

CORPORATIONS ACT 2001
A Proprietary Company Limited by Shares

CONSTITUTION



HCA PHILANTHROPY PTY LIMITED

ACN 091 483 635

[Formerly HCA Leadership Programs Pty Ltd]

Adopted 6th May 2011

Constitution of HCA Philanthropy Pty Limited

ABN 93 091 83 635

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CONSTITUTION OF HCA PHILANTHROPY PTY LIMITED

Recitals:

- A. Harvard Club of Australia Inc was founded in 1961. Its members reside in all states of Australia and overseas.
- B. The Club promotes social and fraternal fellowship among Australians who have affinity with Harvard University as a result of teaching, learning and conducting research there. The Club encourages its members to 'give back', i.e. to give practical expression to their high level of education by creating matching or enhanced benefits for the Australian community.
- C. The Club supports this objective by raising money to fund scholarships and research at senior Australian universities and institutions.
- D. In 1967, the Club formed a joint venture with the Australia National University to create the R G Menzies Scholarship to Harvard [®] funded by donations from Club members and Club activities.
- E. In 2000, the Club formed HCA Leadership Programs Pty Ltd to raise funds to support the Club's objectives by conducting executive educational programs.
- F. Leadership Programs are based on Harvard Business School executive education courses and are presented by Faculty members who permit the Company to conduct such programs in Australia subject to conditions listed in Addendum A.
- G. In 2001, the Club created Harvard Club of Australia Non-profit Fellowships to enable senior Australian non-profit managers to attend executive education courses at Harvard Business School.
- H. In 2003, the Club formed Harvard Club of Australia Foundation, a Private Ancillary Fund specifically to raise money and manage such funds for the benefit of Australian scholarships and research.
- I. In 2004, the Club created Australia-Harvard Fellowships to fund collaborative science and technology research projects in Australia.
- J. In 2006 the Club created the Nonprofit Leaders' Workshop to bring the benefits of the Harvard approach to a wider group of senior Australian Nonprofit executives with a course taught in Australia on the back of the annual Leadership Program. The first course was held in 2007.
- K. In 2010 the Club, in partnership with the Roberta Sykes Foundation, created the Roberta Sykes Harvard Club Scholarship which aims to provide an Indigenous Australian with the opportunity to undertake postgraduate study at Harvard University.
- L. Harvard Alumni Association has given the Club permission to use the abbreviation "HCA" for Harvard Club of Australia in the name of this company.
- M. The Club now requires an incorporated, special purpose company with an operating Board to raise funds, to act as a Trustee of existing and future funds and to manage its awards and projects.
- N. The Club wishes to utilise HCA Leadership Programs Pty Ltd for this purpose by changing its name and its Constitution.

Definitions:

- "Awards" means the scholarships and fellowships funded by the Funds or funded in whole or in part by donations from individuals, trusts or foundations associated with club members
- "AGM" means Annual General Meeting
- "ANU" means the Australian National University
- "ASIC" means the Australian Securities and Investment Commission or its successors
- "Board" means the Directors acting in meeting
- "Chairman" means that person appointed Chairman of the Company pursuant to Rule 13
- "Club" means Harvard Club of Australia Incorporated

- “Company” means the Company constituted by this Constitution
- “Company Officers” means a Director, Secretary, Public Officer, manager, or employee of the Company and all other persons appointed by the Board to undertake given tasks for the Company whether for a fee or as a volunteer
- “Council” means the governing body of the Club
- “Councillor” means an elected member of the Council
- “Constitution” means this Constitution
- “Corporations Act” means the *Corporations Act 2001 (Cth)* as amended or modified from time to time or any replacement to that act
- “Director” means a person properly appointed as a Director of the Company
- “Executives” means the President, Vice President, Secretary and Treasurer of the Club
- “Financial Year” means a year ended 30 June.
- “Funds” means the Harvard Club of Australia Foundation Private Ancillary Fund ABN 61 809 039 121 at Perpetual Trustees, its successor funds and any other funds created by the Club
- “Harvard” means Harvard University, Massachusetts, USA and its Schools and Institutions
- “HCA” means the Club
- “Law” means the Corporations Law and any other applicable law
- “Member” means an entity who pursuant to Rule 6 has become and who has not ceased to be a Member of the Company
- “Menzies” means the R G Menzies Scholarship to Harvard
- “Notice” means a notice given to the Member or a Director
- “Objects” means the objectives for which the Funds and Divisions were created
- “Divisions” means R G Menzies Scholarship to Harvard, Leadership Programs, Nonprofit Leaders Workshops, Australia-Harvard Fellowships, Nonprofit Fellowships and other divisions added from time to time.
- “Property” means any real property owned by, gifted or bequeathed to or purchased by the Club or the Funds or the Company for the benefit of the Funds including any accumulated mutual funds of the Club.
- “Public Officer” means the Public Officer of the Company as required by the Australian Taxation Office
- “Purpose” means the *raison d’être* referred to in Rule 2
- “Responsible Person” means a person who has a degree of responsibility to the community as a whole and includes school principal, judges, clergymen, solicitors, doctors, accountants and other professional persons, mayors, councillors, town clerks and members of parliament. Generally they are persons who perform a public function or they belong to a professional body (such as the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards) which has a professional code of ethics and rules of conduct or as generally approved by the Commissioner of Taxation.
- “Rule” means a rule of this Constitution
- “Secretary” means the Secretary of the Company as required by the Corporations Act

