



Constitution

of the

Gastroenterological Society of Australia

ACN 001 171 115

ABN 44 001 171 115

A Public Company Limited by Guarantee
June 2019

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1 Name of the Company

The name of the Company is Gastroenterological Society of Australia (GESA).

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each Member and each Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to AUD\$20.00.

3 Replaceable Rules

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) **ACNC** means the Australian Charities and Not-for-profits Commission.
- (b) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*.
- (c) **ACNC Regulation** means the *Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)*.
- (d) **AGM** means annual general meeting.
- (e) **Alternate Director** means a person who sits on the Board in lieu of a Director, in the event that, the Director cannot attend a meeting.
- (f) **Associate Member** means a Member in the Membership class set out in **clause 7.1(c)**.
- (g) **Board** means the board of Directors of the Company.
- (h) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Victoria.
- (i) **By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with **clause 51**.

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- (j) **Chairperson** means the person holding that office under this Constitution and includes any assistant or acting chairperson.
- (k) **Committee** means a committee established in accordance with **clause 47**.
- (l) **Company** means Gastroenterological Society of Australia.
- (m) **Constitution** means this constitution as amended or supplemented from time to time.
- (n) **Co-Opted Director** means a person appointed to the Board pursuant to **clause 31.5**.
- (o) **Corporations Act** means *Corporations Act 2001 (Cth)*.
- (p) **DGR** means a deductible gift recipient as defined by the law.
- (q) **Director** means any person holding the position of a Director of the Company (and includes a reference to Elected Directors and Co-Opted Directors and **Directors** means the Directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.
- (r) **Disciplinary Committee** means the committee established for the purpose of conducting disciplinary proceedings in accordance **clause 12.2(a)**.
- (s) **Elected Director** means a person elected to the Board pursuant to **clause 31.4**.
- (t) **Full Member** means a Member in the Membership class set out in **clause 7.1(a)**.
- (u) **Group** means any team, faculty, association, committee, special interest group or working party which the Board has formed under **clause 47(a)**.
- (v) **Honorary Member** means a Member in the Membership class set out in **clause 7.1(d)**.
- (w) **In Writing** means either electronic or paper-based communication.
- (x) **Life Member** means a Member in the Membership class set out in **clause 7.1(b)**.
- (y) **Member** means a member of the Company pursuant to **clause 6** and **clause 7** (and includes Full Members, Associate Members, Life Members and Honorary Members), and **Membership** has the corresponding meaning.
- (z) **Member Present** means in connection with a meeting of Members, a Member being present in person, by proxy or by attorney.
- (aa) **Member's Guarantee Amount** means the amount referred to in **clause 2(c)**.
- (bb) **Objects** means the objects of the **Company** as set out in **clause 5.1**.
- (cc) **Office** means the registered office for the time being of the Company.
- (dd) **Office Bearer** means a person holding any of the offices specified in **clause 31.8(a)**.
- (ee) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act.
- (ff) **President** means an Office Bearer elected by the Board pursuant to **clause 31.8(a)(i)**.
- (gg) **Register** means the register of Members to be kept pursuant to the Corporations Act.
- (hh) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

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- (ii) **Secretary** means the person appointed as the Secretary of the Company and includes any assistant or acting Secretary.
 - (jj) **Special Resolution** has the meaning given to it by the Corporations Act.
 - (kk) **Subscription** means the subscription fees payable by Members pursuant to **clause 10**.
 - (ll) **Vice-President** means an Office Bearer elected by the Board pursuant to **clause 31.8(a)(i)**.
 - (mm) **Voting Member** means a Member who:
 - (i) is in a class of Membership which holds voting rights pursuant to **clause 7.1**; and
 - (ii) has paid any payable annual Subscription within the time limits specified in **clause 11(a)(v)**, namely, at the latest, within fourteen (14) days after having been notified by the Company that the Voting Member is in arrears to the Company.

4.2 Interpretation

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other two genders;
- (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression used in a particular Part or Division of an Act or Regulation that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- (i) headings do not form part of or affect the construction or interpretation of this Constitution.

