

# **CONSTITUTION**

**Australian ADHD Professionals Association Ltd**

ACN 616 076 049

## TABLE OF CONTENTS

<b>Part A – The Company</b> .....	<b>4</b>
1. Name and type of company .....	4
2. Definitions and interpretation.....	4
3. Objects.....	6
4. Powers.....	6
5. Application of income and property .....	7
<b>Part B – Membership</b> .....	<b>7</b>
6. Admission .....	7
7. Membership categories.....	7
8. Eligibility criteria .....	7
9. Applications for Membership .....	9
10. Rights and obligations of Members.....	9
11. Legal effect of Constitution .....	10
12. Cessation of Membership .....	10
13. Rights not transferable.....	11
14. Membership fees .....	11
15. Disciplining Members.....	11
16. Dispute resolution .....	12
<b>Part C - General Meetings</b> .....	<b>13</b>
17. General Meetings called by the Board .....	13
18. General Meetings called by Members.....	14
19. Using technology to hold meetings .....	14
20. Annual General Meetings .....	14
21. Notice of General Meeting .....	15
22. Cancellation or postponement .....	15
23. Quorum .....	16
24. Chair for General Meetings.....	16
25. Adjournment .....	16
26. Voting at General Meetings .....	17
27. Objections to right to vote .....	17
28. How voting is carried out.....	17
29. Votes in writing .....	17
30. Proxies .....	18
31. Direct voting.....	19
32. Members' resolutions and statements.....	19
33. Non-members attending a General Meeting .....	21
<b>Part D - Board of Directors</b> .....	<b>21</b>
34. Powers of the Board .....	21
35. Delegation of powers .....	21
36. Number of Directors.....	21
37. Director eligibility.....	21
38. Appointed Director .....	22
39. Elections.....	22
40. Terms of office .....	22
41. Alternate Directors .....	23
42. Vacation of office of Director .....	23
43. Removal of Director .....	23
44. Office Bearers.....	24
45. Payments to Directors.....	24
<b>Part E - Board meetings</b> .....	<b>25</b>
46. Calling of Board meetings.....	25
47. Notice .....	25
48. Quorum .....	25
49. Chair.....	25
50. Voting and decisions.....	25
51. Conflicts of interest .....	26
52. Use of technology .....	27
53. Resolutions made outside of Board meetings .....	27

54. Validity of acts .....	27
55. Duties of Directors .....	27
<b>Part G - Records.....</b>	<b>28</b>
56. Minutes.....	28
57. Registers .....	28
58. Financial records .....	28
59. Inspection of records .....	28
<b>Part H - Administration .....</b>	<b>29</b>
60. Company Secretary .....	29
61. Financial year .....	29
62. Alteration of Constitution.....	29
63. Notices .....	29
64. Indemnity and insurance.....	30
65. Execution of documents.....	30
66. Patron.....	31
67. Winding Up.....	31
68. Initial Board.....	31

# **Australian ADHD Professionals Association Ltd Constitution**

## **Part A – The Company**

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### **1. Name and type of company**

- 1.1. The name of the Company is Australian ADHD Professionals Association Ltd.
- 1.2. The Company is a not-for-profit public company limited by guarantee.
- 1.3. The liability of Members is limited to the guarantee amount in clause 1.4.
- 1.4. Each Member must contribute an amount not more than \$1.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
  - a. debts and liabilities of the Company incurred before the Member stopped being a Member, or
  - b. costs of winding up.

### **2. Definitions and interpretation**

- 2.1. In this Constitution unless contrary intention appears:

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

"ADHD" means Attention Deficit Hyperactivity Disorder which is a lifespan illness prevalent in the Australian community.

"Board" means the Board of Directors that is constituted by the persons who hold office as Directors, from time to time.

"Chair" means the person appointed to chair:

- a. a General Meeting under clauses 24.1 and 24.2; or
- b. a Board meeting under clause 49.1.

"Company" means Australian ADHD Professionals Association Ltd.

"Constitution" means this Constitution as amended or supplemented from time to time.

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

“Director” means any person holding a position of Director of the Company, as appointed or elected pursuant to this Constitution.

“Elected Director” means a person elected as a Director by the Members as described in clause 36.1.

“General Meeting” means a formal meeting of Members as described in Part C of this Constitution.

“Member” means a Member of the Company pursuant to clauses 6 and 7.

“Non-voting Member” means an Associate Member, Student Member or a member in any other category of membership without voting rights as determined by the Board from time to time.

“Objects” mean the objects of the Company as set out in clause 3.

“Office Bearer” means a person holding the position of President or Vice-President of the Company in accordance with this Constitution.

“President” means the person elected or appointed as President of the Company in accordance with this Constitution.

“Special Resolution” means a resolution for which notice has been given under clause 21.3.c and that has been passed by at least 75% of the votes cast by the Voting Members entitled to vote on the resolution.

“Voting Member” means a Full Member or a member in any other category of membership with voting rights as determined by the Board from time to time.

## 2.2. Reading this constitution with the Corporations Act:

- a. The replaceable rules set out in the Corporations Act do not apply to the Company.
- b. While the Company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- c. If the Company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.
- d. A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

## 2.3. The following rules of interpretation apply unless contrary intention appears:

- a. a reference to any legislation or to any provision of any legislation includes any regulations made under it and any statutory modification or replacements thereto for the time being in force;
- b. a reference to a clause is a reference to a clause of this Constitution and includes any further embedded content;
- c. the word *person* means a natural person and any company, corporation, association, body or entity whether incorporated or not;
- d. the words *writing* and *written* means printing, typewriting and all other means of representing or reproducing words in visible form;
- e. a gender includes all genders;
- f. singular includes plural and vice versa;
- g. where a word or phrase is defined, its other grammatical forms have corresponding meaning;
- h. headings, bold type and italics are for convenience only and do not affect the interpretation of this Constitution.

