



**Constitution of**

**Epilepsy Foundation**

ACN 605 007 510

ABN 75 967 571 784

**a public company  
limited by guarantee**

# Table of Contents

<b>1.</b>	<b>Introduction</b>	<b>5</b>
1.1	Name of the Company	5
1.2	Type of company	5
1.3	Purposes	5
1.4	Powers	6
1.5	Non-profit	6
<b>2.</b>	<b>Definitions and interpretation</b>	<b>7</b>
2.1	Definitions	7
2.2	Interpretation	9
2.3	Inclusive expressions	10
2.4	Replaceable rules	10
<b>3.</b>	<b>Company limited by guarantee</b>	<b>10</b>
3.1	Limited liability	10
3.2	Guarantee	11
<b>4.</b>	<b>Membership</b>	<b>11</b>
4.1	Number of Members	11
4.2	Membership	11
4.3	Obligations of Members	11
4.4	Application for membership	11
4.5	Classes of Membership	12
4.6	Application Fee	12
4.7	Annual Subscription	12
4.8	No transfer of membership	12
4.9	Cessation of membership	13
<b>5.</b>	<b>Dispute resolution and disciplinary procedures</b>	<b>13</b>
5.1	Dispute resolution	13
5.2	Directors may resolve to warn or suspend or expel	14
<b>6.</b>	<b>General meetings</b>	<b>15</b>
6.1	General meetings called by Directors	15
6.2	General meetings called by Members	16
6.3	Annual general meeting	16
6.4	Notice of a general meeting	17
6.5	Quorum at a general meeting	18
6.6	Auditor's right to attend a general meeting	19
6.7	Using technology to hold a general meeting	19
6.8	Chair for a general meeting	20
6.9	Role of the Chair	20
6.10	Adjournment of a general meeting	20
6.11	Resolutions and statements by Members	21
6.12	Company must give notice of proposed resolution or distribute statement	21
6.13	Sole Member resolutions	22
6.14	How many votes a Member has	22
6.15	Challenge to Member's right to vote	22
6.16	How voting is carried out	22
6.17	When and how a poll must be held	23
6.18	Electronic ballots	23
6.19	Votes counted in error	23
6.20	Proxies	23

6.21	Voting by proxy	24
6.22	Representatives of body corporate Members	24
<b>7.</b>	<b>Directors</b>	<b>25</b>
7.1	Number of Directors	25
7.2	Restriction on number of registered medical practitioners	25
7.3	Election and appointment of Directors	25
7.4	Removal by Members	26
7.5	Election of Chair	26
7.6	Term of office	26
7.7	When a Director ceases to be a Director	27
<b>8.</b>	<b>Alternate Directors</b>	<b>27</b>
8.1	Power to appoint an Alternate Director	27
8.2	Appointment	27
8.3	Rights and powers	28
8.4	Alternate Director is not agent of Appointing Director	28
8.5	Termination of appointment	28
<b>9.</b>	<b>Powers of Directors</b>	<b>28</b>
9.1	Directors' powers	28
9.2	Power to borrow and give security	29
9.3	Other offices of Directors	29
9.4	Director may act in professional capacity	29
9.5	Attorneys	29
9.6	Delegation of Directors' powers	30
9.7	Payments to Directors	30
<b>10.</b>	<b>Duties of Directors</b>	<b>31</b>
10.1	Director's duties	31
10.2	Conflicts of interest	31
<b>11.</b>	<b>Proceedings of Directors</b>	<b>32</b>
11.1	When the Directors meet	32
11.2	Calling Directors' meetings and notice of Directors' meetings	32
11.3	Chair	33
11.4	Quorum	33
11.5	Using technology to hold Directors' meetings	33
11.6	Passing decisions of Directors	34
11.7	Circular resolutions of Directors	34
11.8	Committees	34
11.9	Acts of Directors valid despite defective appointment	35
<b>12.</b>	<b>Secretary</b>	<b>35</b>
<b>13.</b>	<b>Executive officers</b>	<b>36</b>
<b>14.</b>	<b>Minutes and records</b>	<b>36</b>
<b>15.</b>	<b>Execution of documents</b>	<b>37</b>
<b>16.</b>	<b>Regulations</b>	<b>37</b>
16.1	Regulations are made by the Directors	37
16.2	Conflict between the Constitution and Regulations	37
16.3	Effectiveness and promulgation of Regulations	38
16.4	Enforceability of Regulations	38

<b>17.</b>	<b>Notices</b>	<b>38</b>
17.1	Notices to the Company	38
17.2	Notices to Directors	38
17.3	Notices to Members	38
17.4	When a notice is taken to be given	39
17.5	Other communications and documents	40
17.6	Notices given electronically	40
<b>18.</b>	<b>Financial matters</b>	<b>40</b>
18.1	Financial and related records	40
18.2	Accounts and audit	40
18.3	Financial year	40
<b>19.</b>	<b>Indemnity, insurance and access to documents</b>	<b>40</b>
19.1	Persons to whom rules 19.2 to 19.7 apply	40
19.2	Indemnity	41
19.3	Limit on indemnity	41
19.4	Extent of indemnity	42
19.5	Insurance	42
19.6	Savings	42
19.7	Deed	42
19.8	Directors' access to documents	42
<b>20.</b>	<b>Winding up and revocation of Deductible Gift Recipient status</b>	<b>43</b>
20.1	Surplus assets not to be distributed to Members	43
20.2	Distribution of surplus assets	43
20.3	Revocation of Deductible Gift Recipient status	43
<b>21.</b>	<b>Modification of this Constitution</b>	<b>44</b>
<b>22.</b>	<b>General</b>	<b>44</b>
22.1	Amendment of Constitution	44
22.2	Submission to jurisdiction	44
22.3	Prohibition and enforceability	44

# Constitution of Epilepsy Foundation

**ACN 605 007 510**

## **A public company limited by guarantee**

---

### **1. Introduction**

#### **1.1 Name of the Company**

The name of the Company is Epilepsy Foundation or as that name is changed from time to time.

#### **1.2 Type of company**

Epilepsy Foundation is a public company limited by guarantee which is established to be, and to continue as, a charity.

#### **1.3 Purposes**

Epilepsy Foundation is a not-for-profit, apolitical, charitable institution, established and operated in Australia, with the object of advancing and supporting the health and wellbeing of People Living with Epilepsy, including by:

- (a) delivering nationally consistent, evidence-based epilepsy-related services and support across all states and territories, to help People Living with Epilepsy to manage epilepsy well;
- (b) promoting, developing, fostering, supporting and participating in scientific, medical and psychosocial research into the cause, cure, effects, therapies and treatments of epilepsy, including the incidence, prevalence, and the economic, social and other effects, of epilepsy;
- (c) establishing and maintaining a public fund or funds to be used for the Company's purposes, and soliciting and accepting donations, gifts and grants for such fund or funds;
- (d) providing funds and in-kind support to other institutions or organisations with purposes similar to those of the Company;
- (e) ensuring that People Living with Epilepsy have equitable access to support, and appropriate materials and resources, reflecting and supporting various levels of health literacy, to assist them to be knowledgeable, healthy and active, social, and economic participants;
- (f) enhancing an understanding of epilepsy across a variety of sectors, including schools, workplaces, aged care, complex care and nursing environments, as well as the broader community, to facilitate appropriate responses to the needs of People Living with Epilepsy;
- (g) supporting the health and other sector workforces to respond to the holistic needs of People Living with Epilepsy;

- (h) ensuring that information and supports provided are culturally appropriate and address the needs of Aboriginal and Torres Strait Islander peoples and other culturally and linguistically diverse communities;
- (i) promoting and advocating for the rights, integrity, autonomy, dignity and well-being of People Living with Epilepsy, regardless of their cultural, political, socio-economic, religious or other backgrounds or affiliations; and
- (j) collaborating in developing an epilepsy ecosystem that addresses the needs of People Living with Epilepsy.