5 Objects

5.1 Objects

- (a) The Company is a charitable institution established to promote the health, prevention and control of gastroenterological and liver diseases in human beings by:
 - (i) undertaking research and learning into the diagnosis, treatment and management of gastroenterological and liver health and disease, and allied subjects;
 - (ii) promoting high standards in the practice of gastroenterology and hepatology;
 - (iii) encouraging, and fostering an interest in gastroenterology, liver disease and associated fields in Australia and internationally by:
 - (A) promoting opportunities for fellowship and collegiality within the gastroenterology and hepatology community;
 - (B) the promotion of forums and discussions in gastroenterological and liver health and diseases and related fields of interest, and discussing matters of common interest;
 - (C) the encouragement of gastroenterologists, hepatologists and others with an interest in gastroenterological and liver health to join in the activities of the Company; and
 - (D) the stimulation of public interest in the prevention and control of gastroenterological and liver diseases and related problems; and
 - (iv) anything ancillary to the Objects referred to in **clauses 5.1(a)(ii) to 5.1(a)(iii)(D)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
 - (i) carry out the Objects; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects.
- (b) Despite anything to the contrary in this Constitution, the Company is established:
 - (i) solely to be a not-for-profit, charitable institution; and
 - (ii) to pursue not-for-profit, charitable purposes in Australia only.
- (c) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution will prevent payment in good faith to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

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- (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
 - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

5.3 Remuneration of Directors

The company must not pay fees to a Director for acting as a Director (except any executive Director in their capacity as an employee of the Company).

(a) The company may:

- pay a Director for work they do for the company, other than as a Director, if the amount is no more than a reasonable fee for the work done, or
- reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the company.

(b) Any payment made under **section 5.3** must be approved by the Directors.

The company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this constitution.

Membership

6 Admission to Membership

6.1 Eligibility for Membership

Any individual is entitled to apply to become a Member if the person:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) satisfies the criteria for the relevant class of Membership in accordance with **clause 7**;
- (c) supports the Objects and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
- (d) wishes to expand or maintain knowledge which is relevant to gastroenterology or liver health and/or participates in a community of gastroenterology or liver health professionals;
- (e) lodges an application form in accordance with **clause 8**; and
- (f) subject to **clause 10(d)**, pays the Subscription in accordance with **clause 10**.

6.2 Benefits

- (a) Each Voting Member will be entitled to vote at all general meetings.

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- (b) In addition to each Voting Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

6.3 Register of Members

- (a) The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
 - (i) for each current member: name, address, any alternative address for service of notices, and date member was entered into the register.
 - (ii) for each person who stopped being a member in the last 7 years: name, address, any alternative address for service of notices, and dates the membership started and ended.
- (b) The company must give current members access to the register of members. Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

7 Classes of Membership

7.1 Classes of Membership

There shall be the following classes of Membership:

- (a) **Full Members**

Full Members:

 - (i) must be natural persons;
 - (ii) must fall into one of the following categories:
 - (A) a fellow of either the Royal Australasian College of Physicians or Surgeons practising in the field of gastroenterology or liver health;
 - (B) a person who is training in an accredited gastroenterology training program, or equivalent;
 - (C) a person with a masters or doctoral degree (of any discipline) currently conducting research or clinical practice in gastroenterology or liver health;
 - (D) a Full Member retiring from clinical gastroenterology practice with 20 years continuous financial membership of the Company; or
 - (E) a person admitted at the Board's discretion;
 - (iii) may be elected to the Board;
 - (iv) shall be entitled to receive notice of, and attend, general meetings; and
 - (v) shall be entitled to vote.

(b) **Life Members**

Life Members:

- (i) must be natural persons;
- (ii) may be any person who has given distinguished and conspicuous service to the Company, (a person may be invited to become a Life Member, by a majority vote of the Board);
- (iii) may be elected to the Board;
- (iv) shall be entitled to receive notice of, and attend, general meetings; and
- (v) shall be entitled to vote.

(c) **Associate Members**

Associate Members:

- (i) must be natural persons;
- (ii) must fall into one of the following categories:
 - (A) a medical practitioner (not practicing in the field of gastroenterology or liver health);
 - (B) an advanced trainee not in an accredited gastroenterology training program;
 - (C) an allied health professional; or
 - (D) a person studying for a Masters degree with an interest in gastroenterology or hepatology; or
 - (E) a person appointed at the Board's discretion;
- (iii) shall be entitled to receive notice of, and attend, general meetings;
- (iv) shall not be entitled to vote on any resolutions at general meetings; and
- (v) shall not be entitled to be elected or appointed to the Board as either Elected or Co-opted Directors.

