL NSW POLICIES AND STANDARD OPERATING PROCEDURES**

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- 21.1 The Board may from time to time pass a resolution adopting or amending Policies and Standard Operating Procedures, provided however any adoption and any amendments to Standard Operating Procedures will be done in consultation with and approved by the District Presidents' Council.
- 21.2 Directors, District Council Delegates, District Councils, District Council Executives, the District Presidents' Council, RSL NSW Members, sub-Branched, sub-Branch Executives and Trustees must comply with any Policies and Standard Operating Procedures made under this Constitution as if they were part of this Constitution.
- 21.3 RSL NSW will publish all Policies and Standard Operating Procedures as soon as practicable after they are made or adopted.
- 21.4 If any part of the Policies and Standard Operating Procedures are inconsistent with this Constitution the terms of this Constitution prevail.
- 21.5 The District Presidents' Council will review the Standard Operating Procedures periodically and recommend to the Board that any changes they recommend are made.

## **22. NOTICES**

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- 22.1 Where any notice must be given under this Constitution, it may be given in writing either by email or by post.

## **23. SAVINGS, TRANSITIONAL AND CONTINUING PROVISIONS**

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- 23.1 This Constitution supersedes the Previous Constitution.

### **By-laws and regulations repealed**

- 23.2 All RSL NSW by-laws and regulations in existence prior to the Commencement Date are repealed and no longer have any force or effect.

### **Board to Continue**

- 23.3 The Directors in office immediately before the Commencement Date will continue to hold office from the Commencement Date and will be deemed the Directors comprising the Board until their existing terms of office expire or they otherwise cease to hold office in accordance with this Constitution.
- 23.4 The number of years already served by a Director holding office at the Commencement Date will be counted towards the total term that each Director can serve pursuant to clauses 9.9(c) and 9.13(d).

### **District Council Executive**

- 23.5 The District Council Executives in office immediately before the Commencement Date will continue to hold office from the Commencement Date and will be deemed the District Council Executives until their existing terms of office expire or they otherwise cease to hold office in accordance with this Constitution.

23.6 The number of years already served by a District Council President holding office at the Commencement Date will not be counted towards the total term that each current District Council President can serve as a District Council President pursuant to clause 13.8(b).

### **Disciplinary Powers**

23.7 All disciplinary powers under this Constitution from the Commencement Date are vested in the Board and the disciplinary powers previously vested in any other RSL NSW body are revoked. All pending disciplinary issues commenced under the provisions of the Previous Constitution or by-laws or regulations will be finalised, including any appeal, under the previously applicable process.

### **Auxiliary Members**

23.8 This Constitution will not affect the continuity of accrued rights of any Auxiliary Member. Any person who was a member of an RSL Auxiliary immediately prior to the Commencement Date is an Auxiliary Member and will automatically retain all rights, entitlements, awards and recognition held at the Commencement Date.

### **Sub-Branch Associate**

23.9 RSL NSW Members who are sub-Branches Associates at the Commencement Date may continue to hold that association after the Commencement Date by remaining attached to more than one sub-Branch but will only have voting and other member rights with the Primary sub-Branch.

### **Sub-Branches**

23.10 All sub-Branches holding a Charter at the Commencement Date will continue to hold that Charter and to be a sub-Branch in accordance with the existing Charter and the terms and conditions attached to that Charter as amended by this Constitution.

23.11 By continuing to operate under its Charter from the Commencement Date, a sub-Branch agrees to be bound by this Constitution and the amended terms and to comply with the terms of this Constitution including for the avoidance of doubt:

- (a) to make sure that the sub-Branch's income and assets are only used to further the Charitable Purpose;
- (b) not to distribute, pay or transfer, directly or indirectly, any income or assets to an RSL NSW Member unless as specified in this Constitution; and
- (c) to comply with this Constitution, any direction, notice or request issued by the Board under this Constitution and any Policies and Standard Operating Procedures issued from time to time.

### **Sub-Branch Executives**

23.12 All sub-Branch Executives holding office immediately prior to the Commencement Date will continue to hold office until the expiration of their current term.

23.13 Any sub-Branch committees in existence immediately prior to the Commencement Date will continue to exist for the duration of their term of appointment.



## **Trustees**

- 23.14 Trustees holding that position at the Commencement Date will continue to hold the position of trustee until they are removed under the trust deed appointing them and this Constitution and will continue to hold sub-Branch Property in accordance with the terms of this Constitution as amended and any Declaration.
- 23.15 Without limiting clause 23.14, Trustees must continue to hold and deal with sub-Branch Property and assets:
- (a) in the best interests of the sub-Branch;
  - (b) subject to the requirement that the Trustees must deal with sub-Branch Property and assets in accordance with the direction of the sub-Branch pursuant to resolutions of the sub-Branch members;
  - (c) in accordance with the sub-Branch's obligation to ensure that all sub-Branch Property is used only to further, support and pursue the Charitable Purpose and to apply sub-Branch Property to the Charitable Purpose; and
  - (d) with the prior written approval of the Board where required under this Constitution.

