

CONFIDENTIAL DISCUSSION DRAFT

[NAME] sub-Branch Inc
[NUMBER]



R S L N S W

MODEL CONSTITUTION

[for an Incorporated Association]

"The Price of Liberty is Eternal Vigilance"

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Draft

Constitution of [name] sub-Branch Limited ([insert number])
Adopted on [insert date]

1. Association

- 1.1 The Association is an incorporated Association which was established as a charity and continues to operate as a registered charity.
 - 1.2 The Association must only pursue the Charitable Purpose.
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2. Charitable Purpose

- 2.1 The purpose of the Association is the charitable purpose set out in the RSL NSW Constitution and assisting, supporting and facilitating RSL NSW in carrying out and maintaining their joint Charitable Purpose including by fulfilling its obligations as an RSL NSW sub-Branch under the RSL NSW Constitution.
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3. Application of income and property

- 3.1 The Association is a not-for-profit entity which operates as a charity and its income and assets:
 - a) must only be used to carry out the objects in pursuit of the Charitable Purpose;
 - b) must not be distributed, paid or transferred, directly or indirectly, by way of pecuniary gain for any Association Member; and
 - c) must only be distributed, paid or transferred, directly or indirectly in accordance with the RSL NSW Constitution.
- 3.2 Clause 3.1 above does not prevent the Association from making reasonable and proper payments in good faith to any person including RSL NSW or a person who is an RSL NSW Member if the payment is:
 - a) a payment for the purpose of carrying out, undertaking, supporting or maintaining the Charitable Purpose and/or for undertaking all things necessary, ancillary or incidental to carrying out, undertaking, supporting or maintaining the Charitable Purpose;
 - b) for goods or services supplied or provided to the Association in the ordinary course of it pursuing or carrying out its Charitable Purpose and its functions as an RSL NSW sub-Branch;
 - c) a commercial rent for property used by the Association which has the prior approval of the sub-Branch Committee;
 - d) reimbursement for out of pocket expenses incurred as a sub-Branch Officeholder, sub-Branch Member or contractor of the Association, in connection with Association business and activities in accordance with this Model Constitution;
 - e) a payment made to any Committee Member to indemnify them in accordance with the RSL NSW Constitution or
 - f) a premium for insurance cover to indemnify a Committee Member.

4. Limited liability

- 4.1 The liability of an Association Member to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, paid by the Association Member in respect of Membership of the Association as required by clause 9. This contribution will be used to pay:
- a) any debts and liabilities of the Association; and/or
 - b) the costs associated with the winding up.

5. Amendments to this Model Constitution

- 5.1 This Model Constitution, and any provision in this Model Constitution, may only be amended, repealed or replaced by a special resolution passed by the Association Members.
- 5.2 If the RSL NSW Constitution is amended so that this Model Constitution also needs to be amended, the Committee must call a general meeting of the Association and put to the Association Members a special resolution which would if passed, amend this Model Constitution so that it is in compliance with the RSL NSW Constitution. If that resolution is not brought by the Committee in a timely fashion or if that special resolution fails to be passed, then this Association would cease to be a sub-Branch of RSL NSW and will be wound up in accordance with the relevant law and the RSL NSW Constitution.
- 5.3 Any amendment to, or repeal or replacement of, this Model Constitution, will take effect from the date it is registered in accordance with the Act. The Secretary must register any new or amended Model Constitution within 28 days of the special resolution being passed and subject to any condition or requirement imposed by the resolution, or under this Model Constitution being met.

6. Powers of Association

- 6.1 The Association has all the powers of a natural person and may from time to time invest any or all of its assets and income, provided that all income earned from such investment is applied or invested in accordance with:
- a) the Act;
 - b) this Model Constitution; and
 - c) the obligations of the Association as a sub-Branch under the RSL NSW Constitution.
- 6.2 The business of the sub-Branch is otherwise to be conducted in accordance with the RSL NSW Constitution.
- 6.3 Without limiting clause 6.1 above, the Association may invest in, and provide loans (whether on a secured or unsecured basis) and make donations to organisations affiliated with the Association in pursuit of the Charitable Purpose, including to RSL NSW.