Interpretations:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Except where the context requires otherwise, words and phrases given a meaning by the *Corporations Act* have the same meaning in this Constitution.
- (c) A reference to any person or body shall include a reference to a company, its authorised officers, agents, delegates, successors, assigns, executors and administrators.
- (d) Unless there is something in the subject or context which is inconsistent:
 - (i) the singular includes the plural and vice versa;
 - (ii) each gender includes the other gender;
 - (iii) the word “person” means a natural person;
 - (iv) where a word or term is defined, any other part of speech or other grammatical form of that word or term has a cognate meaning.

Rule 1. Name of the Company

The name of the Company is “HCA Philanthropy Pty Limited”.

Rule 2. Purpose and Powers

- 2.1 The purpose of the Company is to govern the current and future philanthropic activities of the Club to achieve the Objects of the Funds and the Divisions. For this sole purpose of carrying out the Company’s Objects and not otherwise, the Company has the power to do all things as is necessary, incidental or conducive to the attainment of the Objects of the Company, the Funds and the Divisions and for that purpose and not otherwise the Company has the legal capacity of a natural person with all the consequences and powers conferred by section 124(1) of the Act.
- 2.2 In addition and without limiting to the powers set out in clause 2.1 and without limitation the Company has the following powers in order to further its objects (but not for any other purpose);
- (a) to seek donations and bequests and to raise funds and subject to Rule 18, utilise all funds surplus to general operating expenses to support the interchange of people and ideas in the advancement of education and research;
 - (b) to promote or undertake in Australia, executive education programs, workshops, conferences, seminars, publications, meetings, exhibitions, symposia and other activities and to carry out field projects and training programs;
 - (c) to engage visiting and domestic educators for the purposes outlined in Rule 2.2(b);
 - (d) to act as a trustee either alone or with any other trustee and appoint from time to time by Board resolutions, delegates to represent the Company at trustee meetings;
 - (e) subject to 2.2 (a), to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
 - (f) to make grants, or to provide other support as deemed necessary and appropriate, to local partners in pursuant of projects and the Objects;
 - (g) to acquire, merge with or to enter into any partnership or joint venture arrangement with any other Company for any purpose not inconsistent with the Objects of the Company;
 - (h) to employ and remunerate such staff as are necessary for carrying out the work of the Company;
 - (i) to:
 - (i) operate bank accounts
 - (ii) deposit or invest funds
 - (iii) employ a professional fund manager; and
 - (iv) arrange for the investments of other Property of the Company to be held in the name of a nominee;
 - (j) to do all such other lawful things as are necessary for the achievement of its Objects.

Rule 3. Governance

The Company shall govern the Funds, Awards and Property in accordance with all relevant legislation, the deeds of trust and this Constitution.

Rule 4. Replacement of Replaceable Rules

The replaceable rules set out in the *Corporations Act* do not apply to the Company.

Rule 5. Company a Proprietary Company Limited by Shares

The Company is a proprietary company limited by shares and must not be changed to any other type of company unless required by the *Corporations Act*.

Rule 6. Shareholder/Member

- 6.1 The Company shall issue one [1] share which shall be allotted to the Club as sole Member.
- 6.2 The Member shall be represented at general meetings of the Company by the President of the Club or his nominee.
- 6.3 The Member may not transfer its share in the Company.

Rule 7. Awards

Awards may be proposed by the Company, the Divisions or the Club (the “proposer”). The Company shall determine if an award conforms to its relevant rules and can be funded. Subsequently the Company shall monitor and audit all awards. The proposer shall implement and manage the operation of its award.