## **APPENDIX A – DEFINITIONS AND INTERPRETATION**

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In this Constitution the following terms mean:

**ACNC** means the Australian Charities and Not-for-profits Commission.

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

**ACNC Regulation** means the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth)

**Affiliate Member** means a person who satisfies the eligibility criteria set out in Appendix B and who has been admitted as an affiliate member of RSL NSW in accordance with this Constitution and/or a person who was a current affiliate member at the Commencement Date and who continues as an affiliate member after the Commencement Date.

**Alternate Delegate** means an alternate RSL NSW Service Member elected or appointed by a sub-Branch to attend and vote at an RSL NSW Annual General Meeting or General Meeting in circumstances where the Delegate is not in attendance.

**Annual Congress** means gathering of sub-Branch Delegates (and Alternate Delegates) held in conjunction with the Annual General Meeting.

**Annual General Meeting** means the annual general meeting of RSL NSW.

**ANZAC House** means the business premises of, and the head office function for RSL NSW from time to time.

**Armed Forces** means the armed forces, military power or armed services.

**Australian Defence Force** means the military service responsible for the defence of Australia, constituted under *the Defence Act 1903*.

**Auxiliary Member** means any person who was a member of an RSL Auxiliary immediately before the Commencement Date and any person admitted by a sub-Branch as an auxiliary member after the Commencement Date.

**Board** means the board of directors of RSL NSW.

**Cadets** means any member of the Australian Defence Force cadets.

**Chair** means the Director appointed by the Board to hold that position. .

**Chapter** means a chapter of RSL NSW formed in accordance with this Constitution.

**Charitable Fundraising Act** means the *Charitable Fundraising Act 1991* (NSW).

**Charitable Fundraising Regulation** means the Charitable Fundraising Regulation 2015 (NSW).

**Charitable Purpose** means the charitable purpose of RSL NSW set out in clause 3.

**Charter** means a document charter issued by RSL NSW to a sub- Branch which confirms that the sub-Branch is entitled to operate and represent that it is a sub-Branch on the terms set out in this Constitution.

**Chief Executive Officer** means the person appointed to that position by RSL NSW from time to time under clause 11.

**Code of Conduct** means the code of conduct for Directors adopted from time to time under clause 9.55.

**Commencement Date** means 1 December 2019 being the date on which this Constitution will come into effect.

**Company Secretary** means a person employed by RSL NSW from time to time in the role of company secretary.

**Constitution** means this document and its appendices.

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

**Chair** means the Director appointed by the Board to be the Chair of the Board.

**Delegate** means the RSL NSW Service Member elected or appointed by a sub-Branch to attend and vote at an Annual General Meeting or General Meeting.

**Director** means an Elected Director or an Independent Director of RSL NSW.

**Disciplinary Meeting** means a meeting of the RSL NSW Tribunal under the Disciplinary Procedures in Appendix D at which a disciplinary matter is to be considered.

**Dispute** means a disagreement, grievance or complaint in relation to matters arising out of this Constitution.

**Districts** means the districts of RSL NSW defined by the Board.

**District Council** means the District Council of the sub-Branches within each District formed in accordance with this Constitution.

**District Council Delegate** means the representatives elected or appointed by each sub-Branch to represent the sub-Branch on the District Council.

**District Council Executives** means the officeholders elected in accordance with clause 13.6 or holding these District Council positions immediately before the Commencement Date.

**District Council President** means a person elected to that position by a District Council.

**District Presidents' Council** means the body comprised of each District Council President.

**Document** means any record of information, including without limitation books, files, drawings, messages, financial accounts and statements, financial working papers, minutes of meetings, Member records, receipts, invoices, photographs, transcripts, audio-visual recordings, materials or data, whether or not stored or recorded electronically.

**Elected Director** means a Service Member elected as a director of RSL NSW in accordance with the provisions of this Constitution.

**Election Year** means 2020 and every successive third year after 2020.

**Fit and Proper Person** means a person having the attributes of good character, diligence, honesty, integrity and judgement which can reasonably be expected of an RSL NSW Member or of any position of office held under this Constitution.

**General Meeting** means a general meeting of RSL NSW.

**Honorary Member** means a person who has been awarded an honorary membership of the RSL by the Board of RSL National on the recommendation of the Board.

**Independent Director** means a director appointed to the Board in accordance with this Constitution.

**Life Member** means a Service Member who has been awarded a life membership of the RSL by the Board of RSL National on the recommendation of the Board.

**Model sub-Branch Constitution** means one of the model sub-Branch constitutions approved and issued by the Board from time to time which must be adopted by a sub-Branch which incorporates.

**Membership Register** means the register of all RSL NSW Members established and kept by RSL NSW.

**Minister** means the Minister responsible for the administration of the *Charitable Fundraising Act 1991* (NSW) or other applicable charitable fundraising legislation which may be in force from time to time.