7. Sub-Branch Members

- 7.1 A person is eligible to be an Association Member if the person is confirmed by RSL NSW in accordance with the RSL NSW Constitution, to be an RSL NSW Member attached to the sub-Branch.

- 7.2 The Secretary must, as soon as practicable after receiving the confirmation referred to in paragraph 7.1 above, enter or cause to be entered the applicant's name in the Register of Members within and, on the name being so entered, the applicant becomes an Association Member.
- 7.3 A person ceases to be an Association Member if the person:
- a) dies; or
 - b) ceases to be an RSL NSW Member attached to the sub-Branch pursuant to the RSL NSW Constitution.
- 7.4 A right, privilege or obligation which a person has by reason of being an Association Member:
- a) is not capable of being transferred or transmitted to another person, and
 - b) terminates on cessation of the person's membership of the Association.
- 7.5 For the avoidance of doubt, this Model Constitution does not affect or limit the rights of the sub-Branch or any sub-Branch Member under the RSL NSW Constitution.
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8. Register of Members

- 8.1 The secretary must establish and maintain a Register of Members (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is an Association Member together with the date on which the person became an Association Member.
- 8.2 The Register of Members must be kept in NSW:
- a) at the main premises of the Association;
 - b) if the Association has no premises, at the Association's official address.
- 8.3 The Register of Members must be open for inspection, free of charge, by any Association Member at any reasonable hour.
- 8.4 An Association Member may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- 8.5 If an Association Member requests that any information contained on the register about the Association Member (other than the person's name) not be available for inspection, that information must not be made available for inspection.
- 8.6 An Association Member must not use information about a person obtained from the register to contact or send material to the person, other than for:
- a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the Association or other material relating to the Association, or
 - b) any other purpose necessary to comply with a requirement of the Act, Regulation or RSL NSW Constitution.
- 8.7 If the Register of Members is kept in electronic form:
- a) it must be convertible into hard copy, and

- b) the requirements in clause 8.6 apply as if a reference to the Register of Members is a reference to a current hard copy of the Register of Members.
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9. Member Fees

- 9.1 An Association Member must pay to the Association:
 - a) on admission to membership, a fee of \$1; and
 - b) prior to the first day of the financial year of the Association, an annual membership fee of \$1.
 - 9.2 The Association Membership fee is separate and additional to any fees payable by the Member to RSL NSW pursuant to the RSL NSW Constitution.
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10. The Committee

- 10.1 The Association is governed by a Committee which:
 - a) is to be comprised of no less than 3 and no more than 7 Committee Members; and
 - b) corresponds with the sub-Branch Executive elected in accordance with the RSL NSW Constitution.
- 10.2 Subject to the Act, the Regulation and the RSL NSW Constitution, the Committee:
 - a) is to control and manage the affairs of the Association, and
 - b) may exercise all the functions that may be exercised by the Association, other than those functions that are required by the RSL NSW Constitution and this Model Constitution to be exercised by Association Members at a General Meeting; and
 - c) has power to perform all the acts and do all things that appear to the Committee to be necessary or desirable for the proper management of the affairs of the Association.
- 10.3 To be a Committee Member a person must:
 - a) be a Fit and Proper Person; and
 - b) within six (6) months of being elected, and with no prior experience as a Committee Member successfully complete a governance training course prescribed by RSL NSW;
 - c) have been elected to the sub-Branch Executive in accordance with the RSL NSW Constitution.
- 10.4 To be a Committee Member a person must not:
 - a) have had their RSL NSW Membership cancelled at any time;
 - b) have been removed from holding any office within RSL NSW or a sub-Branch at any time;
 - c) be bankrupt, insolvent or have ever been convicted of a serious indictable offence;
 - d) have been disqualified by any means from managing a corporation under the Corporations Act 2001, suspended, removed or disqualified as a responsible person

under the ACNC Act, fined, convicted or found by the Minister not to be a fit and proper person under the Charitable Fundraising Act.

