

# **Constitution of Australian Physiotherapy Council Limited ACN 108 663 896**

***Corporations Act 2001***

A public company limited by guarantee

**Dated: 1 December 2025**

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***Corporations Act 2001***  
**A public company limited by guarantee**  
**Australian Physiotherapy Council Limited**  
**ACN 108 663 896**

**1 Definitions and interpretation**

**1.1 Definitions**

- (a) Unless the context otherwise requires and other than in the case of an expression defined in clause 1.1(b), an expression in a clause that is used in the Act or the ACNC Act has the same meaning as in the Act or in the ACNC Act (as applicable).

- (b) In this constitution:

**Accreditation** means assessing programs of study, and the education providers that provide the programs of study, to determine whether they meet relevant health profession accreditation standards.

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

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

**Alternate Director** means a person appointed as an alternate director of the Company under clause 5.5(a) who has not vacated their office.

**Appointed Director** means a Director appointed by the Board pursuant to clause 5.3.

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

**Assessment** means assessing health practitioners to determine whether their education, knowledge, clinical skills and professional attributes meet relevant health profession practice standards.

**Auditor** means a person appointed as an auditor of the Company under clause 11.1 who has not vacated their office.

**Board** means the Directors acting as a board of Directors.

**Business Day** means a day on which trading banks are open for business in Melbourne, Victoria, other than a Saturday or a Sunday.

**CEO** has the meaning given under clause 7.13.

**Chair** means the person elected under clause 7.5.

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 1997.

**Committee** means a committee of Directors and/or others formed by the Board in accordance with clause 7.11.

**Company** means Australian Physiotherapy Council Limited Ltd ACN 108 663 896.

**Director** means a director of the Company from time to time.

**Founding Member** means:

- (i) Australian Physiotherapy Association, ABN 89 004 265 150; and
- (ii) Council of Physiotherapy Deans Australia and New Zealand.

**ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth).

**Member** means a person entered in the Register of Members as a member of the Company under clause 4.8.

**Member Elected Director** means a Director nominated and elected by a Member pursuant to clauses 5.1(a)(i) and 5.2.

**Objects** means, in relation to the Company, as set out in clause 2.5.

**Officer** has the same meaning as given to that term in section 9 of the Act.

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

**Register of Members** means the register listing each person who is a Member which the Company maintains under the Act.

**Representative** means a person appointed to represent a Member or a proxy who is not a natural person at meeting of the Company under clause 8.37 and the Act.

**Secretary** means a person appointed under clause 10 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Special Resolution** means a resolution that is passed:

- (i) at a general meeting by at least 75% of the votes cast by Members present (in person or by proxy) at the general meeting and entitled to vote on the resolution; or
- (ii) by a Written Resolution in accordance with clause 8.39 signed by at least 75% of the Members.

**Special Resolution of the Board** means a resolution that is passed:

- (iii) at a Board meeting by at least 75% of the votes cast by Directors present and entitled to vote on the resolution at the Board meeting; or
- (iv) by a circulating resolution in accordance with clause 7.1 signed by at least 75% of the Directors entitled to vote on the resolution.

**Written Resolution** has the meaning given in clause 8.39(b).

**Tax Acts** means the *Income Tax Assessment Act 1936* (Cth) and ITAA 1997.

## **1.2 Interpretation**

In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;
- (d) a reference to a document or instrument, including this constitution, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (e) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (f) unless otherwise stated, a reference to a statute, code or other law includes any regulations and other instruments made under it, together with any modification, amendment, consolidation, re-enactment or replacement in force from time to time, and any reference to any section, part or division is to that section, part or division as so modified, amended, consolidated, re-enacted or replaced;
- (g) all monetary amounts are in Australian dollars, unless otherwise stated and a reference to payment means payment in Australian dollars;
- (h) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day; and
- (i) when counting a period of days before or after a given day or the day of a particular act or event, the given day or day of the particular act or event, as applicable, is excluded and the last day of the period is included.

## **1.3 Application of the Act and the ACNC Act:**

- (a) Subject to clauses 1.3(b) and 1.3(c), this constitution is subject to the Act and where there is any inconsistency between a clause of this constitution and the Act, the Act prevails to the extent of the inconsistency.
- (b) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules do not apply to the Company.
- (c) While the Company is a registered charity (as defined under and or for the purposes of the Tax Acts or the ACNC Act), if a clause of this constitution is inconsistent with the ACNC Act or would prevent the Company from complying with a provision of the ACNC Act, this constitution will not apply to the extent of that inconsistency or to the extent it would prevent compliance with the ACNC Act.