**Policies and Standard Operating Procedures** means policies and/or procedures issued by the Board from time to time applicable to sub-Branches.

**Previous Constitution** means the constitution of RSL NSW as amended on 23 May 2018.

**Primary sub-Branch** means the sub-Branch to which an RSL NSW Member's voting rights attach in circumstances where that member is attached to more than one sub-Branch.

**Real Property Act** means the *Real Property Act 1900* (NSW).

**Related Body Corporate** means a related body corporate as defined in section 50 of the Corporations Act.

**RSL Auxiliary** means a committee or auxiliary comprising Auxiliary Members formed in accordance with the applicable Standard Operating Procedures.

**RSL Custodian** means RSL Custodian Pty Limited ACN 003041610.

**RSL National** means The Returned & Services League of Australia Limited.

**RSL NSW** means the Returned and Services League of Australia (New South Wales Branch) incorporated under the RSL NSW Act.

**RSL NSW Act** means the *RSL NSW Act 2018* (NSW).

**RSL NSW Tribunal** means the tribunal formed by the Board for the purposes of implementing the Disciplinary Procedures.

**RSL NSW Member** means a person admitted in a category of membership set out in clause 8.2 and/or a person who was a current member at the Commencement Date and who continues as a member after the Commencement Date.

**RSL NSW Officer** means a Director and any other officer, employee, former officer, former employee of RSL NSW or a sub-Branch as the Board in the relevant case may determine.

**Service Member** means a person who satisfies the eligibility criteria set out in Appendix B and who has been admitted as a service member of RSL NSW in accordance with this Constitution and/or a person who was a current service member at the Commencement Date and who continues as a service member after the Commencement Date..

**Special Resolution** means a resolution passed by a greater than two-thirds majority of persons present (in person or by proxy) and entitled to vote.

**Standard Operating Procedures** means the documents setting out the procedures which supplement this Constitution in governing the operations of RSL NSW, sub-Branches, District Councils and any other relevant body from time to time.

**State Councillor** means a Service Member elected as a state councillor of RSL NSW.

**State Secretary** means the person holding the position of State Secretary and appointed under clause 12 of this Constitution.

**sub-Branch** means a sub-Branch of RSL NSW holding a Charter.

**sub-Branch Associate** means a person who was an associate of a sub-Branch at the Commencement Date.

**sub-Branch Executives** means the officeholders elected in accordance with clause 15.4 or holding these sub-Branch positions immediately before the Commencement Date.

**sub-Branch Member** means the RSL NSW Members attached to a sub-Branch.

**sub-Branch Property** means all real and personal property, income, assets, money and funds of a sub-Branch.

**Trustee** means a Service Member or RSL Custodian Pty Limited, appointed by a sub-Branch in accordance with this Constitution as a trustee of sub-Branch Property.

## **Interpretation**

In this Constitution, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) headings used in this Constitution do not form part of or affect the construction or interpretation of this Constitution;
- (d) a reference to a person is a reference to a natural person;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (f) a document (including this Constitution) includes all amendments or supplements to, or replacements or novation of, that document;
- (g) “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (h) “law” includes legislation, the rules of the general law, including common law and equity, and any judgment order or decree, declaration or ruling of a court of competent jurisdiction or governmental agency binding on a person or the assets of that person;
- (i) “body” includes any company, trust, partnership, joint venture, association, corporation or other body corporate and any government agency.

## **APPENDIX B – MEMBERSHIP**

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### **Application for membership**

1. A person may apply to be an RSL NSW Member by:
  - (a) submitting an application to a sub-Branch or ANZAC House in the form prescribed by RSL NSW (as amended from time to time) which can be obtained from the sub-Branch or the RSL NSW website; and
  - (b) providing all necessary documents to the sub-Branch or ANZAC House to establish eligibility for membership in the particular class of membership in which membership is sought as set out in clause 8.2 of the Constitution.
2. Upon receipt of a membership application, the sub-Branch or ANZAC House must assess the application against the membership eligibility criteria and determine if the applicant is eligible for RSL NSW membership.
3. Successful applicants will be notified by either the sub-Branch or ANZAC House in writing (depending to whom the application was made) that the application has been accepted, subject to:
  - (a) payment of the annual membership fee amount (if any); and
  - (b) confirmation of acceptance of membership by RSL NSW, in the case of an application made to a sub-Branch,at which time the applicant will be requested to pay the current annual membership fee amount.
4. Upon receipt of the membership fee, the sub-Branch or ANZAC House will enter the applicant's details directly into the RSL NSW membership database, following which RSL NSW will as soon as practicable confirm acceptance to the sub-Branch of the new membership and issue a membership badge to the sub-Branch for presentation to the new Member, or alternatively confirm an ANZAC House applicant.
5. RSL NSW may decline to confirm acceptance of a new membership if, in its discretion, the applicant does not satisfy the membership criteria but will not do so without first consulting with the sub-Branch.
6. New members will be admitted and entered into the Membership Register by RSL NSW and recorded as being attached to the sub-Branch through which the application was made and accepted, or to ANZAC House where the application was made to ANZAC House with a request to be admitted as a member attached to ANZAC House.
7. An RSL NSW Member may be, with the Board's approval, attached to more than one sub-Branch (including being attached to ANZAC House) but will only have one vote as an RSL NSW Member and will only have voting rights attached to the first named or Primary sub-Branch or ANZAC House.
8. A sub-Branch may decide, in its discretion, not to accept Affiliate Members or Auxiliary Members to its sub-Branch.