#### **1.4 Powers**

Solely for carrying out the Company's purposes, the Company may, in any manner permitted by the Corporations Act or the ACNC Legislation:

- (a) exercise any power;
- (b) take any action; or
- (c) engage in any conduct or procedure,

which under the Corporations Act or the ACNC Legislation a company limited by guarantee may exercise, take or engage in if authorised by its constitution, including to:

- (d) solicit and accept donations, gifts and grants;
- (e) liaise, co-operate and collaborate with other international, national, State or Territory epilepsy organisations, or organisations with purposes similar to those of the Company; and
- (f) own, licence or otherwise distribute and develop assets relevant to improved outcomes for People Living with Epilepsy.

#### **1.5 Non-profit**

- (a) Subject to rule 1.5(b)(5), the Company must not pay, transfer or distribute, directly or indirectly, by way of dividend, bonus or other profit distribution, any of its income or assets to any Member or to a person claiming through that Member.
- (b) The Company may, in good faith, pay:
  - (1) reasonable and proper remuneration to any employee of the Company;
  - (2) subject to this Constitution, reasonable and proper amounts to any Member in return for any services actually rendered to the Company;
  - (3) interest at a rate not exceeding the rate for the time being charged by the Company's bankers, for money lent to the Company by any Member;
  - (4) reasonable and proper rent for premises let by any Member to the Company;
  - (5) any amount to a Member in pursuing the Company's charitable purposes;
  - (6) sums permitted to be paid under Chapter 2E of the Corporations Act;

(7) sums permitted to be paid under rule 9.7; and

(8) sums paid under rule 19,

provided that any payment made to a Member or to any person claiming through that Member has been approved by the Directors.

## 2. Definitions and interpretation

### 2.1 Definitions

In this Constitution:

**ACNC Legislation** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) to the extent they apply to the Company at the relevant time.

**Alternate Director** means any person who, for the time being, holds office as an alternate Director duly appointed in accordance with rule 8.

**Annual Subscription** means the annual subscription (if any) determined in accordance with rule 4.7.

**Appeal Notice** means a notice referred to in rule 5.2(b)(3).

**Application Fee** means the application fee (if any) determined in accordance with rule 4.6.

**Appointing Director** means, in relation to an Alternate Director, the Director who appointed that Alternate Director under rule 8.

**ASIC** means the Australian Securities and Investments Commission.

**Chair** means the chair of the relevant meeting under rule 6.8 or 11.3 (as the case may be).

**Charity** has the meaning given in the *Charities Act 2013* (Cth).

**Committee** means a committee established under rule 11.8(a).

**Company** means Epilepsy Foundation ACN 605 007 510 or as that name is changed from time to time.

**Constitution** means this constitution of the Company.

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

**Deductible Gift Recipient** has the meaning given in the *Income Tax Assessment Act 1997* (Cth).

**Director** means a director of the Company.

**Discipline Notice** means a notice given under rule 5.2(b).

**Dispute** means a dispute or disagreement under this Constitution between a Member or a Director and:

- (a) one or more Members;
- (b) one or more Directors; or
- (c) the Company.

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.

**Insolvency Event** means, in relation to:

- (a) a natural person:
  - (1) the person is placed into bankruptcy or an order is made by a court or an application is made to a court for an order or the person gives notice of its intention that the person be placed into bankruptcy;
  - (2) a trustee in bankruptcy is appointed in respect of the person or any property of the person or an application is made to a court for an order that a trustee in bankruptcy be appointed in respect of the person or any property of the person;
  - (3) the person is, or states that the person is or may become, unable to pay the person's debts as and when they fall due; or
  - (4) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- (b) a person who is not a natural person – being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or is otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, the taking of any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event under the law of any applicable jurisdiction.

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law.

**Liability** means a loss, liability, damage, cost, charge or expense.

**Member** means a member of the Company.

**Members' Resolution** means a resolution Members propose to move at a general meeting, notified under rule 6.11(a)(1).

**Members' Statement** means a statement Members request to be provided to all Members, notified under rule 6.11(a)(2).

**Official** means:

- (a) each person who is or has been a Director; and
- (b) officers and former officers of the Company or any of its subsidiaries, as determined by the Directors from time to time.

**People Living with Epilepsy** means people with epilepsy, their family members and their unpaid support networks.

**Register** means the register of Members as required to be kept under the Corporations Act.

**Registered Office** means the registered office of the Company.

**Regulation** means a regulation of the Company made under rule 16.

**Representative** means a representative of a Member which is a body corporate appointed under rule 6.22.

**Secretary** means a person appointed to perform the duties of a company secretary of the Company.

## 2.2 Interpretation

In this Constitution:

- (a) a reference to:
  - (1) any statute, rule, regulation, ordinance or other Law and includes regulations and other statutory instruments under any of them and any consolidation, amendment, re-enactment or replacement of any of them by any Government Agency;
  - (2) a Chapter or section is a reference to a Chapter or section of the Corporations Act;
  - (3) any officer of the Company includes any person acting for the time being as such an officer; and
  - (4) writing includes any mode of representing or reproducing words in a tangible or visible form, and includes electronic forms of writing;

- (b) words importing:
  - (1) the singular include the plural and vice versa;
  - (2) a gender includes the other genders; and
  - (3) a natural person includes a partnership, association and body corporate;
- (c) headings are used for convenience only and do not affect the interpretation of this Constitution;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) references to notices in this Constitution include not only formal notices of meetings but also all documents and other communications from the Company to Members but do not include cheques;
- (f) a Member is to be taken to be present at a general meeting if the Member is present in person or by proxy or by Representative, including participating in a general meeting in any of those capacities whilst using electronic technology; and
- (g) unless the contrary intention appears, an expression used in this Constitution that is defined in the Corporations Act has the same meaning in this Constitution where it relates to the same matter as the matter for which it was defined in the Corporations Act.

If any question, uncertainty, difficulty, anomaly, dispute or disagreement arises, either generally or in a particular case, in connection with the application or interpretation of this Constitution, or the powers, rights, discretions or obligations of the Company, any Director or any Member, then subject only to the law, that question, uncertainty, difficulty, anomaly, dispute or disagreement may be determined by the Directors acting in good faith but otherwise in their absolute discretion, and any such determination is conclusive and binding on all persons to whom the determination relates, and must accordingly be given its full effect.

### 2.3 Inclusive expressions

Specifying anything in this Constitution after the words **including**, **includes** or **for example** or similar expressions does not limit what else is included unless there is express wording to the contrary.

### 2.4 Replaceable rules

The replaceable rules contained in the Corporations Act do not apply to the Company.

---

## 3. Company limited by guarantee

### 3.1 Limited liability

The liability of the Members is limited to the amount of the guarantee in rule 3.2.

### **3.2 Guarantee**

Each Member undertakes to contribute an amount not exceeding \$1.00 to the assets of the Company if the Company is wound up while the Member is a Member, or within one year of the Member ceasing to be a Member, for payment:

- (a) of the debts and liabilities of the Company incurred while the Member was a Member;
- (b) of the costs, charges and expenses of the winding up; and
- (c) for the adjustment of the rights of contributories among themselves.

## **4. Membership**

### **4.1 Number of Members**

The number of Members is unlimited.

### **4.2 Membership**

The Members are, subject to this Constitution:

- (a) the persons who were Members on the date this Constitution was adopted; and
- (b) any other person, body corporate or organisation whom or which the Directors admit to membership in accordance with this Constitution.

### **4.3 Obligations of Members**

Each Member must:

- (a) promote and further the purposes, interest, influence and standing of the Company; and
  - (b) observe this Constitution and the Regulations in force from time to time,
- to the best of the Member's ability.

### **4.4 Application for membership**

- (a) An application for membership must be:
  - (1) in writing, in the form prescribed by the Directors;
  - (2) signed by the applicant;
  - (3) accompanied by the Application Fee (if any) and Annual Subscription (if any); and
  - (4) lodged with a Secretary.
- (b) The Directors must consider an application for membership within a reasonable time after a Secretary receives the application and must determine whether to approve or

reject the application for membership in their absolute discretion, without being obliged to provide reasons.