(d) **Honorary Members**

Honorary Members:

- (i) must be natural persons;
- (ii) must be people who, in the opinion of the Board, are of national or international eminence or standing, or have rendered exceptional service to the Company or to the science and practice of gastroenterology or liver health;
- (iii) shall be entitled to receive notice of, and attend general meetings;
- (iv) shall not be entitled to vote on any resolutions at general meetings; and
- (v) shall not be entitled to be elected or appointed to the Board as either Elected or Co-opted Directors.

7.2 Qualifications and Rights

The Board may determine from time to time additional qualifications for admission to each Membership class and the rights attached to each Membership class.

8 Applications for Membership

8.1 Applications for Membership

- (a) A nomination for Membership of the Company must:
 - (i) be made in writing in the form prescribed by the Board from time to time (which may be submitted to the Secretary or submitted online) and includes the name and membership number of two (2) nominating members;
 - (ii) include a signature, or equivalent acknowledgement by the applicant that the applicant agrees to be bound by the Constitution of the Company as amended from time to time; and
 - (iii) be accompanied by any Subscription payable pursuant to **clause 10**.
- (b) After receiving an application for Membership, the application will be considered at the next Board meeting, or by a delegated authority of the Board, to determine whether to approve or reject the application.
- (c) As soon as practicable after the Board makes that determination the Company must:
 - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
 - (ii) if the Board approved the application, enter the applicant's name in the Register and, subject to the Corporations Act, the applicant becomes a Member on the name being so entered.

8.2 Reasons for Decision

If the Board rejects an application for Membership, it is not required to provide the applicant with any reasons for the rejection.

9 Membership Entitlements Not Transferable

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 on cessation of the person's Membership.

10 Annual Subscription

- (a) An annual Subscription is payable by each Member to the Company.
- (b) The amount of the annual Subscription shall be payable by Members at such times and in such manner as determined by the Board from time to time.

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- (c) The Board may charge different classes of Membership different annual Subscriptions.
 - (d) The Board may in its discretion:
 - (i) determine that no annual Subscription is payable by a Member or Members (in whole or in part) in a given year; and
 - (ii) extend the time for payment of the annual Subscription by any Member.
 - (e) No part of an annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 11**.

11 Cessation of Membership

- (a) A Member's Membership will cease:
 - (i) on the date that the Company receives written notice of resignation from that Member;
 - (ii) upon a Member dying;
 - (iii) upon that Member no longer satisfying the criteria for its respective class of Membership (unless transferred to another class of Membership by the Board);
 - (iv) upon that Member becoming bankrupt or insolvent or arranging or composition with creditors of the person's joint or separate estate generally;
 - (v) subject to **clause 10(d)**, if that Member fails to pay the annual Subscription:
 - (A) within twenty-eight (28) days after it falls due; and
 - (B) then fails to rectify this default within fourteen (14) days of being notified of the default by the Company;
 - (vi) is deregistered by a medical registration authority due to disciplinary matters;
 - (vii) cannot be contacted using the address on the register of Members;
 - (viii) becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (ix) if the Member is expelled from the Company pursuant to **clause 12**.
- (b) A Member may at any time, pursuant to **clause 11(a)(i)**, resign as a Member but shall continue to be liable for:
 - (i) any monies due by the Member to the Company; and
 - (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**.

12 Disciplining of Members

12.1 Disciplining of Members

- (a) Where the Board is of the opinion that a Member:

- (i) has persistently refused or neglected to comply with a provision or provisions of this Constitution; or
- (ii) has persistently and wilfully acted in a manner prejudicial to the interests of the Company;

the Board may exercise any or all of the following options:

- (i) issue a warning to the Member;
 - (ii) censure the Member;
 - (iii) expel the Member from the Company; or
 - (iv) suspend the Member from Membership of the Company for a specified period;
- (b) A resolution of the Board pursuant to **clause 12.1(a)** is of no effect unless the Board holds a meeting to confirm the resolution, not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice pursuant to **clause 12.1(c)**.
- (c) If the Board resolves under **clause 12.1** to discipline any Member, the Company must serve the Member with a notice in writing:
- (i) setting out the resolution of the Board and the grounds upon which it is based;
 - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:
 - (A) attend and speak at that meeting;
 - (B) submit to the Board at or prior to the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 12.1(c)**, the Board must:
- (i) give the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the Board meeting; and
 - (iii) by a resolution, determine whether to confirm or to revoke the resolution. A resolution to confirm the resolution under **clause 12.1(a)** requires the affirmative votes of at least seventy-five per cent (75%) of the Directors voting in the Board meeting.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the warning, censure, expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 12.2**.
- (f) A resolution confirmed by the Board under **clause 12.1(d)** does not take effect:

- (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
- (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 12.2(d)(ii)**.

12.2 Right of Appeal of Disciplined Member

- (a) The Board will establish a committee for the purpose of conducting disciplinary proceedings against a Member (called the Disciplinary Committee). The Disciplinary Committee will comprise of an independent panel of three experts, all chosen by the Board.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 12.1(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 12.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 12.2(b)**, the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 12.2(c)**:
 - (i) the Member must be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
 - (ii) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision, pursuant to **clause 12.2(d)(ii)**, is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) Natural justice will be applied during every disciplinary process under this **clause 12**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.
- (g) Each Member acknowledges that no matter or thing done or omitted by the Board or the Disciplinary Committee (including the exercise of their powers as contained in this **clause 12**) subjects the Disciplinary Committee or the Directors or the Company to any liability. Each Member hereby releases the Company, Directors and members of the Disciplinary Committee from any such liability.

General Meetings

13 Convening of General Meetings

13.1 General Meeting (GM)

Notwithstanding section 111L of the Corporations Act:

- (a) in the event that the Board wishes to do so, it may convene a yearly **meeting general** in nature (GM); and
- (b) any GM which is convened must be done so in accordance with the requirements of the Corporations Act.

13.2 Convening of General Meetings

- (a) Any four (4) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:
 - (i) the Members may call a general meeting; and
 - (ii) the Company will do so,in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of members to call a general meeting.
- (c) Using technology to hold meetings:
 - (i) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting, including to hear and be heard.
 - (ii) Anyone using this technology is taken to be present in person at the meeting.

14 Notice of General Meeting

- (a) Subject to consent to shorter notice being given in accordance with the Corporations Act (notwithstanding section 111L of the Corporations Act), at least twenty-one (21) days' notice of any general meeting must be given specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;
 - (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (v) any other information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act).

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- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at, or any resolution passed at, the meeting.
 - (c) Subject to **clause 16(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
 - (i) every Member;
 - (ii) every Director; and
 - (iii) the auditor for the time being of the Company (if any).

15 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations Act) and this Constitution, the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by the Members pursuant to **clause 13.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by the Members who convened the meeting.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
 - (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

Proceedings at General Meetings

16 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum of Members present at all times during the meeting.

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- (b) Twenty (20) Members must be present (in person, by proxy or by representative) for the whole meeting to constitute a quorum for all general meetings.
 - (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
 - (ii) in any other case:
 - (A) it will stand adjourned to such other day, time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, those Members present shall constitute a quorum and may transact the business for which the meeting was called.

17 Chairperson

- (a) The President shall preside as Chairperson at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no President; or
 - (ii) the President is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to preside at the meeting,then the following person will be Chairperson at the meeting in lieu of the President in the order of availability set out below:
 - (iii) Vice-President;
 - (iv) another Director chosen by the Members present; and
 - (v) a Voting Member, chosen by a majority of the Members present.
- (c) The rulings of the Chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

18 Adjournments

- (a) The Chairperson of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs;to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

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- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
 - (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more, in which case notice of the adjourned meeting must be given as in the case of an original meeting.

19 Determination of Members' Resolution

- (a) At any general meeting a resolution under consideration may be decided by a vote.
- (b) Voting must be conducted and decided by:
 - (i) A show of hands
 - (ii) A vote in writing (paper or electronic), or
 - (iii) Another method chosen by the Chairperson that is fair and reasonable in the circumstances.
- (c) Before a vote is taken, the Chairperson must inform the meeting whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- (d) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- (e) The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

20 Vote

- (a) A vote may be demanded:
 - (i) before a decision on a resolution is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chairperson of the meeting directs, subject to **clause 20(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chairperson or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

21 Voting

A Voting Member has one (1) vote.