### **3. Objects**

- 3.1. The principal Object of the Company is promoting the evidence-based research, diagnosis, treatment and management of ADHD for the benefit of individuals with ADHD and their families across Australia.
- 3.2. For the purpose of furthering the principal Object, the additional Objects of the Company are:
  - a. to support and to conduct education of all professionals working with ADHD and to disseminate knowledge to the broader community related to identifying, understanding, treating and responding to ADHD;
  - b. to collaborate with advocates for individuals with ADHD and their families and for persons affected by ADHD generally for the purpose of more effective access to services and treatment of ADHD;
  - c. to provide input to and consultation on policy development relevant to the evidence-based research, diagnosis and treatment of ADHD;
  - d. to promote and facilitate evidence-based research into the diagnosis, causes and treatment of ADHD; and
  - e. to engage in other relevant activities which support the Objects.

### **4. Powers**

- 4.1. The Company has the legal capacity and powers of a company set out under section 124(1) of the Corporations Act and may only exercise such powers to:
  - a. pursue its Objects; and

- b. do all things incidental or convenient in relation to the exercise of power under sub-clause (a).

## **5. Application of income and property**

- 5.1. The income and property of the Company will only be applied towards the promotion of the Objects.
- 5.2. The Company must not distribute any surplus, income or assets directly or indirectly to its Members in the form of dividends or distribution of profits.
- 5.3. Clause 5.2 does not prevent the Company from paying a Member:
  - a. by way of reimbursement for expenses properly incurred by the Member on behalf of the Company;
  - b. in return for any services rendered or goods supplied in the ordinary course of business to the Company;
  - c. as a Director in accordance with clause 45; or
  - d. for any other bona fide reason or purpose for the attainment of the Objects.

## **Part B – Membership**

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### **6. Admission**

- 6.1. The Members are individuals:
  - a. who are committed to the Objects;
  - b. who have been admitted to membership by the Board in accordance with this Constitution; and
  - c. whose names are entered in the register of Members pursuant to clause 9.6.

### **7. Membership categories**

- 7.1. The membership categories of the Company are:
  - a. Full Member;
  - b. Associate Member; and
  - c. Student Member.

### **8. Eligibility criteria**

- 8.1. A **Full Member** is an individual who:
  - a. is involved in the management of ADHD or ADHD research;
  - b. satisfies any educational requirements for a Full Member as determined by the Board;

- c. has been practicing in the research, diagnosis, treatment or management of ADHD or related conditions, for a period of at least 3 years; and
- d. is either:
  - i. a medical practitioner, psychologist, scientist, pharmacist or other health or education professional and who has received appropriate postgraduate training relevant to the research, diagnosis, treatment or management of ADHD or related conditions; or
  - ii. in the opinion of the Board, has made a worthwhile contribution to the research, diagnosis, treatment or management of ADHD or related conditions.

8.2. An **Associate Member** is an individual who is:

- a. any other suitably qualified person as determined by the Board who is interested in ADHD research, diagnosis, treatment or management or are starting their practice in the field of ADHD; or
  - b. is in the process of completing advanced training (e.g. those undertaking on the job specialist training) related to ADHD or closely related conditions; but
  - c. otherwise ineligible to be admitted as a Full Member under clause 8.1;
- or
- d. despite clauses 8.2a and b, any individual who has made a contribution to the cause of ADHD or those affected by ADHD that the Board considers worthy of recognition with membership and whom the Board invites to apply for membership.

8.3. A **Student Member** is a individual who is:

- a. an enrolled undergraduate or postgraduate student of a university, centre of tertiary education, or learned college; and
  - b. undertaking full or part-time training or studies related to ADHD or closely related conditions;
- but
- c. otherwise ineligible for admission under any other membership category.

8.4. Subject to clause 10.4, the Board may from time to time determine:

- a. the various categories of membership;
- b. the eligibility criteria and educational requirements for such categories; and
- c. the rights attached to being a Member in each category of membership.



- 8.5. The Board may transfer a Member from one category of membership to another category provided the Member consents to the transfer and satisfies the eligibility criteria for the new category.

## **9. Applications for Membership**

- 9.1. Applications for membership must be made in the form and manner prescribed by the Board from time to time.
- 9.2. The Board may at its discretion accept or reject an applicant as a Member.
- 9.3. The Board does not have to give any reason for rejecting an application for membership.
- 9.4. The Company must notify the applicant of the Board's decision to accept or reject the application for admission to membership in accordance with the procedures determined by the Board from time to time.
- 9.5. Upon acceptance of an applicant to be a Member, the applicant must pay any subscriptions in accordance with clause 14.1 within a period as determined by the Board. If any such payment is not made then the Board may, in its discretion, cancel its acceptance of the applicant for membership of the Company.
- 9.6. Subject to clause 9.5, an applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the Register.