- (c) If the Directors approve an application for membership, a Secretary must, as soon as practicable:
  - (1) notify the applicant in writing of the approval; and
  - (2) enter the applicant's name and address in the Register.
- (d) An applicant for membership becomes a Member and is entitled to exercise the rights of membership when the Member's name is entered in the Register.
- (e) If the Directors reject an application for membership, a Secretary must, as soon as practicable, notify the applicant in writing that the application has been rejected, without being obliged to provide reasons.

#### **4.5 Classes of Membership**

To the extent permitted by Law, the Directors may from time to time divide the membership of the Company into different classes of membership and determine the rights and obligations attaching to each class of membership.

#### **4.6 Application Fee**

The Directors may determine, in their absolute discretion, whether there is to be an Application Fee and the amount of the Application Fee (if any).

#### **4.7 Annual Subscription**

- (a) The Directors may determine, in their absolute discretion, whether there is to be an Annual Subscription and the amount of the Annual Subscription (if any).
- (b) The Annual Subscription can be different as between classes of membership.
- (c) Unless the Directors determine otherwise, all Annual Subscriptions are due on 1 July in each year.
- (d) If a Member fails to pay the Annual Subscription within 2 months of it becoming due and payable, the Directors may, in their absolute discretion, issue the Member a default notice, in which case the Member will cease to be entitled to any of the rights or privileges of membership, but remains bound by all duties and obligations of membership.
- (e) Upon payment by a Member of all amounts owing to the Company, including Annual Subscriptions, the Directors may, in their absolute discretion, reinstate any rights or privileges of the Member that were suspended in accordance with rule 4.7(d).
- (f) If a Member fails to pay the Annual Subscription within one month of being issued a default notice under rule 4.7(d), that Member ceases to be a Member.

#### **4.8 No transfer of membership**

A right, privilege, or obligation of a person by reason of membership of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon the cessation of membership.

#### **4.9 Cessation of membership**

A Member will cease to be a Member:

- (a) if the Member resigns from the Company by giving written notice of resignation, from the date of receipt of that notice by a Secretary;
- (b) if the Member is expelled from the Company in accordance with rule 5;
- (c) in the circumstances set out in rule 4.7(f); or
- (d) where the Member is an individual, if the Member:
  - (1) dies;
  - (2) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
  - (3) experiences an Insolvency Event; or
  - (4) is convicted of an indictable offence.
- (e) where the Member is a body corporate, if:
  - (1) the Member experiences an Insolvency Event; or
  - (2) an order is made by a court for the winding up or deregistration of the Member.

---

## **5. Dispute resolution and disciplinary procedures**

### **5.1 Dispute resolution**

- (a) The dispute resolution procedure in this rule 5 applies to a Dispute.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under rule 5.1(h) until the disciplinary procedure is completed.
- (c) Those involved in the Dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the Dispute do not resolve it under rule 5.1(c) within 14 days, they must within a further 10 days do all the following:
  - (1) tell the Directors about the Dispute in writing;
  - (2) agree or request that a mediator be appointed; and
  - (3) attempt in good faith to settle the Dispute by mediation.

- (e) The mediator must:
  - (1) be chosen by agreement of those involved, or
  - (2) where those involved do not agree:
    - (A) for Disputes between Members, a person chosen by the Directors; or
    - (B) for other Disputes, a person chosen by the Commissioner of the Australian Charities and Not-for-profits Commission.
- (f) A mediator chosen by the Directors under rule 5.1(e)(2)(A):
  - (1) may be a Member or former Member;
  - (2) must not have a personal interest in the Dispute; and
  - (3) must not be biased towards or against anyone involved in the Dispute.
- (g) When conducting the mediation, the mediator must:
  - (1) allow those involved a reasonable chance to be heard;
  - (2) allow those involved a reasonable chance to review any written statements prepared by others involved;
  - (3) ensure that those involved are given natural justice; and
  - (4) not make a decision on the Dispute.
- (h) If the mediation does not result in the resolution of the Dispute, anyone involved in the Dispute may pursue any other dispute resolution procedure.

**5.2 Directors may resolve to warn or suspend or expel**

- (a) If a Member has:
  - (1) refused or neglected to comply with this Constitution or a Regulation;
  - (2) knowingly made or given any false, misleading or deceptive statement or representation verbally or in writing to the Company in any capacity; or
  - (3) in the opinion of the Directors, been guilty of conduct unbecoming a Member or prejudicial to the interests of the Company,

the Directors may by resolution:

  - (4) warn the Member;
  - (5) suspend the Member from membership for a specified period during which the Member is not entitled to any of the rights or privileges of membership; or
  - (6) expel the Member from the Company.

- (b) At least 14 days before the Directors' meeting at which a resolution referred to in rule 5.2(a) will be considered, a Secretary must give to the Member a written notice notifying the Member:
- (1) that the Directors are considering a resolution to warn, suspend or expel the Member;
  - (2) that this resolution will be considered at a Directors' meeting and the date of that meeting;
  - (3) that the Member has a right to appeal the proposed Director's decision by lodging with a Secretary, no later than 10 Business Days after the date on which the Discipline Notice was delivered, a notice in writing setting out the Member's intention to appeal the proposed decision and the grounds on which the appeal is sought;
  - (4) what the Member is alleged to have done or not done; and
  - (5) the nature of the resolution that has been proposed.
- (c) After considering any information in an Appeal Notice, the Directors may:
- (1) take no further action;
  - (2) warn the Member;
  - (3) suspend the Member for a period of no more than 12 months;
  - (4) expel the Member; or
  - (5) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this rule 5.1(h)).
- (d) The Directors cannot fine a Member.
- (e) A Secretary must give written notice to the Member of any decision under rule 5.2(c) as soon as possible.
- (f) Disciplinary procedures must be completed as soon as reasonably practicable.
- (g) There will be no liability for any loss or injury suffered by a Member as a result of any decision made in good faith under this rule 5.1(h).

## **6. General meetings**

### **6.1 General meetings called by Directors**

- (a) The Directors may call a general meeting.
- (b) If Members with at least 5% of the votes that may be cast at a general meeting make a written request to a Secretary for a general meeting to be held, the Directors must:

- (1) within 21 days of the Members' request, give all Members notice of a general meeting; and
- (2) hold the general meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members have (for the purposes of rule 6.1(b)) is to be worked out as at midnight before the Members request the general meeting.
- (d) The Members who make the request for a general meeting must:
  - (1) state in the request any resolution to be proposed at the general meeting;
  - (2) sign the request; and
  - (3) give the request to a Secretary.
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

## **6.2 General meetings called by Members**

- (a) If the Directors do not call the general meeting within 21 days of being requested under rule 6.1(b), 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a general meeting under rule 6.2(a) the Members must:
  - (1) as far as possible, follow the procedures for general meetings set out in this Constitution;
  - (2) call the general meeting using the list of Members on the Register, which the Company must provide to the Members making the request at no cost; and
  - (3) hold the general meeting within 3 months after the request was given to the Company.
- (c) The Company must pay the Members who request the general meeting any reasonable expenses the Members incur because the Directors did not call and hold the general meeting.

## **6.3 Annual general meeting**

- (a) A general meeting, called the annual general meeting, must be held at least once in every calendar year, and within 5 months of the end of the Company's financial year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
  - (1) a review of the Company's activities;
  - (2) a review of the Company's finances;
  - (3) the auditor's report;

- (4) the election of Directors or the announcement of the results of a ballot for the election of Directors; and
  - (5) the appointment and remuneration of the Company's auditor.
- (c) Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the last financial year.