A vote made by a voting member using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause** be taken to be in writing and signed by that Member at the time the vote was received by the online voting platform.

22 Disqualification

No person other than:

- (a) a Voting Member; or
- (b) a proxy or attorney of a Voting Member,

shall be entitled to a vote at a general meeting.

23 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairperson whose decision shall be final and conclusive and a vote allowed by the Chairperson shall be valid for all purposes.

24 Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to a deliberative vote.

25 Right of Non-Members to Attend General Meeting

- (a) The Chairperson of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

Proxies

26 Right to Appoint Proxies

Notwithstanding section 111L of the Corporations Act:

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- (a) a Voting Member may appoint a person as their proxy to attend and vote on their behalf at the meeting;
 - (b) A proxy does not need to be a member. The law prohibits the restriction of persons appointed to act as proxies to only members; and
 - (c) if a Voting Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

27 Appointing a Proxy

27.1 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

27.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act):
 - (i) the name and address of the Voting Member;
 - (ii) the proxy's name or the name of the office of the proxy; and
 - (iii) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 27.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

28 Lodgement of Proxies

- (a) An instrument appointing:
 - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be received by the Company or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty-eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this **clause 28**, it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email or other electronic transmission by the Company.

29 Validity of Proxies

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death or unsoundness of mind of the Member;
 - (ii) the bankruptcy of the Member; or
 - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,
- if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, or revocation at least twenty-four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.
- (b) A proxy who is not entitled to vote on a resolution as a Voting Member may vote as a proxy for another Voting Member if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (c) Except on a show of hands, a proxy may vote as more than one Voting Member if the proxy holds appointments for those Voting Members which specify the way the proxy is to vote on the resolution and the proxy votes that way.

30 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 30(c)**, unless a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.

- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a poll.

Appointment and Removal of Directors

31 Number and Appointment of Directors

31.1 Number of Directors

- (a) The Board shall consist of not less than seven (7) and not more than twelve (12) Directors.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 31.1(a)**.

31.2 Composition of Board

- (a) The Board shall consist of:
 - (i) up to nine (9) Elected Directors; and
 - (ii) up to three (3) Co-Opted Directors.
- (b) The Board shall decide from time to time how many Elected Directors and how many Co-Opted Directors shall be on the Board.

31.3 Eligibility to be a Director

A person is eligible to become a Director if he or she:

- (a) is a voting member at the time of nomination;
- (b) over the age of 25 years;
- (c) consents in writing to become a Director;
- (d) is not prohibited or disqualified or otherwise prevented from being a Director of a company under the Corporations Act or a responsible person of a registered charity under the ACNC Act;
- (e) is not an employee of the Company; and

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- (f) for Elected Directors, must have been a Member for three (3) consecutive years prior to the election.

31.4 Elected Directors

- (a) Nominations of candidates for election as Elected Directors:
 - (i) shall be in writing in a form prescribed by the Board confirmed by two (2) voting Members and be accompanied by the written consent of the nominee (which may be endorsed on the nomination); and
 - (ii) shall be delivered to the person authorised by the Board for the purpose on the time and date specified by the Board, prior to the holding of the election or other general meeting at which the election is to take place.
- (b) If insufficient nominations are received to fill all positions of Elected Directors on the Board which are to be filled at the election, the candidate or candidates nominated shall be deemed to be elected and further nominations shall be received at the meeting at which the election is to take place.
- (c) If insufficient further nominations are received, any unfilled positions of Elected Directors remaining on the Board shall be deemed to be casual vacancies.
- (d) If the number of nominations received is equal to the number of positions to be filled, the persons nominated shall be taken to be elected.
- (e) If the number of nominations received exceeds the number of positions to be filled, a ballot shall be held.

31.5 Co-Opted Directors

- (a) The Board may appoint Co-Opted Directors to the Board at any time to fill the positions provided for in **clause 31.2(a)(ii)**.
- (b) A Co-Opted Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.
- (c) A Co-Opted Director may be, but need not be, a Member, and is granted voting rights.