- 10.5 A Committee Member will be appointed following their election to the sub-Branch Executive pursuant to clause 15.9 of the RSL NSW Constitution.
- 10.6 A Committee Member has the same duties as they do on the sub-Branch Executive in accordance with the RSL NSW Constitution and must perform their role in accordance with the Act and the RSL NSW Constitution.
- 10.7 There is no maximum number of consecutive terms for which a committee Member may hold office.
- 10.8 The office of a Committee Member will be automatically vacated, and the Committee Member will cease to hold office if the Committee Member:
 - a) ceases to be eligible to serve on, is removed or resigns from the sub-Branch Executive in accordance with the RSL NSW Constitution.
 - b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - c) otherwise no longer fulfils the eligibility criteria in clause 10 of this Model Constitution.

Casual Vacancy

- 10.9 If a casual vacancy is created pursuant to clause 15.12 of the RSL NSW Constitution in relation to a sub-Branch Executive a casual vacancy is also created in relation to the corresponding role on the Committee. This vacancy must be filled by the person appointed to the sub-Branch Executive in accordance with the RSL NSW Constitution.

Auditor cannot be Committee Member

- 10.10 An auditor of the Association or partner or employee or employer of the auditor must not be Committee Member.

11. Committee Meetings

- 11.1 the Committee may meet for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit subject to the RSL NSW Constitution and this clause 11 of this Model Constitution.
- 11.2 The Committee may determine the quorum necessary for the transaction of business, but until such determination is made, the quorum will be three (3) Committee Members.
- 11.3 If a quorum is present at the beginning of the meeting, it is deemed to be present throughout the meeting even if a Committee Member absents himself or herself, or absents from voting, for any reason.
- 11.4 In the event of a casual vacancy or vacancies on the Committee, the remaining Committee Members may act but to take any steps necessary to increase the number of Committee Members to the number required to constitute a quorum, to fill the vacancies pursuant to clause 10.9 and/or for calling a General Meeting but for no other purpose.
- 11.5 No business is to be transacted by the Committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to

stand adjourned to the same place and at the same hour of the same day in the following week.

- 11.6 If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
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12. Delegation

- 12.1 The Committee may delegate its powers to a sub-Branch committee in accordance with clause 15.4 of the RSL NSW Constitution.
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13. General Meetings and Annual General Meeting

- 13.1 The Association must hold General Meetings at least quarterly, one of which must be the Annual General Meeting.
- 13.2 The Association must hold its Annual General Meeting within 6 months after the close of the Association's Financial Year.
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14. Annual general meetings - calling of and business at

- 14.1 The Annual General Meeting is subject to the Act and to clause 13, to be convened on the date and at the place and time that the Committee thinks fit.
- 14.2 In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting is to include the following:
- a) to confirm the minutes of the last preceding Annual General Meeting and of any special general meeting held since that meeting,
 - b) to receive from the committee reports on the activities of the Association during the last preceding financial year,
 - c) to elect office-bearers of the Association and ordinary committee Members,
 - d) to receive and consider any financial statement or report required to be submitted to Members under the Act.
- 14.3 An Annual General Meeting must be specified as that type of meeting in the notice convening it.
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15. Calling of General Meetings

- 15.1 General Meetings of the Association are general meetings of the sub-Branch called and conducted in accordance with the RSL NSW Constitution.
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16. Notice of Meetings

- 16.1 Notice of a General Meeting of the Association must be provided in accordance with the RSL NSW Constitution, except if the nature of the business proposed to be dealt with at a

General Meeting requires a special resolution of the Association, in which case clause 16.2 applies.

- 16.2 For a meeting requiring special resolution of the Association Members, the Secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each Association Member specifying, in addition to any other matter required to be specified pursuant to the RSL NSW Constitution, the intention to propose the resolution as a special resolution.