## **10. Rights and obligations of Members**

- 10.1. Voting Members are entitled to:
- a. receive notices of and attend and speak at General Meetings;
  - b. vote at a General Meeting in a manner permitted by this Constitution; and
  - c. vote in elections for Directors.
- 10.2. Non-voting Members:
- a. are entitled to receive notices of and to attend General Meetings but are not entitled to speak unless at the invitation of the Chair;
  - b. are not entitled to vote at a General Meeting; and
  - c. are not entitled to vote in elections for Directors.
- 10.3. Every Member shall be bound to further to the best of the Member's ability the Objects, interests, influence and standing of the Company and shall observe the Constitution and the by-laws and regulations of the Company in force from time to time.
- 10.4. The Members acknowledge that:

- a. the rights of Members in a particular category may be varied with the written consent of Members in that category where at least 75% of the votes received are in favour, or with approval of a special resolution passed at a meeting of the Members in that category. The provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each meeting of the Members of that category; and
- b. the rights of Members of a particular category are not to be taken as being varied by the admission of further Members to that category or the addition of further categories of membership.

## **11. Legal effect of Constitution**

11.1. This Constitution constitutes a contract between:

- a. the Company and each Member;
- b. the Company and each Director and other Officer; and
- c. each Member and each other Member

under which each person referred to above agrees to comply with and be bound by the provisions of this Constitution so far as they apply to that person.

## **12. Cessation of Membership**

12.1. A Member's membership of the Company will cease:

- a. upon the Member's resignation from membership. The resignation of a Member takes effect on the date of receipt by the Company of the notice of resignation or any later date provided in the notice;
- b. when the Member no longer meets the criteria for their respective category of membership, unless resolved otherwise by the Board or transferred to another category of membership by the Board;
- c. if membership lapses under clause 14.1;
- d. if the Member is expelled from the Company;
- e. if the Member becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- f. upon the death, bankruptcy or insolvency of that Member; or
- g. if the Member is convicted of an indictable offence unless the Board resolves otherwise.

12.2. Any Member who ceases to be a Member:

- a. will not be entitled to any refund or part refund of any membership fee; and
- b. will not be readmitted as a Member until any unpaid monies outstanding at the time they ceased to be a Member are paid

including any interest or other charges levied on any outstanding monies.

### **13. Rights not transferable**

- 13.1. A right, privilege or obligation which a person has by reason of being a Member:
- a. is not capable of being transferred or transmitted to another person; and
  - b. terminates upon the person ceasing to be a Member.

### **14. Membership fees**

- 14.1. The Board may from time to time charge fees to Members that may include joining fees and annual membership fees. The Board may determine the amounts of such fees for each Member or each class or category of membership and the time and manner of payment of such fees.
- 14.2. Subject to clause 26.3, a Member whose annual membership fee is in arrears by more than 1 month but less than 3 months ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the Board sees fit.
- 14.3. A Member whose annual membership fee is in arrears by 3 months or more, ceases to be a Member.
- 14.4. The Board may at its discretion determine that no fee, in full or in part, is payable by a Member or a particular category of membership.

### **15. Disciplining Members**

- 15.1. In accordance with this clause, the Board may resolve to warn, suspend or expel a Member from the Company if the Board considers that:
- a. the Member has breached this Constitution;
  - b. the Member has acted in a way inconsistent with the Objects; or
  - c. the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 15.2. At least 28 days before the Board meeting at which a resolution under clause 15.1 will be considered, the Company must notify the Member in writing:
- a. that the Board is considering a resolution to warn, suspend or expel the Member;
  - b. that this resolution will be considered at a Board meeting and the date of that meeting;
  - c. what the Member is said to have done or not done;

- d. the nature of the resolution that has been proposed; and
  - e. that the Member may provide an explanation to the Board, and details of how to do so.
- 15.3. Before the Board passes any resolution under clause 15.1, the Member must be given a chance to explain or defend themselves by:
- a. sending the Board a written explanation before that Board meeting; and/or
  - b. speaking at the meeting.
- 15.4. After considering any explanation under clause 15.3, the Board may:
- a. take no further action;
  - b. warn the Member;
  - c. suspend the Member's rights as a Member for a period of no more than 12 months;
  - d. expel the Member;
  - e. refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause); or
  - f. require the matter to be determined at a General Meeting.
- 15.5. The Board cannot fine a Member.
- 15.6. The Company must give written notice to the Member of the decision under clause 15.4 as soon as possible.
- 15.7. Disciplinary procedures must be completed as soon as reasonably practical.
- 15.8. There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.
- 16. Dispute resolution**
- 16.1. The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:
- a. one or more Members,
  - b. one or more Directors, or
  - c. the Company.
- 16.2. A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 15 until the disciplinary procedure is completed.

- 16.3. Those involved in the dispute must try to resolve it between themselves within 28 days of knowing about it.
- 16.4. If those involved in the dispute do not resolve it under clause 16.3, they must within 28 days:
  - a. tell the Board about the dispute in writing,
  - b. agree or request that a mediator be appointed, and
  - c. attempt in good faith to settle the dispute by mediation.
- 16.5. The mediator must be chosen by agreement of those involved, or where those involved do not agree, a person chosen by the Board.
- 16.6. A mediator chosen by the Board under clause 16.5:
  - a. may be a Member or former Member of the Company
  - b. must not have a personal interest in the dispute, and
  - c. must not be biased towards or against anyone involved in the dispute.
- 16.7. When conducting the mediation, the mediator 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 given natural justice, and
  - d. not make a decision on the dispute.