31.6 Transition

- (a) This Constitution has the effect that every Director and Officer Bearer in office as at the date of adoption of this Constitution continues in office subject to, and is taken to have been appointed under, this Constitution.
- (b) For the avoidance of doubt, time spent on the Board before the adoption of this Constitution counts towards the maximum consecutive term set out in **clause 31.7(c)**.

31.7 Term

- (a) Elected and Co-opted Directors may hold office for a term of two (2) years but shall be eligible for re-election or reappointment for two (2) further terms of two (2) years each. Director except the Vice-President must resign at the end of each term and may nominate for re-election.
- (b) The Board may appoint a Co-opted Director for a shorter term than under **clause 31.7(a)** if the Board so determines at the time of appointment.
- (c) Directors shall not hold office for more than six (6) consecutive years.
- (d) Once a Director has served the maximum term of six (6) consecutive years, the person is not eligible for re-election or reappointment to the Board until after a period of at least twenty-four (24) months has expired since the expiry of the Director's previous term on the Board.

31.8 Office Bearers

- (a) The Board may elect and remove the following Office Bearer positions from the Elected Directors:
 - (i) President;
 - (ii) Vice-President; and
 - (iii) Chair of the Finance, Audit and Risk Committee.
- (b) The Board shall, at the first meeting of the Board held after an Office Bearer has indicated retirement or retired, elect from Elected Directors sitting on the Board at the time of the Board meeting such additional Office Bearer positions as required.
- (c) The President and Vice-President shall hold office for a term of two (2) years (or a shorter term if the President or Vice-President has less than two (2) years remaining in his or her term as Director) and shall not be eligible for re-election for any further terms.
- (d) The Chair of the Finance, Audit and Risk Committee shall hold office for a term of two (2) years (or a shorter term if the Chair has less than two (2) years remaining in his or her term as Director) but shall be eligible for re-election for one (1) further term of two (2) years.
- (e) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Elected Director to act in the vacant position during the absence or inability of the Office Bearer.

32 General Right to Appoint and Remove Directors

The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in accordance with **clause 31.1**, the Board may act:

- (a) for the purpose of:
 - (i) increasing the number of Directors to the minimum; or

- (ii) convening a general meeting; or
 - (b) in emergencies;
- but for no other purpose.

33 Vacation of Office

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (iii) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act or the ACNC Act;
 - (iv) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - (v) is removed from office by the Company in general meeting;
 - (vi) resigns by notice in writing to the Company;
 - (vii) is an Elected Director and ceases to be a Voting Member;
 - (viii) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under clause 45.20(4) of the ACNC Regulation; or
 - (ix) is absent without permission of the Board from two (2) consecutive meetings of the Board, and the Board resolves that this constitutes resignation.

34 Filling of Vacancies on the Board

In the event of a casual vacancy occurring on the Board:

- (a) in relation to an Elected Director vacancy, the Board shall appoint a person to fill that vacancy until the end of the next term. The Members must then elect a person to fill the Elected Director position in accordance with clause 31.3. The person elected will serve only for the balance of the term of the original Elected Director;
- (b) in relation to a Co-Opted Director vacancy, the Board shall appoint a person to fill that vacancy until the end of the next annual general meeting.

35 Acting Office Bearers

- (a) In the event of a vacancy occurring in the position of President, the Vice-President shall assume office as President for the balance of the term of the vacating President, after which the Board shall elect a new President, in accordance with **clause 31.8(a)(i)** for a full new term.
- (b) In the event of a vacancy occurring in the position of Vice-President (including in the situation described in **clause 35(a)**), another Elected Director (elected by the Directors at the next meeting of the Board) who is not President, shall assume office as Vice-President for the balance of the term of the vacating Vice-President, after which the Board shall elect a new Vice-President, in accordance with **clause 31.8(a)(ii)** for a full new term.
- (c) In the event of a vacancy occurring in the position of Chair of the Finance, Audit and Risk Committee, another Elected Director (elected by the Directors at the next meeting of the Board) who is not President or Vice-President, shall assume office as the Chair of the Finance, Audit and Risk Committee for the balance of the term of the vacating Chair of the Finance, Audit and Risk Committee, after which the Board shall either elect a new Chair of the Finance, Audit and Risk Committee, or re-elect that Chair of the Finance, Audit and Risk Committee, in accordance with **clause 31.8(a)(iii)** for a full new term.
- (d) Nothing in **clause 35(a)** permits any person to simultaneously hold more than one position of Office Bearer.