## **Discretionary criteria**

9. Despite an applicant meeting the eligibility criteria set out in clauses 13 to 16 of this Appendix B, the Board in its discretion may decline to accept a sub-Branch's application for membership in circumstances where:
  - (a) it does not agree that the applicant meets the eligibility criteria;
  - (b) a person has previously receiving a warning from, or had their RSL NSW membership suspended or cancelled by, RSL NSW;
  - (c) a person is, in the opinion of the Board, not a Fit and Proper Person; or
  - (d) in the opinion of the Board it would be prejudicial to the interests or reputation of RSL NSW to admit the person as an RSL NSW Member.
10. The Board will provide written reasons to the sub-Branch and to the member for declining a membership application for any of the reasons set out above.

## **Membership Fees and renewal**

11. All RSL NSW Members must pay annual membership fees prescribed by the Board, if any, to the sub-Branch to which they are attached, or in relation to members attached to ANZAC House, to RSL NSW. The percentage amount of that fee to be submitted to RSL NSW will be an amount to be determined each year at the Annual General Meeting. The balance of the membership fee is to be retained by the sub-Branch.
12. Membership renewal fees will be submitted to the sub-Branch to which a member is attached, or in the case of members attached to ANZAC House, to RSL NSW.

## **Membership Eligibility**

### ***Service Member***

13. The following persons are eligible to be admitted as a Service Member:
  - (a) a person who, for a period of not less than six months, has been a member of the Australian Defence Force;
  - (b) a person who was a member of the Australian Defence Force for a period of less than six months and was discharged for medical reasons;
  - (c) a person who was a member of the Australian Defence Force for a period of less than six months and was discharged for any reason if the Board in their discretion determines the person should be admitted as a Service Member;
  - (d) a person who was, for a period of not less than six months, a member of the Armed Forces of:
    - (i) any country presently or formerly a member of the British Commonwealth;
    - (ii) any country or place presently or formerly a Crown Colony of the United Kingdom; or
    - (iii) the United States of America.

- (e) subject to providing proof of service and with the specific prior approval of the Board, a person to whom clause 13(d) of this Appendix B does not apply, but who is an Australian citizen or permanent resident and who in a theatre of conflict:
  - (i) either served with, supported or was otherwise engaged with the Australian Defence Force or the Armed Forces of those countries or places referred to in clause 13(d) above; or
  - (ii) served as a member of the Armed Forces of another country or place which, during that time of conflict, was an ally of the Commonwealth.

14. To be eligible to be a Service Member in any of the categories in clause 13 above, a person must be at least 18 years of age.

### **Affiliate Member**

15. The following persons are eligible to be admitted as an Affiliate Member:

- (a) a person who is any relative of a person (living or deceased) who is or was eligible to be a Service Member;
- (b) a person who has received an award for giving valuable service to the League;
- (c) a Cadet and/or Officer of Cadets over 17 years of age;
- (d) any person deemed by the Board to have provided significant service to the League.

### **Auxiliary Member**

16. Any person may apply to a sub-Branch to become an Auxiliary Member and be admitted as an Auxiliary Member of RSL NSW in accordance with the Standard Operating Procedures issued from time to time in relation to Auxiliaries.

### **Membership Awards**

#### ***Life Member***

- 17. A Service Member who has in the opinion of the Board, given long, continued and outstanding service to RSL NSW and the League, may, at the discretion of the Board of RSL National be appointed as a Life Member.
- 18. A Life Member will no longer be required to pay any annual membership fees.
- 19. A sub-Branch or the District Council may propose to the Board that a Service Member be granted Life Membership if the person has been a Service Member for at least 15 continuous years and has rendered not less than 10 years' outstanding service to the League, and the nominating entity agrees to pay any fee prescribed.
- 20. The Board may in its sole discretion recommend that RSL National grant Life Membership to a person who is properly proposed.
- 21. If the person proposed dies before the Board considers the proposal, the Board may still resolve to request that RSL National grant Life Membership to that person. Any badge and certificate will be given to the person's next of kin.