## **2 Nature of the Company**

### **2.1 Public company**

The Company is a public company limited by guarantee.

### **2.2 Not for profit**

- (a) The income and property of the Company must be used and applied solely in promotion of its Objects and no portion will be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to Members.
- (b) Notwithstanding clause 2.2(a), the Company may, with the approval of the Board, make payments to a Member:
  - (i) in return for any services rendered or goods supplied in the ordinary course of the business of the Company;
  - (ii) consisting of interest at a rate not exceeding bank overdraft rates of interest for moneys lent to the Company; or
  - (iii) of reasonable and proper rent for premises let to the Company by the Member.

### **2.3 Limitation of the Company**

The Company does not have the power to:

- (a) issue shares of any kind; or
- (b) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to, a Member, other than payments in good faith as provided in clause 2.2.

### **2.4 Guarantee of Members**

Each Member undertakes to contribute a maximum of \$10.00 to the Company for payment of:

- (a) the debts and liabilities of the Company;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,  
in the event that the Company is wound up:
- (d) while they are a Member; or
- (e) within one year after they cease to be a Member.

### **2.5 Objects of the Company**

The Objects of the Company are to provide assurance of standards for health professionals and others including, without limitation, physiotherapy, for public safety and benefit, by:



- (a) identifying, developing, monitoring and reviewing health profession standards for Accreditation and Assessment, including, without limitation, developing physiotherapy Accreditation standards;
- (b) identifying, developing and delivering best practice health profession Accreditation and Assessment services, including, without limitation, reviewing and Accrediting physiotherapy education programs and Assessment of overseas-qualified physiotherapists;
- (c) providing advice, recommendations and consulting services to the Physiotherapy Board of Australia, the Physiotherapy Board of New Zealand and other relevant organisations in relation to Accreditation and Assessment;
- (d) improving the quality and expertise of health profession Accreditation and Assessment; and
- (e) liaising with other organisations, regulators and educators, within Australia and internationally, on matters related to Accreditation or Assessment, standards and regulation of education and practice, and global recognition and mobility of health profession qualifications.

## **2.6 Scope of powers**

Subject to any restrictions set out in this constitution, and provided that its capacities and powers are exercised directly or indirectly in the furtherance of its Objects, the Company will have the legal capacity and powers set out in the Act.

## **3 Internal management of the Company**

The internal management of the Company is governed by this constitution.

## **4 Members**

### **4.1 Membership**

#### **(a) Number of Members**

- (i) There must be at least one Member.
- (ii) Subject to 4.5(c), the Directors from time to time may set a limit on the maximum number of Members, provided that the limit set by the Directors may not be less than the number of Members at the time the Directors set the limit.

#### **(b) Classes of Members**

The Directors may, by Special Resolution of the Board:

- (i) establish different classes of Members;
- (ii) prescribe the qualifications, rights (including voting rights), privileges and obligations of persons to become a Member of a class;
- (iii) change the membership class of a Member; or

- (iv) vary or cancel the rights attaching to any class of Members,

provided, in the case of such a variation or cancellation, that it is permitted by the Act, is not oppressive and would not unfairly prejudice the Members of the relevant class.

The Directors must give written notice of any change in the membership class of a Member or the variation or cancellation to the Member or Members of the relevant class within seven days of the change, variation or cancellation.

#### **4.2 Eligibility of Members**

A person is eligible to become a Member of the Company if that person:

- (a) is a company or registrable body; and
- (b) in the opinion of the Board holds the ideals of the promotion of the Objects as set out in clause 2.5.

#### **4.3 Application for membership**

An application for membership must be made in the form approved by the Board from time to time, provided that each such application must contain:

- (a) an undertaking on the part of the applicant to be bound by the constitution;
- (b) the business address and electronic mail address of the applicant;
- (c) adequate particulars of the applicant's qualifications for membership (if required by the Board); and
- (d) the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time.

#### **4.4 Lodging of applications**

An application for membership accompanied by the membership or subscription fee (where applicable) must be lodged with the Secretary at the place or in the manner approved by the Board from time to time.

#### **4.5 Determination of application by the Board**

- (a) The Board must determine whether or not to approve each application for membership at the next Board meeting after receipt of the application.
- (b) The Board may require an applicant to give such further information as it desires before approving or refusing an application for membership.
- (c) The Board must act in an open, consultative and cooperative manner with the incumbent Members before admitting an additional Member to the Company.
- (d) An applicant will be admitted as a Member if the Board approves their application by a Special Resolution of the Board. If their application is approved, their name, business address and electronic mail address and any other relevant information, including whether the applicant represents the professional sector or the education sector, will be entered in the

Register of Members.