#### **6.4 Notice of a general meeting**

- (a) Notice of a general meeting must be given to:
- (1) each Member entitled to vote at the general meeting;
  - (2) each Director; and
  - (3) the auditor.
- (b) Notice of a general meeting must be provided in writing at least 21 days before the date scheduled for the general meeting.
- (c) Subject to rule 6.4(d), notice of a general meeting may be provided less than 21 days before the general meeting if:
- (1) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
  - (2) for any other general meeting, Members with at least 95% of the votes that may be cast at the general meeting agree beforehand.
- (d) Notice of a general meeting cannot be provided less than 21 days before the date scheduled for the general meeting if a resolution will be moved to:
- (1) remove a Director;
  - (2) appoint a Director in order to replace a Director who was removed; or
  - (3) remove an auditor,
- or if it is proposed that a special resolution be considered at the general meeting.
- (e) Notice of a general meeting must include:
- (1) the place, date and time for the general meeting (and if the general meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
  - (2) the general nature of the general meeting's business;
  - (3) if applicable, that a special resolution is to be proposed and the words of the proposed special resolution;
  - (4) a statement that a Member has the right to appoint a proxy and that, if a Member appoints a proxy:

- (A) the proxy does not need to be a Member;
  - (B) the proxy form must be delivered to the Company at the Registered Office or the address (including an electronic address) specified in the notice of the general meeting; and
  - (C) to be valid, the proxy form must be received by the Company at least 48 hours before the time scheduled for the general meeting.
- (f) If a general meeting is adjourned for one month or more, the Members must be given new notice of the resumed general meeting.
- (g) No business other than that specified in the notice convening a general meeting may be transacted during that general meeting.
- (h) A person may waive notice of any general meeting by notice in writing to the Company.
- (i) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 6.4 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the general meeting, the person:
    - (A) has waived or waives notice of that general meeting under rule 6.4(h); or
    - (B) has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by notice in writing to the Company.
- (j) A person's attendance at a general meeting waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the general meeting unless the person at the beginning of the general meeting objects to the holding of the general meeting.

## **6.5 Quorum at a general meeting**

- (a) No business may be transacted at any general meeting, except the election of a Chair or the adjournment of the meeting, unless a quorum of Members is present during the time the business is dealt with.
- (b) A quorum for a general meeting is 3 Members present at the general meeting.
- (c) When determining whether a quorum is present, a person may only be counted once (even if that person is a Member as well as a Representative or proxy of one or more Members).
- (d) If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the Chair specifies. If the Chair does not specify one or more of those things, the general meeting is adjourned to:

- (1) if the date is not specified – the same day in the next week;
  - (2) if the time is not specified – the same time; and
  - (3) if the place is not specified – the same place.
- (e) If no quorum is present at the resumed general meeting within 30 minutes after the starting time set for that general meeting, the general meeting is cancelled.

#### **6.6 Auditor's right to attend a general meeting**

- (a) The auditor is entitled to attend any general meeting and to be heard by the Members on any part of the business of the general meeting that concerns the auditor in the capacity as auditor.
- (b) The Company must give the auditor any communications relating to the general meeting that a Member is entitled to receive.

#### **6.7 Using technology to hold a general meeting**

- (a) A general meeting may be held using one or more technologies that give Members as a whole a reasonable opportunity to participate in the general meeting without being physically present in the same place.
- (b) A general meeting may be held partially by, completely by, or not utilising, technological means.
- (c) The Directors may, subject to this Constitution, make any arrangement and impose any requirement or restriction in connection with participation at a general meeting which utilises such technology, including any arrangement, requirement or restriction that is necessary to ensure the identification of those taking part in the general meeting and the security of the facility through which Members participate in the general meeting.
- (d) All persons participating in a general meeting which utilises such technology are taken for all purposes (including quorum requirements) to be present in person at the general meeting while so participating.
- (e) If a technical difficulty occurs which the Chair considers prevents those participating or intending to participate in a general meeting which utilises such technology to have a reasonable opportunity to do so or prevents the Chair from being aware of the proceedings at the general meeting, the Chair may:
  - (1) adjourn the general meeting until the technical difficulty is resolved or otherwise addressed to the Chair's satisfaction; or
  - (2) continue to hold the general meeting in the place where the Chair is present (and any other place which is not affected by such technical difficulty) and transact business, and no Member may object to the general meeting being held or continuing.
- (f) The inability of one or more Members to participate or continue to participate in a general meeting which utilises such technology does not affect the validity of the general meeting or the business conducted at the general meeting provided that

sufficient Members are able to participate in the general meeting as are required to constitute a quorum.

#### **6.8 Chair for a general meeting**

- (a) The Chairperson must (if present within 15 minutes after the time appointed for the general meeting and willing to act) preside as Chair at each general meeting.
- (b) If at a general meeting:
  - (1) there is no Chair;
  - (2) the Chairperson is not present within 15 minutes after the time appointed for the meeting; or
  - (3) the Chair is present within that time but is not willing to act as Chair,

then the Members present must elect as Chair another Director who is present and willing to act or, if no other Director is present and willing to act, a Member who is present and willing to act.
- (c) Despite anything in rule 6.8(b), if the Chair later attends a general meeting, the Chair, provided the Chair is willing to act, must take over as Chair.

#### **6.9 Role of the Chair**

- (a) The Chair is responsible for the conduct of the general meeting, and for this purpose must give Members a reasonable opportunity to ask questions (including to the auditor) and to make comments about the management of the Company.
- (b) In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the general meeting at which the show of hands takes place or at which the poll is demanded has a casting vote (in addition to any vote that the Chair has as a Member).
- (c) The Chair may at any time the Chair considers it necessary or desirable for the proper and orderly conduct of the general meeting:
  - (1) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the general meeting and require the business, question, motion or resolution to be put to a vote of the Members present; and
  - (2) adopt any procedures for casting or recording votes at the general meeting, including the appointment of scrutineers.
- (d) Any question arising at a general meeting relating to the order of business, procedure or conduct of the general meeting must be referred to the Chair, whose decision is final.

#### **6.10 Adjournment of a general meeting**

- (a) If a quorum is present, a general meeting must be adjourned if a majority of Members present direct the Chair to adjourn it.

- (b) Only unfinished business may be dealt with at a general meeting resumed after an adjournment.

#### **6.11 Resolutions and statements by Members**

- (a) Members with at least 5% of the votes that may be cast at a general meeting may give:
  - (1) written notice to the Company of a resolution (including a special resolution) that may properly be considered at a general meeting which they propose to move at a general meeting; and/or
  - (2) a written request to the Company that the Company give all Members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting.
- (b) A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- (c) A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.
- (d) 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.
- (e) The percentage of votes that Members have (for the purposes of rule 6.11(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a Members' Resolution under rule 6.11(a)(1), the resolution must be considered at the next general meeting held more than 2 months after the notice is given.

#### **6.12 Company must give notice of proposed resolution or distribute statement**

- (a) If the Company has been given a notice or request under rule 6.11(a):
  - (1) in time to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of general meeting, it must do so at the Company's cost, or
  - (2) too late to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of general 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. However, at a general meeting, the Members may pass a resolution that the Company will pay these expenses.
- (b) The Company does not need to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members if:
  - (1) it is more than 1,000 words long;
  - (2) the Directors consider it may be defamatory;

- (3) rule 6.12(a)(2) 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
- (4) 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 Members.

**6.13 Sole Member resolutions**

- (a) If at any time the Company has only one Member, it satisfies any requirement in this Constitution or the Corporations Act that a resolution be passed by that sole Member recording the resolution and signing the record.
- (b) A Representative may sign a record referred to in rule 6.13(a).

**6.14 How many votes a Member has**

- (a) Each Member has one vote.
- (b) Except in the case of any resolution which under this Constitution or as a matter of Law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by Members present at the meeting and eligible to vote, and any such decision is for all purposes a decision of the Members.

**6.15 Challenge to Member's right to vote**

- (a) A Member or the Chair may only challenge a person's right to vote at a general meeting at that general meeting.
- (b) If a challenge is made under rule 6.15(a), the Chair must decide whether or not the person may vote. The Chair's decision is final in the absence of manifest error.

**6.16 How voting is carried out**

- (a) Voting must be conducted and decided by:
  - (1) a show of hands;
  - (2) a poll; or
  - (3) another method determined by the Chair that is fair and reasonable in the circumstances.
- (b) Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes have been directed or will otherwise be cast.
- (c) On a show of hands, the Chair's decision is conclusive evidence of the result of the vote, in the absence of manifest error.
- (d) The Chair 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.

**6.17 When and how a poll must be held**

- (a) A poll may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (1) at least 5 Members present; or
  - (2) the Chair.
- (b) A poll must be taken when and how the Chair directs, unless rule 6.17(c) applies.
- (c) A poll must be held immediately if it is demanded under rule 6.17(a)(1):
  - (1) for the election of a Chair under rule 6.8(b), or
  - (2) to decide whether to adjourn the general meeting.
- (d) A demand for a poll may be withdrawn.