## **Part C - General Meetings**

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### **17. General Meetings called by the Board**

- 17.1. The Board may convene a General Meeting at any time it thinks fit.
- 17.2. If Voting Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Board must:
  - a. within 21 days of the Voting Members' request, give all Voting Members notice of a General Meeting, and
  - b. hold the General Meeting within 2 months of the Voting Members' request.
- 17.3. The percentage of votes that Voting Members have (in clause 17.2) is to be worked out as at midnight (Australian Eastern Time) before the Voting Members request the meeting.
- 17.4. The Voting Members who make the request for a General Meeting must:
  - a. state in the request any resolution to be proposed at the meeting

- b. sign the request, and
  - c. give the request to the Company.
- 17.5. Separate copies of a document setting out the request may be signed by the Voting Members if the wording of the request is the same in each copy.

## **18. General Meetings called by Members**

- 18.1. If the Board does not call the meeting within 21 days of being requested under clause 17.2, 50% or more of the Voting Members who made the request may call and arrange to hold a General Meeting.
- 18.2. To call and hold a meeting under clause 18.1, the Voting Members must:
- a. as far as possible, follow the procedures for General Meetings set out in this constitution
  - b. call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Voting Members making the request at no cost, and
  - c. hold the General Meeting within 3 months after the request was given to the Company.
- 18.3. The Company must pay the Voting Members who request the General Meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

## **19. Using technology to hold meetings**

- 19.1. A General Meeting may be held at 2 or more places using any technology that gives the Members present at those places a reasonable opportunity to participate in the meeting, including to hear and be heard.
- 19.2. Anyone using this technology is taken to be present in person at the meeting.

## **20. Annual General Meetings**

- 20.1. A General Meeting called the Annual General Meeting must be held:
- a. within 18 months after registration of the Company; and
  - b. after the first Annual General Meeting, within 6 months after the end of the Company's financial year.
- 20.2. The business of the Annual General Meeting may include the following matters even if not referred to in the notice of meeting:
- a. consideration of the annual financial report and any auditor's report;

- b. a review of the Company's activities;
- c. election or announcement of Directors; and
- d. appointment of the auditor, if any.

## **21. Notice of General Meeting**

- 21.1. At least 21 days' notice of any General Meeting must be given to
  - a. each Member;
  - b. each Director; and
  - c. the auditor, if any.
- 21.2. Subject to 21.2(c), notice of a General Meeting may be provided less than 21 days before the meeting if:
  - a. for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand; or
  - b. for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
  - c. Notice of a General Meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
    - i. remove a Director;
    - ii. appoint a Director in order to replace a Director who was removed;
    - iii. remove an auditor; or
    - iv. consider a special resolution.
- 21.3. A notice of a General Meeting must specify:
  - a. the date, time and place of the meeting;
  - b. the general nature of the business to be transacted at the meeting;
  - c. if a Special Resolution is to be proposed, state in full the proposed resolution and the intention to propose it as a Special Resolution;
  - d. if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this; and
  - e. a statement that Voting Members have the right to appoint proxies and the relevant proxy form.
- 21.4. The non-receipt of a notice of a General Meeting or the accidental omission to give notice to any person entitled to receive the notice does not invalidate anything done or any resolution passed at the General Meeting.

## **22. Cancellation or postponement**

- 22.1. The Board may cancel, postpone or change the venue of a General Meeting (other than a meeting requisitioned by Members) at any time prior to the meeting. The Board must endeavour to notify each person

entitled to receive notices of the meeting of the cancellation, postponement or change of venue.

### **23. Quorum**

- 23.1. No business shall be transacted at a General Meeting unless a quorum is present.
- 23.2. The quorum for any General Meeting is the number of Voting Members entitled to vote and present in person or by proxy that is equal to the sum of the number of Directors in office at the time plus 2. When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy of more than one Member).
- 23.3. If within half an hour after the appointed time for the commencement of a General Meeting a quorum is not present:
  - a. the meeting if convened upon the requisition of Members shall be dissolved;
  - b. in any other case the meeting shall stand adjourned to such other day and at such other time and place as the President may determine.
- 23.4. If at the adjourned meeting the quorum is not present within half an hour after the appointed time for the commencement of the meeting, then the meeting will lapse.

### **24. Chair for General Meetings**

- 24.1. The President will be the Chair for each General Meeting.
- 24.2. If the President is not present within 15 minutes after the time appointed for the commencement, or is unable or unwilling to act, the following may chair the meeting (in order of precedence):
  - a. the Vice-President;
  - b. if the Vice-President is not present or is unable or unwilling to act, any other Director present who has been appointed as Chair by those other Directors present;
  - c. if none of the Directors are present or are able or willing to act, then a Voting Member present chosen by a majority of the Voting Members present.
- 24.3. Any question arising at a General Meeting relating to the order of business, procedure or conduct of the meeting must be referred to the Chair of the meeting whose decision is final.

### **25. Adjournment**

- 25.1. The Chair of a General Meeting at which a quorum is present may in accordance with the law or with the consent of the majority of Voting



Members present at the meeting adjourn the meeting from time to time and place to place.

- 25.2. No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 25.3. When a General Meeting is adjourned for 28 days or more, new notice must be given of the adjourned meeting to each Member and person entitled to receive the notice.