36 Alternate Directors

Alternate Directors shall not be permitted.

Powers of Directors

37 Duties of Directors

- (a) Each Director is subject to, and must comply at all times with, the duties set out in Governance Standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with Governance Standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation

38 Powers of Directors

The control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Corporations Act, the ACNC Act, the ACNC Regulation or by this Constitution required to be exercised in any other manner.

39 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
- (b) the Secretary;
- (c) the Chief Executive Officer of the Company; or
- (d) another staff member of the Company,

to sign such instruments.

40 Delegation of Directors Powers

- (a) The Directors may delegate any of their powers and functions to a committee, a Director an employee of the company (such as chief executive officer) or any other person, as they consider appropriate, for such purposes and on the terms and conditions and with the restrictions as it may think appropriate and expedient.
- (b) Powers conferred under this **clause 40** may be exercised concurrently with the powers of the Directors in that regard and the Directors may from time to time withdraw, revoke or vary all or any of such powers.
- (c) The delegation must be recorded in the company's minute book.

Directors' Disclosure of Interest

41 Contracts

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the provisions of the relevant legislation, being either:
 - (i) the Corporations Act; or

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- (ii) the ACNC Regulation,
which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
 - (c) Subject to **clause 41(a)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
 - (i) be present while the matter is being considered at a meeting;
 - (ii) vote on the matter;
 - (iii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
 - (d) A Director's failure to make disclosure under this **clause 41** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
 - (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

Proceedings of Directors

42 Meetings of Directors

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that the Board must meet not fewer than four (4) times each calendar year.
- (b) On the requisition of the President, or three (3) Directors, the Secretary upon such request shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the President, Directors or Secretary have used their best endeavours to ensure that the notice was properly served and received.
- (c) Notice of a meeting of the Board need not be in writing.

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- (d) Subject to **clause 42(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
 - (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 42(d)**, must be available and accessible to all Directors who wish to attend the Board meeting.
 - (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

43 Quorum

- (a) The quorum necessary for the transaction of the Board's business is at least half the number of Directors at the time of the meeting, plus one (rounded up to the nearest integer).
- (b) A quorum must be present at all times during the meeting.
- (c) A Director who is disqualified from voting on a matter pursuant to **clause 41** shall be counted in the quorum despite that disqualification.

44 Chairperson

- (a) The President shall, if present, preside as Chairperson of every meeting of the Board.
- (b) If a meeting of Board is held and the position of President is temporarily vacant, or the President is:
 - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (ii) if present, does not wish to chair the meeting,then the Vice-President shall preside as Chairperson. If the Vice-President is:
 - (iii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (iv) if present, does not wish to chair the meeting, thenthe other Directors present must elect one of their number to be Chairperson of the meeting.

45 Voting

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In the case of an equality of votes at a meeting of the Board, the Chairperson has a casting vote in addition to a deliberative vote.
- (d) The Board may choose to vote on a resolution by secret ballot.

46 Circular Resolutions by Directors

- (a) The Directors may pass a circular resolution without a Directors' meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in **clause 55.3** or **clause 55.4**.
- (c) Each Director may sign:
 - a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in **clause 55.3** or **clause 55.4**.

- (e) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

47 Committees and Groups

- (a) The Board may form, and delegate any of its powers to a Group consisting of such Directors and other persons (members and non-members) as it thinks fit, and that will contribute to achieving the purpose and mission of the Company. The Board may from time to time revoke such delegation.
- (b) The Board has the power to require any Group to have all decisions made by that Group ratified by the Board.

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- (c) A Group's purpose will be set out in its terms of reference/regulations and approved by the Board and will undertake the powers and functions delegated to it by the Board.
 - (d) The meetings and proceedings of any Group consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
 - (e) A minute of all the proceedings and decisions of every Group shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act, and this Constitution, to be made entered and signed. A copy of such Group minutes shall be tabled at the next Board meeting.

48 Validation of Acts of Directors

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

Minutes

49 Minutes

- (a) The Board must ensure minutes are kept in the manner required by the Corporations Act for the purposes of recording:
 - (i) the names of the Directors present at each Board meeting and of Directors present at each meeting of any Board Committee;
 - (ii) all proceedings and resolutions of Directors and general meetings and of Committees; and
 - (iii) such matters as are required by the Corporations Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of their interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.