**6.18 Electronic ballots**

- (a) Any resolution that could be considered and voted upon at a general meeting (other than the election of a Chair or the adjournment of the meeting, but including the election of Directors), may be submitted to Members and voted upon by an electronic ballot, to be conducted at such time and in such manner as the Directors determine (subject to any applicable Regulations), and a reference in this Constitution related to voting at a general meeting is to be interpreted as including voting in an electronic ballot.
- (b) A resolution passed by an electronic ballot is regarded as passed at the time the result of the electronic ballot is declared, unless the wording of the resolution itself states otherwise.

**6.19 Votes counted in error**

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same general meeting; and
- (b) of sufficient magnitude, in the opinion of the Chair, as to invalidate the resolution.

**6.20 Proxies**

- (a) A Member may appoint a proxy to attend and vote at a general meeting on the Member's behalf.
- (b) A proxy does not need to be a Member.
- (c) A proxy appointed to attend and vote for a Member has the same rights as the Member to:
  - (1) speak at the meeting;
  - (2) vote on a poll (but only to the extent allowed by the appointment); and

- (3) join in to demand a poll under rule 6.17(a)(1).
- (d) An appointment of a proxy must be signed by the Member appointing the proxy and must contain:
  - (1) the Member's name and address;
  - (2) the Company's name;
  - (3) the proxy's name or the name of the office held by the proxy; and
  - (4) the general meeting(s) at which the appointment may be used.
- (e) A proxy appointment may be standing.
- (f) Proxy forms must be received by the Company at the address stated in the notice calling the general meeting or at the Registered Office at least 48 hours before the relevant general meeting.
- (g) A proxy does not have the authority to speak or vote for a Member at a general meeting while the Member is at the general meeting.
- (h) Unless the Company receives written notice 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:
  - (1) dies;
  - (2) becomes mentally incapacitated;
  - (3) revokes the proxy's appointment; or
  - (4) revokes the authority of a Representative or agent who appointed the proxy.
- (i) A proxy appointment may specify the way the proxy must vote on a particular resolution, in which case the proxy must vote on the resolution, and must vote in the way specified. The Chair may implement procedures to pre-record and cast directed votes irrespective of any conduct of the proxy or the appointing Member.

**6.21 Voting by proxy**

- (a) A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).
- (b) When a poll is held, a proxy:
  - (1) does not need to vote, unless the proxy appointment specifies the way the proxy must vote; and
  - (2) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

**6.22 Representatives of body corporate Members**

- (a) A Member which is a body corporate may appoint as a Representative:

- (1) one individual to represent the Member at general meetings; and
  - (2) the same individual for the purpose of being appointed or elected as a Director.
- (b) The appointment of a Representative by a Member must:
- (1) be in writing;
  - (2) include the name of the Representative;
  - (3) be signed on behalf of the Member; and
  - (4) be given to the Company or, for representation at a general meeting, be given to the Chair before the general meeting starts.
- (c) A Representative has all the rights of a Member relevant to the purposes of the appointment as a Representative.
- (d) The appointment may be standing.

## **7. Directors**

### **7.1 Number of Directors**

The Company must have at least 3 and no more than 11 Directors.

### **7.2 Restriction on number of registered medical practitioners**

A person may not be elected or appointed as a Director if such election or appointment would mean that the Directors who are also registered medical practitioners would exceed one third of the total number of Directors in office at that time.

### **7.3 Election and appointment of Directors**

- (a) Subject to rule 7.1, the Members may elect an eligible person as a Director by ordinary resolution passed at an annual general meeting.
- (b) A person is eligible for election as a Director under rule 7.3(a) if the person:
  - (1) is a Member or a Representative;
  - (2) is not an employee of the Company or any of its subsidiaries;
  - (3) is nominated by 2 Members or Representatives (unless the person was previously elected as a Director at a general meeting and has been a Director since that general meeting);
  - (4) gives the Company the person's signed consent to act as a Director; and
  - (5) is not ineligible to be a director under the Corporations Act or the ACNC Legislation.

- (c) The election process must be undertaken in accordance with a process approved by the Directors (including as set out in any applicable Regulation), which may involve an electronic ballot under rule 6.18.
- (d) Subject to rule 7.1, the Directors may at any time appoint an eligible person (including a person who is not elected or re-elected as a Director at an annual general meeting) as a Director to fill a casual vacancy or as an additional Director.
- (e) A person is eligible for appointment as a Director under rule 7.3(d) if the person:
  - (1) is a Member or a Representative;
  - (2) is not an employee of the Company or any of its subsidiaries;
  - (3) has given the Company the person's signed consent to act as a Director; and
  - (4) is not ineligible to be a director under the Corporations Act or the ACNC Legislation.
- (f) If the number of Directors is reduced to fewer than 3, the continuing Directors may act for the purpose of increasing the number of Directors to 3 or calling a general meeting, but for no other purpose.

#### **7.4 Removal by Members**

The Members may by ordinary resolution:

- (a) remove any Director from office; and
- (b) elect another eligible person as a Director instead.

#### **7.5 Election of Chair**

- (a) At the first meeting of the Directors following each annual general meeting, the Directors must elect a Director as the Chairperson.
- (b) The Chairperson may otherwise be appointed and removed by the Directors at any time.
- (c) The Chairperson has the roles, powers, discretions and responsibilities:
  - (1) set out in this Constitution; and
  - (2) given to the Chairperson by the Directors from time to time.

#### **7.6 Term of office**

- (a) At each annual general meeting:
  - (1) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire; and
  - (2) one-third (rounded up to the nearest whole number) of the remaining Directors must retire.

- (b) The Directors who must retire at each annual general meeting under rule 7.6(a)(2) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless those Directors agree otherwise.
- (c) An elected Director's term of office starts at the end of the annual general meeting at which the Director is elected and ends at the end of the annual general meeting at which the Director retires.
- (d) Each Director must retire at least once every 3 years.
- (e) A Director who retires under rule 7.6(a) or rule 7.6(d) may nominate for election or re-election.

### **7.7 When a Director ceases to be a Director**

A Director ceases to be a Director if the Director:

- (a) gives written notice of resignation as a Director to the Company;
- (b) dies;
- (c) is removed as a Director by a resolution of the Members passed under rule 7.4 or the Corporations Act;
- (d) ceases to be a Member of the Company;
- (e) experiences an Insolvency Event;
- (f) is a Representative, and the appointing Member ceases to be a Member;
- (g) is a Representative, and the appointing Member notifies the Company that the Representative is no longer a Representative of that Member;
- (h) is absent from 3 consecutive Directors' meetings without approval from the Directors;  
or
- (i) becomes ineligible to be a director under the Corporations Act or the ACNC Legislation.

---

## **8. Alternate Directors**

### **8.1 Power to appoint an Alternate Director**

- (a) With the prior written approval of each other Director, a Director may appoint an Alternate Director to exercise some or all of the Appointing Director's powers, authorities, responsibilities, functions and discretions either indefinitely or for a specified period.
- (b) An Alternate Director need not be a Director or a Member.

### **8.2 Appointment**

The appointment of an Alternate Director must be in writing and a copy given to the Company.

### **8.3 Rights and powers**

- (a) An Alternate Director:
  - (1) is entitled to notice of each Directors' meeting and if the Appointing Director is not present at any such meeting, the Alternate Director may attend and vote at that meeting in the Appointing Director's place; and
  - (2) is otherwise entitled to exercise all the powers, authorities, responsibilities, functions and discretions of the Appointing Director in the Appointing Director's place (unless the appointment was expressly limited to some only of the Appointing Director's powers, authorities, responsibilities, functions and discretions, in which case the Alternate Director may only exercise those powers, authorities, responsibilities, functions and discretions).
- (b) When an Alternate Director exercises the Appointing Director's powers, authorities, responsibilities, functions and discretions, the exercise of the powers, authorities, responsibilities, functions and discretions is just as effective as if the powers, authorities, responsibilities, functions and discretions were exercised by the Appointing Director.