Rule 8. Directors and Secretary

- 8.1 The Board shall consist of persons appointed by the Member provided that at all times there shall be a minimum of three Directors in accordance with the Act. Persons who occupy the positions of President and Treasurer of the Club shall, unless they so decline, be appointed as ex officio Directors and shall continue to be Directors whilst occupying those positions. When such persons cease to occupy those positions, they shall be eligible to be elected or appointed as a Director pursuant to some other provision of this Rule.
- 8.2 A person shall not be appointed as a Director unless that person is, or is entitled to be, a member of the Club and qualifies to be a Director of a trustee company. At least one Director must be a Responsible Person.
- 8.3 Directors shall be chosen based on their long experience in the activities of the Club and their availability to meet Award timetables.
- 8.4 The initial terms of the Directors will be staggered from one year to five years to provide overlapping terms and continuity. Subsequent terms will be in accordance with Rule 8.5. An initial five year term will be reserved for the Chairman. At the first Board meeting of the Company, the Directors will choose, or failing that, be chosen by lot, to occupy one of the available term positions. Any initial term may be duplicated if there are more than five Directors.
- 8.5 On the date of the second AGM of the Company and each of the four years following, the Director completing his term shall retire but may be re-appointed for a further three years. Should a retiring Director elect not to be re-appointed, his replacement and all subsequent replacements may serve five year terms with an option to nominate for a three year extension.
- 8.6 Not later than 30 days before each AGM, the Chairman shall advise the Council of the number of persons to be appointed as Directors and the names of those retiring Directors who qualify and nominate for re-appointment. At least seven days before that AGM, the Chairman shall advise the Secretary the names of those persons being nominated for election or re-election at the AGM.
- 8.7 Notwithstanding Rule 8.5, the Council may determine that the Chairman, at the conclusion of his first term, is eligible for re-appointment for another five years.
- 8.8 If a person ceases to be a Director before the expiration of his term, the Directors shall appoint another person in his/her place for the remainder of that person's term.
- 8.9 A Director may be removed at a specially convened joint meeting attended by the Member and all the remaining Directors or their proxies, if, in the opinion of the meeting, the person brings the Company into disrepute or the presence of such person on the Board is not in the interests of the Company. The resolution requires all but one person voting in favour of the removal.

Rule 9. Directors' Meetings

- 9.1 The Chairman or Secretary may serve a notice on the Directors requiring the Directors to meet and to conduct business on behalf of the Company.
- 9.2 The Chairman or Secretary must give at least 7 days notice of any such meeting to each of the Directors which notice may be by mail, facsimile or email to the last known physical or electronic address of the Director. Such written notice must:
- (a) set out the place, date and time for the meeting, and
 - (b) if the meeting is to be held in two or more places, state the technology that will be used to facilitate the meeting, and
 - (c) state the general nature of the business of the meeting.
- 9.3 Where a link is established by the means of any telephone, audio or audio-visual communication approved by the Directors for the purpose of any meeting of the Directors, the Directors will be taken to be assembled together at a meeting and all proceedings of the Directors conducted with the aid of the link will be as valid and effectual as if conducted at a meeting at which all the Directors were physically present.
- 9.4 At a meeting of the Directors, a quorum shall be three which shall include the Chairman or his proxy. In the event of a tied vote at a meeting of Directors, the Chairman shall not have a casting vote and the matter shall be referred to the Council for a resolution.
- 9.5 A Director may appoint a person to act as the Director's proxy at any meeting of the Directors.
- 9.6 A resolution shall not be passed at any meeting of the Directors unless it is passed by the casting of the majority of the votes entitled to be cast by the Directors present at that meeting. If the Chairman or his proxy is not present at the meeting, the meeting shall not proceed.
- 9.7 Two or more identical copies of a minute circulated electronically and containing a resolution of a Directors' meeting signed by all the Directors will be taken to have been passed at a meeting of Directors held on the day and at the time at which the document was last signed by a Director.

Rule 10. Directors' Records

Minutes of each meeting of the Directors must be taken by or on behalf of the Secretary and must be kept for at least seven years from the date of that meeting. A directory of resolutions which bind the Board until repealed is to be maintained by the Secretary.

Rule 11. Remuneration of Directors

- 11.1 A Director may not be paid any remuneration as a consequence of being a Director.
- 11.2 The Company may pay travelling and other expenses properly incurred by a Director:
- (a) in attending a Directors' meeting or any committee of the Directors;
 - (b) in connection with the Company's business.