- (e) If the Board approves an application for membership, it must also determine the class of membership appropriate for each application for membership (if applicable).
- (f) The Chair must, as soon as practical, notify an applicant in writing of the Board's decision in relation to its application for membership. The Chair is not required to give reasons why an application was rejected.

#### **4.6 Notification of change in qualifications**

If there are qualifications required or necessary for a person to become a Member or to maintain its membership, then a Member whose qualifications have changed must promptly notify the Company of the change in the Member's qualifications.

#### **4.7 Fees, Subscriptions and Charges**

- (a) The Board may set fees, subscriptions and other charges or levies (if any) to be paid by Members in respect of their Membership. The fees, subscriptions and other charges or levies payable by Members may vary by class or other criteria determined by the Board.
- (b) The right of a Member to attend and vote at a general meeting is suspended while the payment of any fee, subscription, charge or levy determined under clause 4.7(a) is in arrears for longer than 30 days.

#### **4.8 Register of Members**

- (a) The Directors must cause the Company to keep a register of Members in accordance with the Act, in which are entered:
  - (i) the name of each Member;
  - (ii) the address (business or postal) and electronic mail address (if any) for notices last notified by the Member;
  - (iii) the class of membership (if applicable);
  - (iv) the date of becoming a Member; and
  - (v) in the case of former Members, the date of ceasing to be a Member.
- (b) Each Member must notify the Company in writing of the change in any detail kept in the Register of Members within one month after the change.
- (c) The Register will be available for inspection by the Members at the office of Company, subject to reasonable conditions the Board thinks fit.

#### **4.9 Rights and obligations**

- (a) Members that have been suspended in accordance with clause 4.11 are not eligible to participate in the activities of the Company.
- (b) The rights of Members are not transferable and end when the Member ceases to be a Member.

#### **4.10 Resignation of Members**

A Member may resign by giving written notice of resignation to the Company at its Registered Office or by email to the electronic mail address of the Secretary. The membership of the relevant Member will cease on the date that the Secretary receives the written resignation.

#### **4.11 Disciplinary procedures**

- (a) If any Member or any Representative of a Member wilfully refuses or neglects to comply with the provisions of this constitution or is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company, the Board will have the power by Special Resolution of the Board to censure, fine, suspend or expel the Member from the Company.
- (b) For the avoidance of doubt, conduct will be considered to be unbecoming if it:
  - (i) causes a majority of the Board to think less of the Member's integrity;
  - (ii) brings the Company into disrepute; or
  - (iii) breaches any of the Company's codes of conduct.
- (c) Any action taken by the Board in accordance with clause 4.11(a) is effective only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the Board meeting at which the resolution is to be considered.
- (d) A Member has a right to appeal if it is expelled from membership in the Company under clause 4.11(a) in accordance with the Company's guidelines on disciplinary and dispute resolution procedures.
- (e) A Member may also be expelled from membership in the Company if the Members, by a Special Resolution that is passed at a general meeting, resolve to expel a Member whose conduct or circumstances in the opinion of those Members renders it undesirable that that Member continues to be a Member of the Company. The Member who is proposed to be expelled must be given at least 21 days' notice of the resolution and the opportunity to be heard at the general meeting at which the resolution is to be considered.
- (f) The requirements of natural justice do not apply to any censure, fine, suspension or expulsion of a Member under this clause 4.11.

#### **4.12 Cessation**

- (a) A Member ceases to be a Member if:
  - (i) the Member resigns under clause 4.10;
  - (ii) the Member, if a natural person, dies, becomes bankrupt, makes a composition with or assigns the member's estate for the benefit of the member's creditors;
  - (iii) the Member, if a company or other entity, becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation);

- (iv) the Member ceases to satisfy, where applicable, the criteria for admission to membership in the Company;
  - (v) the Member's membership was for a specified term or period of time and that term or period expires without being renewed or extended; or
  - (vi) the Member is expelled from membership in the Company under clause 4.11.
- (b) If a Member ceases to be a Member, the Directors must cause the Company without delay to make the necessary entry in the Register of Members.
- (c) If a Member ceases to be a Member, that Member remains liable to pay to the Company any money which that Member owes to the Company and any amount which that Member has guaranteed under clause 2.4.