### **8.4 Alternate Director is not agent of Appointing Director**

An Alternate Director is responsible to the Company for the Alternative Director's own conduct as if the Alternate Director were a Director elected or appointed under rule 7, and is not, deemed to be, an agent of the Appointing Director.

### **8.5 Termination of appointment**

- (a) The Appointing Director may terminate the Alternate Director's appointment at any time.
- (b) The termination of an Alternate Director must be in writing and is not effective until a copy is given to the Company.
- (c) In any case, the appointment of an Alternate Director terminates when the Appointing Director stops being a Director.

## **9. Powers of Directors**

### **9.1 Directors' powers**

- (a) Subject to the Corporations Act, the ACNC Legislation and this Constitution, the Directors are responsible for managing and directing the activities of the Company to pursue the purposes set out in rule 1.3.
- (b) The Directors may exercise to the exclusion of the Company in general meeting all the powers, authorities, responsibilities, functions and discretions of the Company which are not required, by the Corporations Act, the ACNC Legislation or this Constitution, to be exercised by the Company in general meeting.
- (c) The Directors must decide on the responsible financial management of the Company including:

- (1) any suitable written delegations of powers, authorities, responsibilities, functions and discretions under rule 9.6; and
  - (2) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (d) Subject to this Constitution and the Law, the Directors cannot remove a Director.
  - (e) The Directors may only remove, appoint, or replace the auditor if permitted by the Corporations Act or the ACNC Legislation.

## **9.2 Power to borrow and give security**

- (a) Without limiting the generality of rule 9.1, the Directors may:
  - (1) borrow money, with or without giving security for it; and
  - (2) guarantee the performance of any obligation of the Company or of any other person.
- (b) The Directors may borrow or provide security as they think fit and in particular by the issue of bonds, debentures or debenture stock or any mortgage, charge or other security on the undertaking of the whole or part of the property of the Company (both present and future).
- (c) Debentures, debenture stock, bonds or other securities may be:
  - (1) made assignable free from any equities between the Company and the person to whom they have been issued; or
  - (2) issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings, appointment of Directors and otherwise, and any debentures may be re-issued notwithstanding that they may have been made paid off or satisfied.

## **9.3 Other offices of Directors**

Subject to the Corporations Act, a Director may hold any other office or offices of the Company (except that of auditor) in conjunction with the office of Director, and on such terms as the Directors may determine.

## **9.4 Director may act in professional capacity**

Subject to the Corporations Act and rule 9.7, any Director (or the Director's firm) may act in a professional capacity for the Company and the Director (or the Director's firm) is entitled to remuneration for professional services as if the Director were not a Director.

## **9.5 Attorneys**

- (a) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company with such powers, authorities, responsibilities, functions and discretions (being powers, authorities, responsibilities, functions and

discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.

- (b) Subject to any contract between the Company and the relevant attorney and any applicable industrial law, remove or dismiss an attorney of the Company at any time, with or without cause.
- (c) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney and may also authorise the attorney to delegate all or any of the powers, authorities, responsibilities, functions and discretions vested in the attorney.

#### **9.6 Delegation of Directors' powers**

- (a) The Directors may delegate any of their powers, authorities, responsibilities, functions and discretions to a Committee, a single Director, any other officer or an employee of the Company (such as a chief executive officer or other executive appointed under rule 13) or any other person, as they consider appropriate.
- (b) A person or Committee to whom any powers have been delegated or further delegated must exercise those powers in accordance with any directions of the Directors.
- (c) No delegation or further delegation prevents the Directors from continuing to themselves exercise the power delegated.
- (d) The Directors may amend or revoke the terms of any delegation at any time, and any amendment or revocation applies equally to the terms of any further delegated power.
- (e) The delegation must be recorded in the Company's minute book and be set out in a Regulation.

#### **9.7 Payments to Directors**

- (a) The Company must not pay fees to a Director for acting as a Director.
- (b) The Company may:
  - (1) pay a Director for work the Director does for the Company, other than as a Director, including extra services or special exertions in a professional or technical capacity, if the amount is no more than a reasonable fee for the work done; or
  - (2) as permitted by any applicable Regulation, reimburse a Director for reasonable expenses properly incurred by the Director in connection with the affairs of the Company.
- (c) Any payment made under rule 9.7 must be approved by the Directors.
- (d) The Company may pay premiums for insurance indemnifying Directors, as allowed by Law (including the Corporations Act) and this Constitution.

---

## **10. Duties of Directors**

### **10.1 Director's duties**

Each Director must ensure that they are aware of, and comply with, the Director's duties as a Director under Law, including in particular, the duties set out in governance standard 5 of the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) which are:

- (a) to exercise the Director's powers and discharge the Director's duties with the degree of care and diligence that a reasonable individual would exercise if the Director were a Director;
- (b) to act in good faith in the Company's best interests and to further the charitable purposes of the Company set out in rule 1.3;
- (c) not to misuse the Director's position as a Director;
- (d) not to misuse information the Director gains in the performance of the Director's duties as a Director;
- (e) to disclose any perceived or actual material conflicts of interest experienced by the Director, in the manner set out in rule 10.2;
- (f) to ensure that the financial affairs of the Company are managed in a responsible manner; and
- (g) not to allow the Company to operate while insolvent.

### **10.2 Conflicts of interest**

- (a) 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 meeting of Directors (or that is proposed in a circular resolution):
  - (1) to the other Directors; or
  - (2) 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.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as permitted under rule 10.2(d);
  - (1) be present at the meeting while the matter is being discussed; or
  - (2) vote on the matter.
- (d) A Director may still be present and vote if:
  - (1) the Director's interest arises because a Director is a Member, and the other Members have the same interest;

- (2) the Director's interest relates to an insurance contract that insures, or would insure, a Director against liabilities that a Director incurs as a Director;
- (3) the Director's interest relates to a payment by the Company under rule 19, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (4) ASIC makes an order allowing the Director to vote on the matter; or
- (5) the Directors who do not have a material personal interest in the matter pass a resolution that:
  - (A) 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
  - (B) states that those Directors are satisfied that the interest should not prevent the Director from voting or being present.

## **11. Proceedings of Directors**

### **11.1 When the Directors meet**

- (a) The Directors may decide how often, where and when they meet.
- (b) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

### **11.2 Calling Directors' meetings and notice of Directors' meetings**

- (a) The Chairperson or any Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- (b) A Secretary must, when requested by the Chairperson or on the requisition of any Director, convene a meeting of the Directors.
- (c) A notice of a meeting of Directors:
  - (1) must specify the time and place of the meeting;
  - (2) should where practicable state the nature of the business to be transacted at the meeting;
  - (3) subject to rule 11.2(d), may be given immediately before the meeting; and
  - (4) may be given in person or by post, or by telephone or electronic means.
- (d) In the absence of special circumstances, at least 48 hours' notice of a meeting of the Directors must be given.
- (e) A Director may waive notice of any meeting of Directors by notifying the Company to that effect in person or by post, or by telephone or electronic means.

- (f) The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the Director:
    - (A) has waived or waives notice of that meeting under rule 11.2(e); or
    - (B) has notified or notifies the Company of the Director's agreement to that act, matter, thing or resolution personally or by post or by telephone or electronic means; or
  - (3) the Director attended the meeting.
- (g) Attendance by a person at a meeting of Directors waives any objection that the person may have to a failure to give notice of the meeting.

### **11.3 Chair**

- (a) The Chairperson must (if present within 15 minutes after the time appointed for the Directors' meeting and willing to act) preside as Chair at each Directors' meeting.
- (b) If at a Directors' meeting:
- (1) there is no Chairperson;
  - (2) the Chairperson is not present within 15 minutes after the time appointed for the Directors' meeting; or
  - (3) the Chairperson is present within that time but is not willing to act as Chair,
- then the Directors present must elect as Chair another Director who is present and willing to act.
- (c) Despite anything in rule 11.3(b), if the Chairperson later attends a Directors' meeting, the Chairperson, provided the Chairperson is willing to act, must take over as Chair.