## **26. Voting at General Meetings**

- 26.1. Subject to clauses 26.3 and 27, each Voting Member has 1 vote on a show of hands and on a vote in writing.
- 26.2. The vote may be exercised in person or by proxy (subject to clause 30.8).
- 26.3. A Voting Member will not be entitled to exercise their right to vote if at the time of the meeting, their membership fee is overdue and unpaid.

## **27. Objections to right to vote**

- 27.1. A challenge to a right to vote at a General Meeting:
  - a. may only be made at the meeting; and
  - b. must be determined by the Chair, whose decision is final.
- 27.2. A vote not disallowed following the challenge is valid for all purposes.

## **28. How voting is carried out**

- 28.1. A resolution put to the vote at a General Meeting must be decided on a show of hands unless a vote in writing is demanded.
- 28.2. On a show of hands, a declaration by the Chair is conclusive evidence of the result. Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 28.3. Unless otherwise required by this Constitution or the Corporations Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by Members entitled to vote on the resolutions.
- 28.4. If the votes are equal, the motion is not carried.

## **29. Votes in writing**

- 29.1. A vote in writing may be demanded on any resolution.
- 29.2. A demand for a vote in writing may be withdrawn.
- 29.3. At a General Meeting, a vote in writing may be demanded by:

- a. at least 3 Voting Members entitled to vote on the resolution; or
  - b. the Chair.
- 29.4. A vote in writing may be demanded:
- a. before a vote is taken;
  - b. before the voting results on a show of hands are declared; or
  - c. immediately after the voting results on a show of hands are declared.
- 29.5. A vote in writing demanded on a matter other than the election of a Chair or the question of an adjournment must be taken when and in the manner the Chair directs.
- 29.6. A vote in writing on the election of a Chair or on the question of an adjournment must be taken immediately.
- 29.7. The demand for a vote in writing does not prevent the continuance of a meeting for the transaction of any business other than the question on which a vote in writing has been demanded.
- 29.8. The result of the vote in writing is the resolution of the meeting at which the vote in writing was demanded.

### **30. Proxies**

- 30.1. A Voting Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 30.2. A proxy must be a Member.
- 30.3. A proxy appointed to attend and vote for a Voting Member has the same rights as the Voting Member to:
- a. speak at the meeting;
  - b. vote in a vote in writing (but only to the extent allowed by the appointment); and
  - c. demand or join in to demand a vote in writing under clause 29.
- 30.4. An appointment of proxy (proxy form) must be signed by the Voting Member appointing the proxy and must contain:
- a. the Voting Member's name and address;
  - b. the proxy's name or the name of the office held by the proxy; and
  - c. the meeting(s) at which the appointment may be used.
- 30.5. A proxy appointment may be a standing one.
- 30.6. In the event of a Voting Member not nominating a particular person as proxy on the proxy form, the proxy may be exercised by the Chair unless the Voting Member indicates otherwise.

- 30.7. Proxy forms must be received by the Company at the address or email stated in the notice of meeting or at the Company's registered address or email at least 48 hours before a General Meeting or such shorter period as the Board may permit.
- 30.8. A proxy is not entitled to vote on a show of hands (but this does not prevent a Voting Member appointed as a proxy from voting as a Voting Member in their own right on a show of hands).
- 30.9. When a vote in writing is held, a proxy:
- a. does not need to vote, unless the proxy appointment specifies the way they must vote;
  - b. if the way they must vote is specified on the proxy form, must vote that way; and
  - c. if the proxy is also a Voting Member or holds more than one proxy, may cast the votes held in different ways.
- 30.10. Unless the Company receives written notice at least 48 hours (or any shorter period the Board may permit) before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- a. dies;
  - b. is mentally incapacitated;
  - c. revokes the proxy's appointment; or
  - d. revokes the authority of a representative or agent who appointed the proxy.
- 30.11. Despite clause 30.10.c if a Voting Member attends a General Meeting and they have appointed a proxy, the proxy's appointment is deemed revoked. This means the proxy does not have the authority to speak and vote for a Voting Member at a meeting while the Voting Member is at the meeting.

## **31. Direct voting**

- 31.1. The Board may determine that at any General Meeting, a Voting Member who is entitled to vote at that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the Board. The Board may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

## **32. Members' resolutions and statements**

- 32.1. Members with at least 5% of the votes that may be cast on a resolution may give:
- a. written notice to the Company of a resolution they propose to move at a General Meeting (Members' resolution), and/or

- b. a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (Members' statement).
- 32.2. A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- 32.3. A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.
- 32.4. Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 32.5. The percentage of votes that Members have (as described in clause 29.1) is to be worked out as at midnight (Australian Eastern Time) before the request or notice is given to the Company.
- 32.6. If the Company has been given notice of a Members' resolution under clause 29.1(a), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 32.7. If the Company has been given a notice or request under clause 32.1:
  - a. in time to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, it must do so at the Company's cost, or
  - b. too late to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members' resolution or a copy of the Members' statement.
- 32.8. The Company does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:
  - a. it is more than 1,000 words long
  - b. the Board considers it may be defamatory
  - c. clause 32.1.b applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' resolution or a copy of the Members' statement to Members, or
  - d. in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Members.

### **33. Non-members attending a General Meeting**

- 33.1. Any Director or auditor of the Company is entitled to attend and address a General Meeting.
- 33.2. Any other person that is not a Member may attend and address a General Meeting if invited to do so by the Chair of the meeting.