## **5 Directors**

### **5.1 Preliminary**

(a) Number of Directors

The Company must have at least 7 Directors and no more than 9 Directors, as follows:

- (i) each Founding Member is entitled to nominate 2 Directors who are registered Physiotherapists in Australia or New Zealand (collectively, **Member Elected Directors**);
- (ii) the Board (subject to the 9 Director maximum limit) may appoint up to 5 Directors (**Appointed Directors**), none of whom may be an officer or employee of any Member; and
- (iii) the Company must always have a majority of Directors who are registered Physiotherapists in Australia or New Zealand.

(b) Eligibility for election or appointment as Director

To be eligible to be elected or appointed as a Director a person must:

- (i) be an individual;
- (ii) be at least 18 years old; and
- (iii) not be otherwise ineligible or disqualified from holding office under this constitution or the Act.

(c) Non-eligibility of Auditor

Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be elected or appointed as a Director.

(d) Other offices held by Directors

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions, including additional remuneration, as the Board determines by resolution.

(e) Period of office of Directors

- (i) Subject to clause 5.1(e)(iii), each Member Elected Director will hold office for a term of three years, from the date of their appointment and ending on the third anniversary of the date of their appointment, unless the Director vacates the office earlier under clause 5.4(a).
- (ii) Subject to clause 5.1(e)(iii), each Appointed Director will hold office for a term of three years from the date of their appointment and ending on the third anniversary of the date of their appointment, unless the Director vacates the office earlier under clause 5.4(a).
- (iii) If a Director is elected or appointed to fill a vacancy resulting from a Director ceasing to hold office before the end of their three year term, the Director filling that vacancy will hold office only for the remainder of the term of the Director who ceased to hold office.
- (iv) Subject to clause 5.1(f), a Director is eligible for re-election or reappointment as a Director at the end of their term of office.

(f) Maximum consecutive terms in office of Director

- (i) A Director must not serve as a Director for consecutive terms totalling more than nine years.
- (ii) For the purpose of clause 5.1(f)(i):
  - (A) the period from the conclusion of an annual general meeting to the conclusion of the next annual general meeting will be considered to be one year;
  - (B) the term of a Director who filled a casual vacancy in the office of Director and served for a remaining term that was two years or less will be counted as a consecutive term but the period of the remaining term will not be counted in determining whether the Director has reached the nine year limit; and
  - (C) the term of a Director who filled a casual vacancy in the office of Director and served for a remaining term that was more than two years will be counted as three full years.
- (iii) A Director who has served the maximum number of terms in accordance with clause 5.1(f) will not be eligible to be a Director for three years following the completion of their maximum term.

## **5.2 Election of Directors by Members**

- (a) If the term of one or more Member Elected Directors is to end at the end of an annual general meeting of the Company, a call for nomination for Directors must be made by the Board no later than 60 days before the annual general meeting, specifying the number of Member Elected Director(s) that are to be elected at the annual general meeting.
- (b) Each Member whose Member Elected Director is to finish their term of office at the end of the annual general meeting may nominate a candidate for Director in a form approved by the Board:
  - (i) signed by the nominee and nominating Member; and
  - (ii) delivered to the Registered Office of the Company no later than 30 days before the annual general meeting.
- (c) The notice of meeting in respect of the annual general meeting must set out a list of the names of the candidate(s) and their nominating Member(s).
- (d) So long as the Member(s) who nominated a candidate is or are entitled to elect a Member Elected Director at the annual general meeting, its or their nominee will be declared elected at the annual general meeting.
- (e) The successful nominees will be declared elected as Directors at the annual general meeting and will take office as Member Elected Directors at the conclusion of the annual general meeting.
- (f) If a vacancy occurs in the office of a Member Elected Director, the Member that nominated that Member Elected Director, will be entitled to appoint a person to fill the vacancy as its Member Elected Director. The person appointed by the Member(s) to fill that vacancy will hold office for the remainder of the term of the Member Elected Director whose ceasing to hold office created the vacancy.

## **5.3 Board appointed Directors**

- (a) The Board from time to time may, subject to clauses 5.1(a) and 5.1(f), appoint one or more persons as Appointed Directors (whether to fill a casual vacancy or otherwise). In determining whether and who to appoint as an Appointed Director, the Board should have reasonable regard to, amongst other matters, the following:
  - (i) representation of the physiotherapy professional sector and the physiotherapy educational sector;
  - (ii) the mix of gender, skills and experience required of the Directors (and any deficiency in genders or gaps in those skills and experience amongst the Directors then in office); and
  - (iii) any skills matrix for Appointed Directors that may be adopted by the Board.
- (b) When the Board is considering the appointment of an Appointed Director:
  - (i) the Board must notify the Members of its consideration of the appointment and invite the Members to propose candidates for appointment by the Board; and

- (ii) the People and Governance Committee will assist in identifying candidates for Appointed Director. The People and Governance Committee will have the authority to recommend that a candidate for appointment as an Appointed Director is unsuitable for further consideration by the Board. The People and Governance Committee will be comprised of at least three persons appointed by the Board. The duties, functions and rules of the People and Governance Committee will be set out in its terms of reference as approved by the Board.
- (c) The People and Governance Committee must utilise and report on a skills matrix approved by the Board as part of its assessment of candidates for Appointed Director.