### **11.4 Quorum**

- (a) Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority (more than 50%) of the Directors in office at the relevant time.
- (b) No business may be transacted at any meeting of the Directors unless a quorum of Directors is present during the time the business is dealt with.
- (c) If there is a vacancy in the office of a Director then, subject to rule 7.1, the remaining Directors may act.

### **11.5 Using technology to hold Directors' meetings**

- (a) Provided all reasonable steps have been taken to give each Director notice of the proposed meeting of the Directors, the contemporaneous linking together by telephone or other electronic means (allowing reasonable interaction between them)

of a number of the Directors sufficient to constitute an absolute majority of the Directors, constitutes a meeting of the Directors and all the provisions in this Constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of the Directors by telephone or other electronic means.

- (b) A Director participating in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (c) A meeting by telephone or other electronic means is to be taken to be held at the place determined by the Chair provided that at least one of the Directors involved was at that place for the duration of the meeting.

#### **11.6 Passing decisions of Directors**

- (a) A meeting of Directors at which a quorum is present is competent to exercise all or any of the powers, authorities, responsibilities, functions and discretions vested in or exercisable by the Directors under this Constitution or under Law.
- (b) Questions arising at a meeting of Directors are to be decided by a majority of votes cast by the Directors present and any such decision is for all purposes a decision of the Directors.
- (c) Other than in relation to an election of the Chair under rule 11.3, in the case of an equality of votes upon any proposed resolution, the Chair, in addition to the Chair's deliberative vote, has a casting vote.

#### **11.7 Circular resolutions of Directors**

- (a) The Directors may pass a circular resolution without a Directors' meeting being held.
- (b) A circular resolution is passed if an absolute majority of the Directors in office at the relevant time, who are entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in rule 11.7(c) or 11.7(d).
- (c) Each Director may sign:
  - (1) a single document setting out the resolution and containing a statement that the Director agrees to the resolution; or
  - (2) 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 a Director and the Director may agree to the resolution by sending a reply email to that effect, including the text of the resolution in the Director's reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in rule 11.7(c) or 11.7(d).

#### **11.8 Committees**

- (a) The Directors may, by making a Regulation, establish a committee:
  - (1) consisting of such Directors (if any) as they think fit;

- (2) consisting of such non-Directors they think fit;
  - (3) the chair of which must be a Director unless the relevant Regulation requires or allows otherwise;
  - (4) with such persons including non-Directors as observers, as they think fit; and
  - (5) with such purposes and functions as are set out in the Regulation.
- (b) Any non-Director who is a member of a Committee may only vote on that Committee if the relevant Regulation permits.
  - (c) The Directors may, in the relevant Regulation or by resolution, delegate any of their powers, authorities, responsibilities, functions and discretions to a Committee.
  - (d) A Committee to which any powers, authorities, responsibilities, functions and discretions have been so delegated must exercise the powers, authorities, responsibilities, functions and discretions delegated in accordance with any directions of the Directors given from time to time.
  - (e) The provisions of this Constitution applying to meetings and resolutions of Directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a Committee.

#### **11.9 Acts of Directors valid despite defective appointment**

An act done by a person acting as a Director or by a meeting of Directors or a Committee attended by a person acting as a Director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the Directors or Committee (as the case may be) when the act was done.

---

## **12. Secretary**

- (a) The Company must have at least one Secretary, who may also be a Director or an employee of the Company.
- (b) A Secretary must be appointed by the Directors (after giving the Company the Secretary's consent to act as Secretary) and may be removed by the Directors.
- (c) Each Secretary must also be appointed as a company secretary of the Company for the purposes of the Corporations Act.
- (d) The role of a Secretary includes:
  - (1) maintaining the Register; and

- (2) maintaining the minutes and other records of general meetings (including notices of meetings), Directors' meetings and circular resolutions.

---

### 13. Executive officers

- (a) A reference in rules 13(b) to 13(e) to an executive officer is a reference to an officer holding office or appointed under rule 12 or 13.
- (b) The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the Directors think fit.
- (c) Subject to any contract between the Company and the relevant executive officer and any applicable industrial Law, any executive officer of the Company may be removed or dismissed by the Directors at any time, with or without cause, whether or not the executive officer is also a Director at the time.
- (d) The Directors may:
- (1) confer on an executive officer such powers, authorities, responsibilities, functions and discretions (including any powers, authorities, responsibilities, functions and discretions vested in or exercisable by the Directors) as they think fit;
  - (2) withdraw, suspend or vary any of the powers, authorities, responsibilities, functions and discretions conferred on an executive officer; and
  - (3) authorise the executive officer to delegate all or any of the powers, authorities, responsibilities, functions and discretions conferred on the executive officer.
- (e) An act done by a person acting as an executive officer is not invalidated by reason only of:
- (1) a defect in the person's appointment as an executive officer; or
  - (2) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

---

### 14. Minutes and records

- (a) The Company must, within one month, make and keep the following records:
- (1) minutes of proceedings and resolutions of general meetings;
  - (2) a copy of a notice of each general meeting; and
  - (3) a copy of any Members' Statement distributed to Members under rule 6.12.
- (b) The Company must, within one month, make and keep the following records:
- (1) minutes of proceedings and resolutions of Directors' meetings (including meetings of any Committee); and
  - (2) minutes of circular resolutions of Directors.

- (c) The Directors must ensure that minutes of a general meeting or a Directors' meeting are signed within a reasonable time after the meeting by:
  - (1) the Chair of the meeting; or
  - (2) the Chair of the next meeting.
- (d) A minute that is recorded and signed under this rule 14 is evidence of the proceeding or resolution to which it relates unless the contrary is proved.
- (e) Subject to Law:
  - (1) the Directors may determine whether and on what terms the accounting records and other documents of the Company or any of them will be open to inspection by Members; and
  - (2) a Member who is not a Director does not have the right to inspect any record or other document of the Company except as provided by the Corporations Act or authorised by the Directors.

## **15. Execution of documents**

- (a) Without limiting its other options, the Company may execute a document (including a deed) if the document is signed by:
  - (1) 2 Directors; or
  - (2) a Director and a Secretary.
- (b) Rule 15(a) does not limit the ability of the Directors to authorise a person who is not an officer of the Company to execute a document for and on behalf of the Company.
- (c) The Company need not have a common seal.
- (d) The Company may execute a document (including a deed) as permitted by any Law facilitating the electronic execution of documents.

## **16. Regulations**

### **16.1 Regulations are made by the Directors**

The Directors may from time to time, in their absolute discretion, make, amend, add to, rescind or replace Regulations concerning any aspect of the membership, governance, management, operation or activities of the Company including:

- (a) any matter this Constitution expressly envisages may be regulated by Regulations; and
- (b) any other matter relevant to the Company that the Directors choose to regulate.

### **16.2 Conflict between the Constitution and Regulations**

To the extent of any conflict between this Constitution and any Regulation, this Constitution prevails.

**16.3 Effectiveness and promulgation of Regulations**

Any Regulation made, and any amendment, addition, rescission or replacement:

- (a) has effect on and from the date it is made unless otherwise stated in the relevant instrument; and
- (b) must be promulgated to those affected, provided that failure to bring it to the attention of any person does not render it or anything done in accordance with it void, voidable or ineffective.

**16.4 Enforceability of Regulations**

- (a) Any Regulation:
  - (1) is as valid and enforceable as if it was repeated in this Constitution; and
  - (2) can be enforced by legal action.
- (b) A failure by a Director, other officer of the Company or Member to comply with a Regulation is deemed to be a failure by that Director, other officer of the Company or Member to comply with this Constitution.

**17. Notices****17.1 Notices to the Company**

Unless this Constitution expressly provides otherwise, a notice or any communication under this Constitution to the Company or a Secretary must be in writing and may be given by:

- (a) delivering it to the Registered Office;
- (b) posting it to the Registered Office or to another address determined by the Directors for notice to be provided;
- (c) sending it to an email address or other electronic address determined by the Directors as the Company's email address or other electronic address; or
- (d) sending it to the facsimile number (if any) determined by the Directors as the Company's facsimile number.