### **Honorary Member**

22. The Board may, in its discretion, recommend to the Board of RSL National that it grant Honorary Memberships.

### **Membership Badges**

23. Each RSL NSW Member will receive a membership badge reflecting their class of membership which must be worn only whilst being an RSL NSW Member.
24. The unauthorised wearing of an RSL NSW membership badge may constitute an offence under the *Discharged Servicemen's Badges Act 1964*.

### **Cessation or Cancellation of Membership**

25. A member may resign as an RSL NSW Member by giving notice in writing to RSL NSW.
26. The Board may cancel a Membership:
  - (a) if the RSL NSW Member fails to pay any annual membership fees by the due date;
  - (b) in exercising its powers under clause 17.2 .
27. In the event of the death of an RSL NSW Member, the membership will automatically cease from the date of the member's death.

## **APPENDIX C – MEMBERS’ MEETINGS CONDUCT AND VOTING PROCEDURE**

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### **Motions for General Meeting**

1. For the purposes of this Appendix C the provisions for a General Meeting apply to an Annual General Meeting.
2. A sub-Branch and/or a District Council may submit any motion it wishes to propose at a General Meeting by providing it, together with a brief supporting argument, to ANZAC House not less than 10 weeks before date of the General Meeting.
3. Motions will be reviewed by the Board, its nominated delegate or committee and may be:
  - (a) approved and accepted for inclusion on the agenda of the General Meeting;
  - (b) revised in form by the Board and approved as amended provided the revision does not change the substance or intent of the proposed motion;
  - (c) rejected and returned to the sub-Branch or District Council if the proposed motion, in the discretion of the Board, its delegate or committee:
    - (i) is inconsistent with or irrelevant to the Charitable Purpose or RSL NSW’s charitable obligations;
    - (ii) does not comply with the Constitution in form or substance;
    - (iii) conflicts with any statutory, regulatory or other legally binding provisions that regulate the activities, operations and conduct of RSL NSW; or
    - (iv) is not within the scope of power or authority of RSL NSW.
4. Motions approved under clause 3 of this Appendix C will be included in the agenda for the General Meeting and the sub-Branch or District Council will be notified accordingly.

### **Returning Officer**

5. Before sending the Notice of a General Meeting, the Board will appoint a Returning Officer.

### **Notice of Annual General Meeting**

6. A notice of General Meeting must be sent to sub-Branches and, if elections for Directors will be conducted at the meeting, to Service Members, via email or post by no later than four weeks before the General Meeting.
7. The notice of General Meeting must:
  - (a) confirm the date, time and place for the General Meeting;
  - (b) include an agenda;
  - (c) set out all items of business and all motions and proposed resolutions
  - (d) include any information and material in support of motions and proposed resolutions;
  - (e) include a statement that the Delegates have the right to appoint either the Chair, another Director or their District Council Delegate as a proxy, the procedure for doing so and the closing date for the receipt of proxies.

### **Holding a General Meeting at two or more places**

8. RSL NSW may hold a General Meeting at two or more places using any technology which gives the Delegates as a whole an opportunity to participate.
9. The technology used to hold a meeting in two or more places must allow:
  - (a) every Delegate attending the meeting to hear each person who addresses the meeting;
  - (b) every person who addresses the meeting to simultaneously address each of the Members attending the meeting; and
  - (c) the Chair to be aware of the proceedings in the other places at which the Chair is not present.
10. If a meeting is held in two or more places using technology, a quorum is taken to be present if the minimum number of Delegates required to form a quorum specified in clause 25 of this Appendix C is present in aggregate in all of the places at which the meeting is held.
11. A meeting held in two or more places using technology is taken to be held at the place at which the Chair is present.
12. If, either before or during the meeting, any technical difficulty causes one or more of the matters set out in clause 9 of this Appendix C to be not satisfied,
  - (a) the Chair may:
    - (i) adjourn the meeting until the difficulty is remedied; or
    - (ii) continue to hold the meeting and transact business in the place where the Chair is present (and any other place which is linked under clause 9); and
  - (b) no Member may object to the meeting being adjourned, being held or continuing.

### **Close of the Membership Register**

13. The Board will determine the date and time of the close of the Membership Register.

### **Conduct of the General Meeting**

14. The President, or Chair of the Board, will preside as chair of every General Meeting.
15. The Directors present may choose another Elected Director as chair if neither the President nor the Chair is present within 15 minutes after the time appointed for the meeting to start.
16. If the Directors do not choose a chair under clause 15 of this Appendix C or if all of the Directors' present decline to act as chair, then the Delegates present in person or by proxy, must choose a Service Member present in person to be chair.
17. The chair will not have a casting vote.
18. Subject to the specific matters prescribed in this Appendix C, the chair is responsible for the conduct of the General Meeting and may in their absolute discretion determine the procedures to be adopted at the meeting.
19. The chair may require the adoption of any procedure which is, in the chair's opinion, necessary or desirable to:

- (a) give Delegates a reasonable opportunity to make comments and ask questions;
  - (b) allow proper and orderly debate or discussion – including limiting the time that a Delegate may speak on a motion or other item of business before the meeting; and
  - (c) allow proper and orderly voting at the meeting – whether on a show of hands or on a poll.
20. The chair may terminate discussion or debate on any matter whenever the chair considers it necessary or desirable to do so for the proper conduct of the meeting.
21. The chair may refuse to allow debate or discussion on any matter which is not within the business in the notice of meeting.
22. The chair may refuse to allow any amendment to be moved to a resolution of which notice has been given.
23. The General Meeting must include:
- (a) a report by the President; and
  - (b) debate and voting on all resolutions proposed and approved in accordance with this Constitution.
24. In addition to the requirements of a General Meeting, an Annual General Meeting must include:
- (a) a presentation of the financial statements for the previous financial year and a report by the Board in relation to the financial statements; and
  - (b) a presentation of an auditor's report.
25. The quorum for a General Meeting is 50 Delegates who must be present at all times during the meeting.

## **Voting**

26. Each Delegate, or in the absence of the Delegate, the Alternate Delegate, is entitled to one vote on resolutions proposed at a General Meeting.
27. Voting on resolutions will take place at the meeting by either:
- (a) a show of hands;
  - (b) a poll; or
  - (c) through electronic voting mechanisms,
- at the chair's discretion.
28. The chair must inform the meeting before any vote is taken whether any proxy votes have been received by the chair, a Director or a District Council Delegate and, if so, how the proxy votes will be cast.
29. On a vote by show of hands, the decision of the chair will determine the result.
30. The chair does not need to state the number or proportion of the votes recorded for or against on a show of hands.
31. A poll may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least five Delegates present; or
- (b) the chair.

32. A poll in such case must be taken in the manner directed by the chair.

### **Proxies**

33. A Delegate eligible but unable for any reason to attend a General Meeting, may appoint the chair, a Director or their District Council Delegate as a proxy to vote on their behalf.
34. An appointment of proxy (proxy form) must be signed by the Delegate and one other representative of the Delegate's sub-Branch and must:
- (a) confirm the appointment of the chair, or if not appointing the chair, name the Director or District Council Delegate appointed as proxy; and
  - (b) identify the appointor Delegate and the Delegate's sub-Branch.
35. Proxy forms must be submitted in writing by post or email to the Returning Officer and must be received no later than five business days before the General Meeting.
36. Unless the Returning Officer receives written notice before the start or resumption of the General Meeting for which a proxy is given, a vote cast under the proxy is valid even if, before the proxy votes, the Delegate:
- (a) dies;
  - (b) is mentally incapacitated; or
  - (c) revokes the proxy's appointment.
37. A proxy appointment may specify the way the chair, Director or District Council Delegate must vote on a particular resolution.
38. A proxy vote must not be cast on a show of hands.
39. When a poll is held, a proxy vote:
- (a) does not need to be cast, unless the proxy form specifies the way the proxy must vote; and
  - (b) if the way the proxy must vote is specified on the proxy form, the proxy must be cast that way.
40. The chair is taken to be appointed as the proxy of a Delegate (regardless of anything to the contrary in the proxy form) to vote on the Delegate's behalf and in accordance with the Delegate's direction if the Director or District Council Delegate nominated in the proxy form is absent from the General Meeting.

## **APPENDIX D – DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES**

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### **DISPUTE RESOLUTION**

1. This Appendix sets out the procedure which applies in relation to Disputes referred to in clause 17.1 of this Constitution.
2. No person may start any dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure outlined in this Appendix D until that procedure has been concluded.
3. If a Dispute arises the parties to the Dispute must try to resolve the Dispute within 30 days of one party requesting the other or others to do so.

### **Mediation by District Council or District Presidents' Council**

4. If the Dispute is not resolved in accordance with clause 3 of this Appendix D:
  - (a) if the Dispute is between RSL NSW Members, or an RSL NSW Member and a sub-Branch, the parties to the Dispute or either of them may refer the Dispute to the District Council, which will appoint one or more District Council Executives to work with the parties to try and resolve the Dispute including by acting as a mediator to assist the parties in resolving the Dispute;
  - (b) if the Dispute is between an RSL NSW Member or a sub-Branch on the one hand and any of a District Council Executives, District Council, RSL NSW or a Director, the parties to the Dispute or either of them may refer the Dispute to the District Presidents' Council who will work with the parties to try and resolve the Dispute including by acting as a mediator to assist the parties in resolving the Dispute.
5. If the parties seek to have the Dispute mediated in accordance with clause 4, the District Council Executives or District Council President seeking to mediate:
  - (a) must not have a personal interest in the Dispute, and
  - (b) must not be biased towards or against anyone involved in the Dispute.
6. The District Council Executives or District Council President/s assisting the parties in mediating a Dispute must :
  - (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are afforded procedural fairness;
  - (d) not make a decision on the Dispute; and
  - (e) issue a report to the parties on the outcome of the mediation.