## **Part D - Board of Directors**

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### **34. Powers of the Board**

- 34.1. The business and affairs of the Company is managed by or under the direction of the Board. The Board may exercise all powers and do all such things that may be exercised or done by the Company, except for anything which must be exercised by the Company in General Meeting as required by law or by this Constitution.
- 34.2. The Board may by resolution make, amend or revoke by-laws for the purposes of giving effect to any provision of this Constitution or to govern the procedures and activities of the Company. These by-laws are binding on the Board and the Members.
- 34.3. Any question, issue or dispute relating to or arising in consequence from this Constitution shall be determined by the Board.

### **35. Delegation of powers**

- 35.1. The Board may delegate any of its powers and/or functions to one or more committees or any employee of the Company or any other person as the Board thinks fit.
- 35.2. In exercising any powers so delegated, the committee, employee or person must comply with any terms and conditions that may be set by the Board.

### **36. Number of Directors**

- 36.1. The Board will comprise:
  - a. up to 6 Elected Directors; and
  - b. up to 2 Appointed Directors appointed in accordance with clause 38.1.
- 36.2. The minimum number of Elected Directors shall be 3.

### **37. Director eligibility**

- 37.1. An Elected Director must be a Voting Member.
- 37.2. A person is not eligible to be a Director if they are ineligible to be a director under the Corporations Act or the ACNC Act.

### **38. Appointed Director**

- 38.1. The Elected Directors may by resolution appoint up to **2** additional persons as Appointed Directors to serve on the Board at any one time, where appropriate skill, experience or knowledge is sought that complement the existing skills on the Board and to enhance the ability of the Board to discharge its duties and advance the Objects of the Company.
- 38.2. An Appointed Director may be, but is not required to be, a Member.

### **39. Elections**

- 39.1. Elections will be held prior to the Annual General Meeting in accordance with the procedures determined by the Board and set out in the by-laws.
- 39.2. If the number of nominations exceeds the number of vacancies to be filled, a ballot must be held prior to the Annual General Meeting, which may include an electronic ballot as determined by the Board.
- 39.3. If insufficient nominations are received to fill all vacancies on the Board:
  - a. the candidates nominated shall be declared elected at the Annual General Meeting following the election; and
  - b. any unfilled positions remaining on the Board shall be deemed casual vacancies.
- 39.4. If the number of nominations received is equal to the number of vacancies to be filled, the candidates nominated shall be declared elected at the Annual General Meeting following the election.

### **40. Terms of office**

- 40.1. The terms of Elected Directors will be staggered so that elections for 3 Elected Director positions on the Board will be conducted each year.
- 40.2. Results of an election will be announced at the Annual General Meeting. Elected Directors will hold office for a term of 2 years commencing from the end of that Annual General Meeting until the end of the second following Annual General Meeting.
- 40.3. The Elected Directors to retire at each Annual General Meeting are those who were elected 2 years earlier and those appointed to fill a casual vacancy for a Director elected 2 years earlier.
- 40.4. An Appointed Director will hold office for a term determined by the Elected Directors not exceeding 2 years from the date of appointment.
- 40.5. A Director may not serve more than 10 consecutive years as a Director. Upon serving 10 consecutive years, a Director may only

stand for re-election or reappointment after a period of at least 2 years following the expiration of their 10th year.

**41. Alternate Directors**

41.1. Alternate Directors are not permitted.

**42. Vacation of office of Director**

42.1. The Directors may appoint a person as an Elected Director to fill a casual vacancy if that person is an eligible Voting Member.

42.2. Any individual so appointed to fill a vacancy of an Elected Director will hold office for the remainder of the term of that vacancy.

42.3. The Board may act even if there are vacancies on the Board. However, if the number of Directors is reduced below the minimum of 3 Elected Directors, the continuing Directors may act only:

- a. in an emergency; or
- b. for the purposes of appointing additional eligible Voting Members as Elected Directors up to the minimum number; or
- c. to convene a General Meeting.

42.4. A Director stops being a Director if they:

- a. die;
- b. are an Elected Director who ceases to be a Voting Member; or
- c. become bankrupt or makes any arrangement or composition with creditors generally;
- d. become ineligible to be a director of a company under the Corporations Act or the ACNC Act;
- e. resign their office by written notice given to the Company;
- f. are removed from office pursuant to clause 43.1;
- g. become of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- h. are absent from 3 consecutive Board meetings (other than urgent Board meetings under clause 47.2) without leave of absence from the Board;
- i. are convicted on indictment of an offence and the Board does not resolve to confirm the Director's appointment following the conviction; or
- j. fail to disclose a material personal interest in breach of the law unless at the next Board meeting the Board resolves otherwise.

**43. Removal of Director**

- 43.1. Voting Members may by ordinary resolution in a General Meeting remove any Director from office in accordance with the Corporations Act.

#### **44. Office Bearers**

- 44.1. The Office Bearers of the Company are:
- a. President; and
  - b. Vice President.
- 44.2. The Board will appoint the Office Bearers from amongst its number at the first Board meeting held after the Annual General Meeting or at any time after a vacancy arises.
- 44.3. Each Office Bearer will hold their position:
- a. for a period of approximately 1 year or until the first Board meeting after the next Annual General Meeting following their appointment, but will be eligible for reappointment;
  - b. until they resign from their position as Office Bearer by written notice to the Company; or
  - c. until they are removed from their position as Office Bearer by resolution of the Board.
- 44.4. For avoidance of doubt, an individual who vacates an Office Bearer position remains on the Board if they continue to be a Director.
- 44.5. The President and the Vice-President must each be Voting Members.
- ~~44.6. There will be a term limit on the President of 3 consecutive years. Upon serving 3 consecutive years as President an individual may stand again as President after a period of 1 year has expired following the expiration of their 3rd year.~~
- ~~44.7. There will be a term limit on the Vice-President of 3 consecutive years. Upon serving 3 consecutive years as Vice-President an individual may stand again as Vice-President after a period of 1 year has expired following the expiration of their 3rd year.~~
- 44.8. Office Bearers will not hold office beyond their retirement or removal from the Board as a Director.