Rule 12. Powers of Directors

- 12.1 The Company is to be managed by the Directors who may exercise all the powers of the Company.
- 12.2 The Company may appoint from time to time by Board resolutions, delegates to represent the Company at trustee meetings.
- 12.3 Any two of the Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 12.4 In furtherance of the Purpose and Objects, the Directors shall:
- (a) securely invest for optimum return the Funds not immediately required;
 - (b) hold money required in the short term in interest bearing, on-call, deposits;
 - (c) make awards, donations and gifts for approved awards;
 - (d) create classes of donors, and
 - (e) where appropriate, name an Award after the donor.

Rule 13. Chairman

The Chairman shall be appointed by the Council based on the recommendations of the Directors and the retiring Chairman.

Rule 14. Company Officers

The Board shall appoint persons to the offices of Secretary and Public Officer of the Company on terms and conditions as determined by the Board. The Board may appoint divisional operating officers however named on terms and conditions as determined by the Board and may delegate powers of the Company to such Company Officers and any staff appointed by them. Notwithstanding Rule 11.1, a Director is not disqualified from such paid appointment.

Rule 15. Auditors

The Company may elect not to appoint auditors, prepare financial reports, or directors' reports unless directed by the Member or by any relevant authority.

Rule 16. Common Seal

The Company may have a seal. If the Company has a seal it may only be used as authorised by the Directors.

Rule 17 Non-Profit Status

The assets and income of the Company shall be applied solely for the furtherance of the objectives of the Funds and the Awards and no portion shall be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to the Member or Company Officers except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

Rule 18. Reserves

The Company must maintain reserves to cover uninsurable risks. Before declaring any donations, the Directors may set aside out of the profits of the Company any sums they think proper as a reserve to provide working capital and to meet any losses from its programs, any contingencies and for any other purpose the Directors in their absolute discretion consider to be in the interests of the Company, subject to:

- (a) profits being tax exempt and
- (b) that such exemption does not restrict the Company from donating its profits to the Funds

Rule 19. No Loans to the Member and Company Officers

The Company must not:

- (a) lend money of the Company to:
 - (i) a Director or Company Officer;
 - (ii) a relative or an associate of a Director or Company Officer, or
- (b) give any other financial assistance to:
 - (i) a Director or Company Officer;
 - (ii) a relative or an associate of a Director or Company Officer, or
- (c) make any transfer to the Member of the Company other than to repay a loan from the Member.

Rule 20. Winding Up

- 20.1 The Company shall be wound up if the Directors resolve that the Company is no longer able to fulfil its Purpose or Objects.
- 20.2 All assets and income remaining after such dissolution and the satisfaction of all debts and liabilities shall be transferred to the Funds or if they no longer exist, to any other organisations which in the sole opinion of the liquidator have similar objects to those of the Company and which also prohibit the distribution of profits and assets to their Members.
- 20.3 In the event of a shortfall in satisfying the liabilities of the Company, the Member will contribute such amount as may be required to meet its liabilities but that amount shall not exceed \$1,000.

Rule 21. Indemnification of Company Officers

- 21.1 To the extent that it is permitted to do so by law, the Company must indemnify each Company Officer against any direct or indirect liability which that Company Officer may incur by reason of being a Company Officer or in carrying out the business or exercising the powers of the Company. Company Officers are to be so indemnified with respect to the period for which they serve the Company irrespective of the time of any claim is made against them or any subsequent change in the terms of this Rule.
- 21.2 In order to comply with Rule 20.1, the Company must ensure that satisfactory indemnity cover is included in the Club's Group Insurance Policy or shall arrange an appropriate alternative policy and must provide each Company Officer with a current copy of the policy.

Rule 22. Amendment of Constitution

This Constitution may be amended by the unanimous vote of the Member present at a general meeting.

Rule 23. General Meetings of Members

The Directors may convene general meetings of the Company provided that the Company must have one such meeting each year before the end of December which shall be the Annual General Meeting of the Company. The quorum for such meetings shall be the Member represented by a Proxy.

Rule 24. Notices

Notices and any material for Directors and the Member of the Company may be sent by mail, facsimile, or email, or be personally delivered.

Addendum A to the Constitution of HCA Philanthropy Pty Ltd

The Faculty of Harvard Business School permits the Company to conduct in Australia, Leadership Programs styled on HBS Executive Education Programs subject to the following conditions

- 1 They are to be advertised as "Harvard Club of Australia Leadership Programs" presented by Professors from Harvard Business School" The abbreviation HCA is permitted.
 - 2 There must be no inference whatsoever whether in writing or by use of brochures or photos depicting Harvard, Harvard University or Harvard Business School that they are a Harvard program
 - 3 Advertising must be confined to Australia, New Zealand and Papua New Guinea and advertised as "Harvard Club of Australia Leadership Programs"
-