**17.2 Notices to Directors**

Subject to this Constitution, a notice may be given by the Company to any Director either by serving it personally at, or by sending it by post in a prepaid envelope to, the Director's usual residential or business address, or by sending it to the electronic address, or such other address as the Director has supplied to the Company for the giving of notices.

**17.3 Notices to Members**

- (a) Notice or any communication under this Constitution to any Member must be:
  - (1) in writing, legible and in English; and

- (2) signed by an officer of the Company or in any other way authorised by the Directors,

and may be served:

- (3) in person;
  - (4) by posting it to, or leaving it at the address of the Member in the Register or an alternative address (if any) nominated by the Member for service of notices;
  - (5) by sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
  - (6) by sending it to the facsimile number nominated by the Member as an alternative address for service of notices (if any); or
  - (7) by making a copy of it accessible electronically on a website of, or relating to, the Company.
- (b) The fact that a person has supplied an electronic address for the giving of notices does not:
    - (1) require the Company to give any notice to that person by electronic means; or
    - (2) prevent the Company from giving any notice to that person in the manner envisaged by rule 17.3(a)(7).
  - (c) A signature to any notice given by the Company to a Member under this rule 17.3 may be in writing or affixed by some mechanical, electronic or other means.
  - (d) A certificate signed by a Director or a Secretary to the effect that a notice has been given in accordance with this Constitution is conclusive evidence of that fact in the absence of manifest error.

#### **17.4 When a notice is taken to be given**

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, in Australia, to an Australian address – is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by post to an address outside Australia – is taken to be given on the tenth day after it is posted with the correct payment of postage costs;
- (d) sent by email, facsimile or other electronic method – is taken to be given on the business day after it is sent; and
- (e) given under rule 17.3(a)(7) – is taken to be given at the time it is made accessible.

**17.5 Other communications and documents**

Rules 17.1 to 17.4 apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

**17.6 Notices given electronically**

A reference in this Constitution to a notice or other communication in writing includes a notice given by electronic means.

**18. Financial matters****18.1 Financial and related records**

(a) The Company must make and keep written financial records that comply with the ACNC Legislation and:

- (1) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (2) enable true and fair financial statements to be prepared and to be audited,

and the Company must allow a Director and the auditor to inspect those records at all reasonable times.

(b) The Company must keep written records that correctly record its operations.

(c) The Company must retain the records referred to in rules 18.1(a) and 18.1(b) for at least 7 years.

(d) The Directors must take reasonable steps to ensure that the Company's records are kept safe.

**18.2 Accounts and audit**

(a) The Company must prepare and deal with such accounts as required under the ACNC Legislation.

(b) The Company must appoint a properly qualified auditor whose duties will be regulated in accordance with the ACNC Legislation.

**18.3 Financial year**

The Company's financial year is from 1 July to 30 June, unless the Directors change the financial year.

**19. Indemnity, insurance and access to documents****19.1 Persons to whom rules 19.2 to 19.7 apply**

Rules 19.2 to 19.7 apply to each Official.

## 19.2 Indemnity

Subject to rule 19.3, the Company must indemnify each Official on a full indemnity basis and to the full extent permitted by Law against all Liabilities incurred by the Official as an Official, including:

- (a) a liability for negligence; and
- (b) a liability for reasonable legal costs.

## 19.3 Limit on indemnity

- (a) The indemnity in rule 19.2 does not operate in relation to any Liability which:
  - (1) is a Liability to the Company or any of its related bodies corporate;
  - (2) is a Liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE of the Corporations Act; or
  - (3) did not arise out of conduct of the Official which was in good faith, or which arises out of conduct of the Official which involves wilful misconduct, gross negligence, recklessness or fraud,

provided that this rule 19.3(a) does not apply to a Liability for legal costs.
- (b) The indemnity in rule 19.2 does not operate in relation to legal costs incurred by the Official in defending an action for a Liability if the costs are incurred:
  - (1) in defending or resisting proceedings in which the Official is found to have a Liability referred to in rule 19.3(a);
  - (2) in defending or resisting criminal proceedings in which the Official is found guilty;
  - (3) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established. For the avoidance of doubt, this does not include costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order; or
  - (4) in connection with proceedings for relief to the Official under the Corporations Act in which the court denies the relief.
- (c) If there is any appeal in relation to any proceedings referred to in rule 19.3(b), it is the outcome of the final appeal that is relevant for the purposes of rule 19.3(b).
- (d) The indemnity in rule 19.2:
  - (1) does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void, unenforceable or not permitted by Law; and
  - (2) does not operate in respect of any Liability of the Official to the extent that Liability is covered by insurance.

**19.4 Extent of indemnity**

The indemnity in rule 19.2:

- (a) is enforceable without the Official having to first incur any expense or make any payment; and
- (b) is a continuing obligation and is enforceable by the Official even though the Official may have ceased to be an officer of the Company or a related body corporate or to hold the non-officer position the Official originally held.

**19.5 Insurance**

The Company may, to the extent permitted by Law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each Official against any Liability incurred by the Official as an Official including a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

**19.6 Savings**

Nothing in rule 19.2 or 19.5:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

**19.7 Deed**

The Company may enter into a deed with any Official to give effect to the rights conferred by rules 19.1 to 19.6, or the exercise of a discretion under rules 19.1 to 19.6 on such terms as the Directors think fit which are not inconsistent with rules 19.1 to 19.6.

**19.8 Directors' access to documents**

- (a) In addition to rights conferred by Law, a Director has a right of access to the financial records of the Company at all reasonable times.
- (b) Subject to Law, if the Directors agree, the Company must give a Director access to:
  - (1) certain documents, including documents provided for or available to the Directors, and
  - (2) any other documents referred to in those documents.

---

## **20. Winding up and revocation of Deductible Gift Recipient status**

### **20.1 Surplus assets not to be distributed to Members**

If the Company is wound up or dissolved, any surplus assets remaining after payment of all its debts and liabilities must not be paid or distributed to any Member, unless that Member is a charity of the type described in rule 20.2.

### **20.2 Distribution of surplus assets**

- (a) Subject to the Corporations Act and any other applicable Law, and any court order, any surplus assets that remain after the Company is wound up or dissolved must be given or transferred to one or more companies, funds, institutions or authorities:
  - (1) with purposes similar to, or inclusive of, the purposes of the Company set out in rule 1.3;
  - (2) which is a Charity;
  - (3) whose constituent documents prohibit the distribution or payment of sums to its members to at least the same extent as set out in rule 1.5; and
  - (4) which is a Deductible Gift Recipient.
- (b) The decision as to the companies, funds, institutions or authorities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court of Victoria to make this decision.

### **20.3 Revocation of Deductible Gift Recipient status**

- (a) If the Company's endorsement as a Deductible Gift Recipient is revoked, any surplus of the assets listed in rule 20.3(b) must be transferred to one or more companies, funds, institutions or authorities:
  - (1) with purposes similar to, or inclusive of, the purposes of the Company set out in rule 1.3;
  - (2) which is a Charity; and
  - (3) which is a Deductible Gift Recipient.
- (b) The assets to which rule 20.3(a) applies are:
  - (1) gifts of money or property for the purposes of the Company;
  - (2) contributions made in relation to an eligible fundraising event held for the objects of the Company; and
  - (3) money received by the Company because of such gifts and contributions.
- (c) The identity of the companies, funds, institutions or authorities referred to in rule 20.3(a) must be determined by the Directors, or if the Directors do not wish to decide or do not decide, it must be determined by the Supreme Court of Victoria.

---

**21. Modification of this Constitution**

- (a) Subject to rule 21(b), the Members may modify this Constitution by passing a special resolution.
- (b) The Members must not pass a special resolution that modifies this Constitution if passing it causes the Company to no longer be entitled to be registered as a charity.

---

**22. General****22.1 Amendment of Constitution**

The Members may amend this Constitution by Special Resolution in accordance with the Corporations Act.

**22.2 Submission to jurisdiction**

Each Member and each Director submits to the non-exclusive jurisdiction of the Supreme Court of Victoria and the Courts which may hear appeals from that Court.

**22.3 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.