#### **45. Payments to Directors**

- 45.1. The Company must not pay fees to a Director for acting as a Director.
- 45.2. The Company may pay a Director for:
- a. reimbursement of out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously agreed by the Board; or



- b. any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as a Director, where the provision of the service has the prior approval of the Board and is on reasonable commercial terms.
- 45.3. The Company may pay premiums for insurance indemnifying Directors, as allowed by law and this Constitution.

## **Part E - Board meetings**

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### **46. Calling of Board meetings**

- 46.1. The Board will meet for the dispatch of business, adjourn and otherwise regulate its meetings at such place and time as the Board may determine.
- 46.2. The President or any 2 or more Directors may at any time, and the Company Secretary must on the request of the President and any 2 or more Directors, call a Board meeting.

### **47. Notice**

- 47.1. Subject to clause 47.2, all Directors must be given at least 7 days' notice of a Board meeting.
- 47.2. In cases of urgency, a meeting can be held without notice being given in accordance with clause 47.1 provided that as much notice as practicable is given to each Director by the quickest means practicable.
- 47.3. Notice may be given orally or in writing and using any technology.

### **48. Quorum**

- 48.1. No business shall be transacted by the Board unless a quorum is present. The quorum for a meeting of the Board shall be half of the number of Directors currently in office, rounded up if not a whole number.

### **49. Chair**

- 49.1. At a meeting of the Board, the President shall preside as Chair. If the President is absent or unwilling to act, then the Vice President shall preside and if the Vice President is not present or is unwilling to act, the remaining Directors shall choose another Director to preside as Chair at the meeting.
- 49.2. Despite anything in clause 49.1, if the President (or as applicable Vice President) later attends a meeting of Directors or is later willing to act then they must take the role of Chair of the meeting.

### **50. Voting and decisions**

50.1. Decisions made at a meeting of the Board will be determined by a majority of votes cast by Directors present and eligible to vote at the meeting. Each Director has 1 vote.

50.2. In the event of an equality of votes on any question, the Chair does not have a second or casting vote.

## **51. Conflicts of interest**

51.1. A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a resolution made outside of a Board meeting):

- a. to the other Directors; or
- b. if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

51.2. The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

51.3. Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a resolution made outside of a Board meeting) must not, except as provided under clause 51.4:

- a. be present at the meeting while the matter is being discussed, or
- b. vote on the matter.

51.4. A Director may still be present and vote if:

- a. their interest arises because they are a Member of the Company, and the other Members have the same interest;
- b. their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 64);
- c. their interest relates to a payment by the Company under clause 64 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
- e. the Directors who do not have a material personal interest in the matter pass a resolution that:
  - i. identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
  - ii. says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **52. Use of technology**

- 52.1. A Board meeting may be held using any technology consented to by all the Directors. The consent may be a standing one. The Board must reconsider any technology consented to at least annually.
- 52.2. A Director may only withdraw their consent to the use of technology proposed for a Board meeting if they do so at least 48 hours before the meeting.
- 52.3. A Board meeting held by means of technology is to taken to be held at the place where Chair of the meeting is, or at such other place as determined by the Chair of the meeting provided that at least 1 of the Directors involved was at that place for the duration of the meeting.
- 52.4. A Director who participates in a Board meeting permitted under clause 52.1 is taken to be present at the meeting and is entitled to vote.

## **53. Resolutions made outside of Board meetings**

- 53.1. The Board may pass a resolution without a Board meeting being held. The resolution may be passed by written or electronic communication.
- 53.2. The resolution is passed if at least a majority of Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clauses 53.3 or 53.4.
- 53.3. The Directors may sign a single document setting out the resolution and containing a statement that they agree to the resolution or there may be multiple copies of the same document, each signed by one or more of the Directors.
- 53.4. The Company may send the proposed resolution by email or other electronic message to the Directors and the Directors may agree to the resolution by sending a reply email or message to that effect, including the text of the resolution in their reply.
- 53.5. The resolution is taken to be passed when the last Director who constitutes a majority in favour signs or otherwise agrees to the resolution in the manner set out in clauses 53.3 or 53.4.

## **54. Validity of acts**

- 54.1. Any act done by the Board is valid and effective despite any defect that may afterwards be discovered in the appointment or qualification of any Director.
- 54.2. A procedural defect in decisions made by the Board will not result in such decisions being invalidated.

## **55. Duties of Directors**

- 55.1. The Directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- a. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
  - b. to act in good faith in the best interests of the Company and to further the Objects of the Company;
  - c. not to misuse their position as a Director;
  - d. not to misuse information they gain in their role as a Director;
  - e. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 51;
  - f. to ensure that the financial affairs of the Company are managed responsibly; and
  - g. not to allow the Company to operate while it is insolvent.