#### **5.4 Resignation, cessation and termination of a Director**

(a) Vacation of office

- (i) A Director vacates office if the Director:
  - (A) resigns their office by written notice to the Company under clause 5.4(b);
  - (B) is removed from the office of Director by a resolution of the Members under clause 5.4(c);
  - (C) dies, becomes incapacitated or becomes of unsound mind rendering the Director unable to fulfil their role;
  - (D) was elected or appointed for a term and that term expires without the Director having been re-elected or re-appointed;
  - (E) fails to attend Board meetings for a continuous period of six months without leave of absence from the Board;
  - (F) was appointed by the Board as an Appointed Director and is removed by Special Resolution of the Board;
  - (G) is an executive Director under an employment or services agreement with the Company and that agreement terminates, unless the Board determines otherwise; or
  - (H) ceases to be a Director or becomes prohibited from being a Director under the Act.
- (ii) A Director whose office is vacated under clause 5.4(a)(i)(G) is not eligible for re-election or re-appointment until the relevant prohibition no longer applies.

(b) Director may resign

- (i) A Director may resign as a Director of the Company by written notice to the Company and the notice 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).
- (ii) If the resignation of a Director under clause 5.4(b)(i) will cause the number of Directors to fall below the minimum number required by this constitution or by the



Act, the Director must not resign or otherwise vacate their office voluntarily until another Director has been appointed.

(c) Removal of a Director by Members

- (i) The Company may, at a general meeting held in accordance with the Act:
  - (A) remove a Member Elected Director from office by Special Resolution;
  - (B) remove an Appointed Director from office by ordinary resolution; and
  - (C) in the case of Member Elected Director who is removed, elect another person, subject to clauses 5.1(a) and 5.1(f), as a Member Elected Director in that Director's place.
- (ii) If a Director was elected or appointed to represent the interests of particular Members, their removal under clause 5.4(c)(i) has no effect until a replacement to represent the interests of those Members has been elected or appointed.
- (iii) If the removal of a Director under clause 5.4(c)(i) will cause the number of Directors to fall below the minimum required by this constitution or the Act, the removal has no effect until a replacement has been elected or appointed.
- (iv) Notice of intention to move the resolution referred to in clause 5.4(c)(i) must be given to the Company at least two months before the meeting is to be held except if a general meeting is called after the notice of intention is given under this clause.
- (v) The Company must give the Director a copy of the notice as soon as practicable after it is received.
- (vi) The Director is entitled to put their case to Members by:
  - (A) giving the Company a written statement for circulation to Members; and
  - (B) speaking to the motion at the general meeting (whether or not the Director is a Member of the Company).
- (vii) The written statement in clause 5.4(c)(vi) is to be circulated by the Company to Members by:
  - (A) sending a copy to everyone to whom notice of the general meeting is sent if there is time to do so; or
  - (B) if there is not time to comply with clause 5.4(c)(vii)(A), having the statement distributed to Members attending the general meeting and read out at the meeting before the resolution is voted on.
- (viii) The Director's statement does not have to be circulated to Members if it is more than 1,000 words long or defamatory.
- (ix) A person elected to replace a Member Elected Director removed under this clause 5.4(c) will have a term of office that is the same as the remaining term of the Member Elected Director who was removed.

## **5.5 Alternate Director**

**(a) Power to appoint Alternate Director**

Each Director may at any time appoint any individual approved for that purpose by the Board to act as an Alternate Director in the appointor's place.

**(b) Suspension of appointment of Alternate Director**

The appointor may vary, suspend or terminate the appointment of their Alternate Director.

**(c) Notice of appointment of Alternate Director**

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor, and a copy served on the Company.