17. Quorum for general meetings

- 17.1 No item of business is to be transacted at a general meeting unless a quorum of Association Members is present. The quorum and conduct of a General Meeting if a quorum is not present is as prescribed by the relevant provisions of the RSL NSW Constitution.

18. Presiding Member

- 18.1 The presiding member of any General Meeting is as prescribed by the relevant provisions of the RSL NSW Constitution.

19. Making of decisions

- 19.1 A question arising at a General Meeting of the Association is to be determined in accordance with the relevant provisions of the RSL NSW Constitution.

20. Special resolutions

- 20.1 A Special Resolution may only be passed by the Association in accordance with section 39 of the Act.

21. Voting

- 21.1 Voting at a General Meeting may only be undertaken in accordance with the relevant provisions of the RSL NSW Constitution.

22. Proxy votes

- 22.1 Proxy voting may only be undertaken in accordance with the relevant provisions of the RSL NSW Constitution.

23. Postal or electronic ballots

- 23.1 The Association may hold a postal or electronic ballot (as the Committee determines) to determine any issue or proposal.

- 23.2 A postal or electronic ballot is to be conducted in accordance with Schedule 3 of the Regulations.
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24. Use of Technology

- 24.1 Any meeting of the Association may be held at 2 or more venues using any technology approved by the Committee that gives any eligible Association Member a reasonable opportunity to participate.
- 24.2 A Member who participates in a meeting using that technology is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.
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25. Insurance

- 25.1 The Association may effect and maintain insurance.
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26. Funds - source

- 26.1 The funds of the Association are to be derived from donations and, subject to any resolution passed by the Association in general meeting, any other sources that the committee determines.
- 26.2 All money received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank or other authorised deposit-taking institution account.
- 26.3 The Association must, as soon as practicable after receiving any money, issue an appropriate receipt.
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27. Funds - management

- 27.1 Subject to any resolution passed by the Association in General Meeting, the funds of the Association are to be used solely in pursuance of the objects of the Association in the manner that the Committee determines.
- 27.2 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.
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28. Distribution of property on winding up of Association

- 28.1 Subject to clause 28.2 below, upon the winding up or dissolution of the Association, if there remains after satisfaction of all of its debts and liabilities any property whatsoever, the property must not be paid to or distributed amongst Association Members.
- 28.2 Subject to the Act and the Regulations, provided that RSL NSW continues to fulfill the requirements of clause 28.3 below, the Association must give or transfer any property and assets available after all liabilities of the Association have been discharged to RSL NSW or as RSL NSW directs in accordance with the RSL NSW Constitution, and pass any special resolution required under the Act and do any thing required to effect such gift or transfer. If

RSL NSW does not fulfill the requirements of clause 28.3 below, then any property and assets available upon a winding up or dissolution after all liabilities of the Association have been discharged must be transferred to another entity having similar charitable purposes as the Association to be chosen by a majority resolution of Association Members at a General Meeting.

- 28.3 Property of the Association must be dealt with by the Association in accordance with clause 28.2 above provided that RSL NSW continues to have charitable purposes similar to the Charitable Purpose.

29. Change of name, objects and constitution

- 29.1 An application for registration of a change in the Association's name, objects or constitution in accordance with section 10 of the Act is to be made by the Secretary as Public Officer.

30. Custody of books etc

- 30.1 Except as otherwise provided by this constitution, all records, books and other documents relating to the Association must be kept in New South Wales:
- a) at the main premises of the Association, in the custody of the Secretary or as otherwise determined by the Committee; or
 - b) if the Association has no premises, at the Association's official address, in the custody of the public officer.