### **External Mediation**

7. If a Dispute is not resolved with the assistance of District Council Executives or District Council President/s, either party may agree or request that an external mediator be appointed and must attempt in good faith to settle the dispute by external mediation.
8. The external mediator must be:

- (a) chosen by agreement between the parties to the Dispute, or
- (b) where the parties do not agree, a person nominated at the request of either party by the President of the Law Society of New South Wales.

## **DISCIPLINARY PROCEDURES**

9. This applies to the exercise of the Board's powers referred to in clause 17.2 of this Constitution.

### **Referral to RSL NSW Tribunal**

10. Before making any resolution, decision or determination about a matter under clause 17.2, the Board must refer the matter to the RSL NSW Tribunal.

11. Before referring a matter to the RSL NSW Tribunal, the Board must inform an RSL NSW Member, sub-Branch, Trustee, sub-Branch Executive, District Council or the District Council Executive as the case may be (**the Respondent**) that the matter is being referred to the RSL NSW Tribunal.

The RSL NSW Tribunal will hear, determine and adjudicate the matter and make a recommendation to the Board in accordance with the provisions of clause 22 of this Appendix (**Disciplinary Recommendation**).

### **Composition of RSL NSW Tribunal**

12. The RSL NSW Tribunal will be made up of between five and eight members, which will comprise five Service Members and may also comprise independent persons who are not RSL NSW Members who the Board determines have the requisite qualifications, skills and experience. RSL NSW employees must not be appointed to the RSL NSW Tribunal.

13. A member of the RSL NSW Tribunal must not hear or determine any matter which involves a sub-Branch or District Council or a member of a sub-Branch or District Council of which the RSL NSW Tribunal Member is himself or herself a member.

### **Function and powers of RSL NSW Tribunal**

14. In exercising the power to hear and adjudicate matters referred to it by the Board and making a Disciplinary Recommendation, the RSL NSW Tribunal may determine whether a Respondent:

- (a) is in breach of this Constitution;
- (b) has failed to comply with any notice or request issued by RSL NSW under this Constitution;
- (c) has failed to comply with any Policies and Standard Operating Procedures from time to time;
- (d) has done anything which is not in support or pursuance of the Charitable Purpose, or has not complied with all relevant statutory and regulatory requirements;
- (e) has applied sub-Branch Property or any of its income or assets in a manner which is inconsistent with the furtherance or pursuance of the Charitable Purpose;
- (f) has done anything which is prejudicial to, or which may cause damage to the reputation of RSL NSW;
- (g) is no longer a Fit and Proper Person;
- (h) has done anything which causes a sub-Branch to do, or contributes to a sub-Branch:
  - (i) breaching this Constitution;



- (ii) in the case of an incorporated sub-Branch, doing anything in breach of the applicable Model sub-Branch Constitution;
  - (iii) failing to comply with any notice or request issued by RSL NSW to an RSL NSW branch;
  - (iv) failing to comply with any Policies and Standard Operating Procedures;
  - (v) doing anything which is prejudicial to, or which may cause harm or damage to the reputation of RSL NSW;
  - (vi) doing anything which is not in support or pursuance of the Charitable Purpose, or does not comply with all relevant statutory and regulatory requirements;
    - having applied sub-Branch Property or any of its income or assets in a manner which is inconsistent with the furtherance or pursuance of the Charitable Purpose.
15. In considering a matter and before making a Disciplinary Recommendation, the RSL NSW Tribunal must ensure that it carries out its functions and procedures fairly.
16. At least 28 days before convening a meeting of the RSL NSW Tribunal at which a disciplinary matter is to be considered (**the Disciplinary Meeting**), the RSL NSW Tribunal must notify the Respondent in writing:
- (a) that the Board has referred a matter to the RSL NSW Tribunal, seeking a recommendation on whether the Board should exercise any of its powers under clause 17.2 of the Constitution,
  - (b) that the matter will be considered at the Disciplinary Meeting;
  - (c) the date of the Disciplinary Meeting;
  - (d) details of the alleged matter, act or omission giving rise to the referral to the RSL NSW Tribunal, including providing all documents, information, materials and allegations, written and oral which have been provided to the RSL NSW Tribunal by the Board and upon which the referral is based; and
  - (e) the nature and details of the Disciplinary Recommendation which the RSL NSW Tribunal may make.
17. The Respondent must also be notified that he or she is entitled to present information, written arguments and submissions, documents, materials and oral argument to the RSL NSW Tribunal by:
- (a) sending them to RSL NSW Tribunal before the Disciplinary Meeting, and
  - (b) attending and speaking at the Disciplinary Meeting.
18. If a Respondent wishes to be accompanied or represented by another person at the Disciplinary Meeting, the Respondent must notify the RSL NSW Tribunal or its nominee in writing prior to the Disciplinary Meeting, by providing the name of any proposed representative and whether they are an RSL NSW Member. A Respondent may only be accompanied or represented by one other person at the Disciplinary Meeting and this person must not be a legal practitioner.