**(d) Role of Alternate Director**

An Alternate Director:

- (i) is not entitled to receive notice of Board meetings unless the appointor has, by written notice to the Company, required the Company to do so either generally or in particular circumstances;
- (ii) may attend and vote at a Board meeting only if the appointor is not present at that meeting;
- (iii) may sign a circulating resolution under clause 7.1 unless the appointor has, by written notice to the Company, suspended that right either generally or in particular circumstances;
- (iv) is entitled to sign a document under clause 6.6 or section 127 of the Act;
- (v) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director (subject to clauses 5.5 to 5.5(g));
- (vi) does not have a conflict of interest, or a material personal interest in a matter that relates to the affairs of the Company, solely by reason of the fact that the appointor has; and
- (vii) is not taken into account in determining the number of Directors in clause 5.1(a).

**(e) Remuneration of Alternate Director**

An Alternate Director's only rights (if any) as to remuneration for ordinary service as a Director are against the appointor and not the Company.

**(f) Multiple votes**

A Director or any other individual may act as Alternate Director to represent more than one Director, and has a corresponding number of votes accordingly, but for the purpose of forming a quorum counts as only one Director.

**(g) Termination of appointment**

The appointment of an Alternate Director will be terminated by any of the following events:

- (i) if the Alternate Director gives written notice to the Company that they resign the appointment;
- (ii) if the appointment of the Alternate Director is terminated by the appointor under clause 5.5(c);
- (iii) if a majority of the remaining Directors withdraw the approval of the individual to act as an Alternate Director;
- (iv) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (v) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.

**5.6 Payments to Directors**

**(a) Director Remuneration**

With the approval of the Board, the Company may pay a Director for the Director's services to the Company as a Director a reasonable remuneration in an amount or calculated using a methodology agreed by a majority of the Members.

**(b) Remuneration of Directors for extra services**

- (i) If the Company requests a Director to perform services in a professional or technical capacity, in addition to those provided in their capacity as a Director, the Company may pay the Director for those services where the provision of the services has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the services.
- (ii) Any remuneration paid as contemplated by this clause is in addition to remuneration paid under clause 5.6(a).

**(c) Reimbursement of expenses incurred by Director**

Subject to the Act, a Director is entitled to reimbursement of the travelling and other expenses that the Director reasonably incurs:

- (i) in attending Board meetings or any meetings of a Committee;
- (ii) in attending any general meeting of the Company; or
- (iii) in connection with the Company's business or otherwise in connection with the fulfilment of their duties as a Director.

(d) Financial benefit

- (i) A Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.
- (ii) The Company must not make loans to Directors or provide guarantees or security for obligations undertaken by Directors except as may be permitted by the Act.

**5.7 Conflicts of interest**

(a) Prohibition on being present or voting

Subject to the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (i) is not entitled to receive the Board meeting papers to the extent related to the matter;
- (ii) must not be present while the matter is being considered at the meeting; and
- (iii) must not vote on the matter unless otherwise determined by the uninterested Directors in accordance with the Act.

(b) Directors' interests

Subject to this constitution and the Act:

- (i) a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (A) enter into any agreement or arrangement with the Company;
  - (B) hold any office or place of profit (other than Auditor) in the Company; and
  - (C) act in a professional capacity (other than as Auditor) for the Company,and the Director or the body or entity may receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company;
- (ii) the fact that a Director holds office as a director and has fiduciary obligations arising out of that office:
  - (A) does not void or render voidable a contract made by the Director with the Company;
  - (B) does not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
  - (C) does not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on

behalf of the Company and in which the Director may have an interest;

- (iii) a Director may be or become a director or other officer of, or otherwise be interested in:

- (A) any related body corporate of the Company; or
- (B) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in that body corporate; and

- (iv) any Director:

- (A) may exercise the voting power conferred by the interest held by the Company in another company in favour of a resolution appointing themselves or any Director as a director or other officer of the other company;
- (B) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (C) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (D) if also a director of the other company, may vote as a director of the other company in whatever manner they sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

- (c) Material personal interest - Director's duty to disclose

- (i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless an exception in the Act applies.
- (ii) A notice required by clause 5.7(c)(i) must:
  - (A) include details of:
    - (I) the nature and extent of the interest; and
    - (II) the relation of the interest to the affairs of the Company; and
  - (B) be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter.