- (b) The minutes are to be signed by the Chairperson of the meeting, or the Chairperson of the next succeeding meeting or within a reasonable time. The minutes may be approved by no less than 7 Directors when approving by electronic circular resolution. Those minutes which purport to be signed accordingly are enough evidence, without any further proof, that the matters and things recorded by such minutes took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

Secretary

50 Appointment and Role

- (a) There must be at least one Secretary who may also be a Director and appointed by the Directors and may be removed by the Directors.
- (b) The Directors determine the conditions under which the Secretary is appointed.
- (c) The role of the Secretary includes:
 - (a) maintaining a register of the company's members and current contact details, and
 - (b) maintaining the minutes of other records of general meetings (including notices of meetings), Directors' meetings and circular resolutions.

By-Laws

51 By-Laws

- (a) The Board may make, repeal and amend By-Laws that in its opinion are necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) Members and Directors must comply with By-laws as if they were part of this Constitution.
- (d) The Board will, as it deems appropriate, advise Members of all By-Laws, amendments and repeals.

52 Execution of Documents

Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:

- (a) two (2) Directors signing the same; or
- (b) one (1) Director and one (1) Secretary signing the same.

Accounts and Inspection of Records

53 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, where required by the Corporations Act or the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report in accordance with the requirements of the Corporations Act or the ACNC Act or the ACNC Regulation;
- (b) where required by the Corporations Act or the ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act or the ACNC Act (as the case may be); and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Member;
- (d) ensure the company retains the records for at least 7 years; and
- (e) take reasonable steps to ensure the company's records are kept safe.

Notices

54 Service of Notices

- (a) A notice must be in writing and may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices; or
- (b)

- (i) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (c) Members must advise the company of their current address for inclusion in the Register for notices and to receive notices. If the company does not have an address for a member, the company is not required to give notice in person.
- (d) Where a notice is sent by post, service of the notice shall be taken to be affected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been affected on the third (3rd) Business Day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (e) Where a notice is sent by electronic means, service of the notice shall be taken to be affected by properly addressing and sending the notice and in such case shall be taken to have been affected on the Business Day after it is sent.
- (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

Winding Up

55 Winding Up

55.1 Surpluses Arising from Deductible Donations

- (a) If any surplus arising from deductible gifts and contributions, and any money received in respect of such gifts and contributions, remains following the winding up of the Company, that will be given or transferred to another institution(s) or corporation(s) which has (have):
 - (i) objects which are similar to the Objects and is charitable;
 - (ii) a constitution which requires its income and property to be applied in promoting its objects;
 - (iii) a constitution which prohibits it from paying or distributing its income and property among its members to an extent at least as great as imposed on the Company by **clause 5.2(b)**; and
 - (iv) DGR endorsement.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 55.1(a)** is to be determined:
 - (i) by the Board; or
 - (ii) if the Board does not decide or does not wish to decide, then by the Members,

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of Victoria for determination.

- (c) In the event that the Company ever has its endorsement as a DGR revoked, the Company must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another DGR which is charitable at law, such DGR to be determined by the Board, or failing the Board, the Members, and failing such determination being made by either the Board or the Members, by application to the Supreme Court of Victoria for determination.

55.2 Other Surpluses

- (a) Any surplus remaining which is not within the ambit of **clause 55.1(a)** will be paid to or distributed to another institution(s) or corporation(s) which has:
- (i) objects which are similar to the Objects and is charitable;
 - (ii) a constitution which requires its income and property to be applied solely in promoting its objects; and
 - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as that in **clause 55.2(a)** imposed on the Company by **clause 5.2(c)**.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 55.1(a)** is to be determined:
- (i) by the Board; or
 - (ii) if the Board does not decide or does not wish to decide, then by the Member(s),

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of Victoria for determination.

Indemnity

56 Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:

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- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

57 Payment of Indemnity Policy Premium

- (a) To the extent permitted by law, the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
 - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a liability arising out of conduct that contravenes the governance standards in sections 45.5 to 45.25 of the ACNC Regulation.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 56** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

58 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 56** and **57** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.



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