19. If the Respondent is a sub-Branch, it may be represented at the Disciplinary Meeting by any two of its President, Vice-President, Secretary, or Treasurer.
20. A transcript of the Disciplinary Meeting must be taken and provided to the Board and the Respondent within a reasonable time after a Disciplinary Meeting, and prior to the issuing of a Disciplinary Recommendation.
21. After considering any materials, submissions and explanations provided by the Respondent in writing and/or orally at the Disciplinary Meeting, the RSL NSW Tribunal may determine to recommend to the Board that it resolve to do any of the following:
  - (a) take no further action;
  - (b) warn the Respondent;
  - (c) suspend an RSL NSW Member for a period of no more than 12 months; or
  - (d) cancel the RSL NSW Member's membership;
  - (e) if the Respondent is a sub-Branch, revoke the Charter;
  - (f) if the Respondent holds office as a Trustee, a sub-Branch Executive or a District Council Executive, direct that the Respondent cease to hold that office; or
  - (g) refer any Disciplinary Recommendation to the next general meeting to be voted on by Delegates (or Alternate Delegates).
22. The RSL NSW Tribunal will simultaneously provide a copy of the Disciplinary Recommendation to the Board and the Respondent.

### **Board Resolution**

23. The Board must notify the Respondent that the Board has received the Disciplinary Recommendation and inform the Respondent of the date on which the Board will consider the Disciplinary Recommendation which will be a date no earlier than 28 days after the date of such notice being given to the Respondent.
24. On considering the Disciplinary Recommendation, the Board may pass a resolution giving effect to the Disciplinary Recommendation (**Disciplinary Resolution**).
25. Upon passing a Disciplinary Resolution the Board must inform the Respondent in writing.
26. The RSL NSW Tribunal cannot recommend and the Board cannot resolve to fine or issue a monetary penalty to a Respondent.

### **Review of Disciplinary Recommendation**

27. A Respondent may notify the Board in writing within 14 days of receiving a copy of a Disciplinary Recommendation that it requires a review of the Disciplinary Recommendation (**Disciplinary Review**).
28. If a Disciplinary Review is requested, the Board must convene a disciplinary review panel of three persons from the panel described in clause 30 of this Appendix D, at least two of whom must be RSL NSW Members and at least one of which must have formal legal qualifications and will preferably be a legal practitioner currently admitted to practice in any state or federal jurisdiction in Australia (**Review Panel**).

29. The Disciplinary Review Panel will be convened from a standing panel of persons who are eligible and available to be appointed by the Board as a member of the Review Panel from time to time to conduct a Review. The standing panel will comprise eligible persons who have been selected and recommended to the Board by the District Presidents' Council. A person appointed to the Review Panel must not be a member of the RSL NSW Tribunal or have been a member of the RSL NSW Tribunal at the time when the Disciplinary Recommendation the subject of the Disciplinary Review was made.
30. The Board must refer a matter the subject of a Disciplinary Review application to the Review Panel and must ensure that the Review Panel is provided with all material that was provided to the RSL NSW Tribunal, including by formally requesting in writing that the RSL NSW Tribunal provide all material in its possession to the Review Panel including the transcript of the Disciplinary Meeting.
31. The Respondent and the Board may provide written submissions to the Review Panel before the Review Panel makes a determination.

### **Powers of Review Tribunal**

32. The Review Tribunal can only review the Disciplinary Recommendation for the purpose of considering and determining whether:
  - (a) the procedural provisions prescribed in this Appendix D have been followed;
  - (b) there was sufficient material before the RSL NSW Tribunal to justify the Disciplinary Recommendation;
  - (c) the RSL NSW Tribunal has correctly interpreted and applied the provisions of the Constitution; and/or
  - (d) the recommended action in the Disciplinary Recommendation is reasonable in the circumstances.
33. The Review Panel can affirm or overturn the Disciplinary Recommendation or refer the matter back to the RSL NSW Tribunal for reconsideration (**Review Determination**). The Review Panel must give written reasons for reaching its Review Determination.
34. The Board must notify the Respondent that the Board has received the Review Determination and inform the Respondent of the date on which the Board will consider the Review Determination.
35. On considering the Review Determination, the Board must pass a resolution giving effect to the substance of the Review Determination.
36. If the Review Determination requires the Board to refer the matter back to the RSL NSW Tribunal for reconsideration, the Board and the RSL NSW Tribunal must follow the relevant procedures set out in this Appendix D.
37. Subject to clause 38 of this Appendix D, the Review Determination, or where applicable, a Disciplinary Recommendation made following the matter being referred back and reconsidered by the RSL NSW Tribunal, will be final.
38. If a National Tribunal exists on the date that a Review Determination or a Disciplinary Recommendation referred to in clause 37 of this Appendix D is made, a Respondent may exercise any appeal rights available under the RSL National Constitution and By-Laws in effect at that time.