- (d) Director may give standing notice about a material personal interest
  - (i) A Director required to give notice under clause 5.7(c) may give standing notice of the nature and extent of the interest in the matter in accordance with the Act and this constitution.
  - (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
  - (iii) A notice under clause 5.7(d)(i) must be given:
    - (A) at a Board meeting either orally or in writing; or
    - (B) to the other Directors individually in writing.
  - (iv) If the standing notice is given to the other Directors individually in writing:
    - (A) the notice is effective when it has been given to every Director; and
    - (B) the notice must be tabled at the next Board meeting after it is given.
  - (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

## **5.8 Validity of acts**

- (a) All actions at any meeting of the Board or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director.
- (b) If the number of Directors is reduced below the minimum number fixed under this constitution, the continuing Directors may act for the purpose of appointing additional Directors or calling a general meeting of the Company but for no other purpose.

## **6 Management of business by the Board**

### **6.1 Powers of Directors**

- (a) The business of the Company is to be managed by or under the direction of the Board.
- (b) The Directors may exercise all of the powers of the Company except any powers that any provision of the Act or this constitution require the Company to exercise in a general meeting.
- (c) Without limiting the generality of clause 6.1(b), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **6.2 Directors must keep transactions confidential**

Every Director and other agent or officer of the Company must:

- (a) keep confidential all aspects of all transactions of the Company, except:
  - (i) to the extent necessary to enable the person to perform their duties to the Company;
  - (ii) as required by law; or
  - (iii) when requested by the Directors to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Directors, sign and make a declaration that they will not disclose or publish any aspect of any transaction of the Company.

### **6.3 Appointment of attorney for Company**

The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this constitution.

### **6.4 Delegation by the Board**

- (a) Subject to the Act, the Board may delegate any of its powers to:
  - (i) a Committee;
  - (ii) a Director;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it under any directions of the Board.
- (c) The effect of the delegate exercising a power is the same as if the Board exercised it.
- (d) The Board may at any time revoke or vary any delegation to a person or committee.

### **6.5 Seals and execution of documents**

- (a) The Directors must provide for the safe custody of any seal of the Company.
- (b) If the Company has a common seal or duplicate common seal:
  - (i) it must be used only by the authority of the Board, or of a Committee authorised by the Board to authorise its use; and
  - (ii) every document to which it is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

- (c) The Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

## **6.6 Negotiable instruments**

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument, including any cheque, promissory note, draft, bill of exchange and any receipt for money paid to the Company.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **7 Board meetings**

### **7.1 Board circulating resolution without a meeting**

- (a) The Board may pass a valid resolution without a Board meeting being held if at least 75% of the Directors entitled to vote on the resolution sign a document (which may include an electronic message) containing a statement that they are in favour of the resolution set out in the document. The resolution is not invalidated if, in addition to the required percentage of Directors entitled to vote on the resolution, it is also consented to by a Director who is not entitled to vote on it.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution is identical in each copy.
- (c) The resolution is passed when the last required Director signs. The Directors who do not sign a document stating that they are in favour of the resolution (if any) must be given notice of the passage of the resolution, but the failure to receive the notice will not affect the validity of the passage of the resolution.

### **7.2 Calling Board meetings**

A Director may at any time, and the Secretary on the request of a Director must, call a Board meeting by giving at least 48 hours' notice to all the Directors.

### **7.3 Notice of meeting**

Reasonable notice of every Board meeting must be given individually to each Director, but failure to give or receive reasonable notice will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error, or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

### **7.4 Conduct of Board meetings**

- (a) A Board meeting may be called and held:
  - (i) in person;
  - (ii) by telephone;



- (iii) by audio visual linkup; or
  - (iv) using any technology consented to by a majority of the Directors before or during the relevant meeting.
- (b) Any consent under clause 7.4(a)(iv) may be a standing consent.
- (c) If a Director gives their consent under clause 7.4(a)(iv) that Director may only withdraw their consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a Board meeting where that meeting is conducted by telephone, audio visual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A Board meeting conducted by telephone, audio visual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Board meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this constitution, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

## **7.5 Appointment of Chair**

- (a) The Board must elect a Director to the office of Chair and may elect a Director to the office of Deputy Chair.
- (b) The Chair and if applicable the Deputy Chair once elected shall serve for an initial term of three years.
- (c) Subject to clause 5.1(f), the Board may resolve to extend the Chair's term for a further term of up to two years after the end of their initial term under clause 7.5(b).
- (d) The Board may remove the Chair or Deputy Chair from office as Chair or Deputy Chair by a special resolution of the Board. For the avoidance of doubt, any removal by the Board of a person from the office of Chair or Deputy Chair will not affect that person's holding office as a Director.
- (e) Where a person ceases to be a Director that person automatically ceases to be Chair or Deputy Chair (as applicable).