31. Inspection of books etc

- 31.1 The following documents must be open to inspection, free of charge, by an Association Member at any reasonable hour:
- a) records, books and other financial documents of the Association;
 - b) this Model Constitution;
 - c) minutes of all Committee meetings and General Meetings of the Association.
- 31.2 An Association Member may obtain a copy of any of the documents referred to in clause 31.1 on payment of a fee of not more than \$1 for each page copied.
- 31.3 Despite clauses 31.1 and 31.2, the Committee may refuse to permit an Association Member to inspect or obtain a copy of records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

32. Service of notices

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

33. Financial year

- 33.1 The financial year of the Association is:
- a) the period of time commencing on the date of incorporation of the Association and ending on the following 30 June, and
 - b) each period of 12 months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

34. Dispute Resolution and Disciplinary Procedures

- 34.1 Any Dispute or Disciplinary matter arising in relation to the Association must be dealt with in accordance with the RSL NSW Constitution.

35. RSL NSW Constitution

- 35.1 The Association must comply with all relevant law and the RSL NSW Constitution. The Association acknowledges that the Board of RSL NSW may direct it to comply with all relevant law and the RSL NSW Constitution and that if the Association does not comply then the Board of RSL NSW may exercise its powers under the RSL NSW Constitution to ensure that the Association complies with the relevant law and the RSL NSW Constitution.
- 35.2 If the Association is not a registered charity (even if it remains a charity), the Act overrides any clause in this Model Constitution which is inconsistent with that Act.

36. Interpretation

- 36.1 In this Model Constitution, unless the context otherwise requires:
- a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes every gender;
 - (iii) the Act, any section, regulation or schedule of the Act or any other legislation is a reference to that law as amended, consolidated, supplemented or replaced;
 - (iv) **in writing** or **written** includes printing, lithography, photography and other means of representing or reproducing words in a visible form;
 - (v) any person includes a reference to any individual, company, body corporate, Association, partnership, firm, joint venture, trust or government agency;
 - (vi) the word **including** or **includes** means **including but not limited to or including without limitation**; and
 - b) headings are for convenience only and must be ignored in interpreting this Model Constitution.

37. Definitions

- 37.1 In this Model Constitution, words with a capital letter have the meaning set out below:

Act means the *Incorporated Associations Act 2009 (NSW)*.

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

Annual General Meeting means an annual general meeting of the Association held in accordance with this Model Constitution.

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

Charitable Purpose means the purpose set out in clause 2 of this Model Constitution and being the same charitable purpose as set out in the RSL NSW Constitution.

Charter means a document issued by RSL NSW to an RSL NSW 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 the RSL NSW Constitution.

Committee means the governing committee of the Association.

Committee Member means a member of the Committee

Disciplinary Matter means any disciplinary matter arising out of this Model Constitution.

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

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 under the RSL NSW Constitution or of any office held under this Model Constitution.

General Meeting means a general meeting of the Association held under this Model Constitution and includes the Annual General Meeting.

Model Constitution means the constitution of the Association for the time being in force and defined as a Model sub-Branch Constitution in the RSL NSW Constitution.

Public Officer means the Secretary who must be nominated by the Association as the Association's public officer in accordance with the Act and who must perform the duties prescribed by the Act.

Register of Members means the register of Association Members maintained in accordance with this Model Constitution.

Regulations means the *Incorporated Associations Regulations 2016 (NSW)*.

RSL NSW means The Returned and Services League of Australia (NSW Branch) incorporated under the RSL NSW Act.

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

RSL NSW Constitution means the constitution of RSL NSW as amended from time to time.

RSL NSW Member means a person admitted in a category of Membership pursuant to the RSL NSW Constitution.

RSL NSW Membership means membership of RSL NSW.

RSL NSW sub-Branch means a sub-Branch of RSL NSW holding a Charter issued pursuant to the RSL NSW Constitution.

Secretary means the secretary of the Association, being the person appointed to the sub-Branch Executive in accordance with the RSL NSW Constitution who will also be the Public Officer for the purposes of the Act.

sub-Branch means [name] RSL NSW sub-Branch.

sub-Branch Executive means the executive of the sub-Branch as appointed pursuant to the RSL NSW Constitution.

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

sub-Branch Officer means a sub-Branch Executive member and any other relevant officer, employee, former officer or former employee of the Association.