## **Part G - Records**

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### **56. Minutes**

- 56.1. The Board must ensure that minutes are made and kept of
- a. proceedings and resolutions of Board meetings;
  - b. proceedings and resolutions of General Meetings of Members;
  - c. resolutions passed by the Board without a meeting; and
  - d. proceedings and resolutions of any committees of the Board.

### **57. Registers**

- 57.1. The Company must keep all registers required by this Constitution and the Corporations Act.
- 57.2. The registers must be made available as required by the Corporations Act.

### **58. Financial records**

- 58.1. The Company must keep written financial records that:
- a. correctly record and explain its transactions and financial position and performance; and
  - b. would enable true and fair financial statements to be prepared and reviewed or audited.

### **59. Inspection of records**

- 59.1. A Member is not entitled to inspect the financial records or other documents of the Company unless authorised by the Board or the Corporations Act.

## **Part H - Administration**

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### **60. Company Secretary**

- 60.1. There must be at least 1 Company Secretary appointed by the Board on any terms as the Board sees fit. The Board may remove or terminate such appointment subject to law.

### **61. Financial year**

- 61.1. The Company's financial year is from 1 July to 30 June, unless the Board passes a resolution to change the financial year.

### **62. Alteration of Constitution**

- 62.1. This Constitution may only be altered by the Voting Members passing a Special Resolution.

### **63. Notices**

How notice is given

- 63.1. Any notice required to be given to the Company may be given:
- a. by delivering it to the Company's registered office;
  - b. by sending the notice by post to the registered address; or
  - c. by email to the email address nominated by the Company for that purpose; or
  - d. by facsimile transmission to the facsimile number of the Company.
- 63.2. Any notice required to be given to a Member under this Constitution may be given:
- a. personally;
  - b. by sending it by post to the address for the Member in the register of Members or the alternative address (if any) nominated by the Member;
  - c. by sending it to the facsimile number or electronic address (if any) nominated by the Member;
  - d. by sending it by other electronic means (if any) nominated by the Member; or
  - e. if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

- 63.3. If the Company does not have an address for the Member, the Company is not required to give notice in person.

When notice is given

- 63.4. A notice:
- a. delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
  - b. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
  - c. sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
  - d. given under clause 63.2.e is taken to be given on the business day after the notification that the notice is available is sent.

#### **64. Indemnity and insurance**

- 64.1. For the purposes of this clause 64, 'officer' has the same meaning as in the Corporations Act including a person who is or has been a Director or Company Secretary.

- 64.2. The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.

- 64.3. In clause 64.2, 'to the relevant extent' means:

- a. to the extent that the company is not precluded by law (including the Corporations Act) from doing so; and
- b. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

- 64.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

- 64.5. To the extent permitted by law (including the Corporations Act), and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

#### **65. Execution of documents**

- 65.1. The Company may execute a document without using a common seal or in any other manner as permitted by law, if the document is signed by:
- a. 2 Directors of the Company, or

b. a Director and the Company Secretary.

**66. Patron**

66.1. The Board may appoint an individual as Patron of the Company. The Board may remove or replace such appointment at any time as it sees fit.

66.2. A Patron may not be a Director or other officer of the Company.

66.3. A Patron has such rights, entitlements and duties as determined by the Board.

**67. Winding Up**

67.1. In the event of the winding up or the dissolution of the Company, the surplus assets of the Company must not be distributed to any Members or former Members.

67.2. The surplus assets must be given to an organisation that:

a. has similar objects to the Company and whose constitution requires it to apply its income in promoting those objects;

b. whose constitution prohibits it from making distributions to its members to at least the same extent as in clause 5;

and

c. if the Company is an endorsed deductible gift recipient just before the winding up of the Company, then such organisation must be one that is endorsed as a deductible gift recipient.

67.3. The organisation to which the surplus assets are to be given is to be determined by the Voting Members at or before the time of winding up, or failing that, by the Board at or before the time of winding up, and failing such determination, by application to a court that has jurisdiction in the matter.

67.4. If the Company has been endorsed as a deductible gift recipient by the Australian Tax Office and the Company maintains accounts or a gift fund pursuant to such endorsement, the Company must on the earlier of the winding up of such accounts or gift fund or of the Company having its deductible gift recipient endorsement revoked, transfer any surplus assets of those accounts or gift fund to another organisation or gift fund which is endorsed as a deductible gift recipient. The organisation to which the assets are to be given is to be determined by the Voting Members, or failing that, by the Board, and failing such determination, by application to a court that has jurisdiction in the matter.

**68. Initial Board**

68.1. The initial Board of Directors are:

a. Vicki Anderson

- b. Mark Bellgrove
  - c. David Coghill
  - d. Roger Paterson.
- 68.2. The initial Board will hold office until the first Annual General Meeting following registration of the Company. All Directors will retire at the end of the first Annual General Meeting but may stand for re-election if they continue to be a Voting Member.
- 68.3. Call for nominations for the 6 Elected Director positions will take place within 6 months after registration of the Company. After the call for nominations, clauses 39.2 39.3 and 39.4 will then apply. Results of the election will be announced at the first Annual General Meeting and individuals elected as Elected Directors will take office from the end of that Annual General Meeting.
- 68.4. In order to implement staggered rotational elections under clause 39, at the second Annual General Meeting following registration of the Company, half of the Elected Directors will retire but may stand for re-election if they continue to be a Voting Member.
- 68.5. The Directors to retire at the second Annual General Meeting will be determined by the Board by agreement among themselves. If the Board cannot agree then the drawing of lots will determine which Directors are to retire.