## **7.6 Chairing Board meetings**

- (a) The Chair shall, if present, preside as Chair of every meeting of the Board.
- (b) If a meeting of Board is held and the Chair has notified that they will not be attending or is not present within 15 minutes after the time appointed for the holding of the meeting or, if

present, does not wish to chair the meeting, then the Deputy Chair shall preside as Chair of the meeting.

- (c) If there is no Deputy Chair or the Deputy Chair is not present or is unwilling to act then the other Directors present may choose by majority another Director as Chair for the meeting.

#### **7.7 Quorum at Board meetings**

- (a) Unless the Board determine otherwise, the quorum for a Board meeting is a majority of the Directors, including at least one Member Elected Director, who are present at the meeting (including by using technology in accordance with clauses 7.4(a)(ii), 7.4(a)(iii) or 7.4(a)(iv)), and the quorum must exist at all times during the meeting.
- (b) A Director who is disqualified from voting on a matter pursuant to clause 5.7 shall be counted in the quorum despite that disqualification.
- (c) Subject to clause 5.5(f), an Alternate Director is to be counted when determining whether a quorum is present at a Board meeting.

#### **7.8 Meeting competent to exercise all powers**

A Board meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

#### **7.9 Passing of resolutions at Board Meetings**

- (a) A resolution of the Board will be passed if a majority (or 75% in the case of a Special Resolution of the Board) of the votes cast by Directors entitled to vote on the resolution are in favour of the resolution.
- (b) Any resolution properly passed at a duly called Board meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this constitution.
- (c) Each Director has one vote.

#### **7.10 Voting by Chair at Board meetings**

In case of an equality of votes on a resolution at a Board meeting, the Chair of that meeting does not have a casting vote on that resolution in addition to any vote the Chair has in their capacity as a Director in respect of that resolution.

#### **7.11 Committee powers and meetings**

- (a) The Board may form and delegate any of its power to any number of committees consisting of such Directors and/or other people as it thinks fit and may from time to time revoke such delegation. The term of reference of each Committee will be determined by the Board.
- (b) Any Committee may exercise the powers delegated to it in accordance with any directions and restrictions that may from time to time be imposed on it by the Board.
- (c) The Board shall elect a Chair of each Committee.
- (d) The meetings and proceedings of any Committee will be governed by the provisions of this

constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this clause.

- (e) A minute of all proceedings and decision of every Committee shall be made, entered and signed in the same manner in all respect as minutes of Board meetings as required by this constitution and the Act.

## **7.12 Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Committee; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director or the Committee (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

## **7.13 Chief Executive Officer**

- (a) The Board may appoint a Chief Executive Officer (**CEO**) on any terms it thinks appropriate and may remove the CEO either in writing or if appointed for a fixed term, when the term ends.
- (b) A CEO will report directly to the Board and be accountable to the Board.
- (c) A CEO will receive such remuneration as the Board determines from time to time.
- (d) The powers, duties and responsibilities of a CEO will be determined by the Board and may be amended from time to time.

# **8 General meetings**

## **8.1 Company must hold an annual general meeting**

Unless the Company has only one Member, the Company must hold a general meeting, to be called the annual general meeting, once a year in accordance with the Act, subject to any extension of time granted under the Act.

## **8.2 Business of the annual general meeting**

- (a) Whether or not stated in the notice of the annual general meeting, the business of the annual general meeting may include:
  - (i) receiving and considering the annual financial statements, reports of the Directors, reports of the Auditors and the statement of the Directors;
  - (ii) electing Member Elected Directors;

- (iii) appointing the Auditor; and
  - (iv) fixing the remuneration of the Auditor.
- (b) The business of the annual general meeting may also include any other business which under this constitution or the Act ought to be transacted at an annual general meeting.

### **8.3 Calling a general meeting**

- (a) Any three Directors or the Board may, by written notice, call a general meeting at a time and place, and to be held in any manner, as those Directors or the Board resolve.
- (b) Members may requisition the holding of a general meeting only in accordance with the Act and the Board must call a general meeting within 21 days receiving that requisition.
- (c) Members may call and arrange to hold a general meeting only in accordance with the Act.
- (d) A general meeting may be convened at one or more locations or virtually, using technology that gives the Members a reasonable opportunity to participate in the meeting.
- (e) If a failure in communication lead to the number of participants falling below the required quorum, the meeting will be suspended until a quorum is re-established. If a quorum is not reached within 15 minutes, the meeting is deemed to have terminated.

### **8.4 Right to attend general meetings**

- (a) Each Member (other than a Member of a class that does not have voting rights) and any Auditor is entitled to attend a general meeting.
- (b) Each Director is entitled to attend and speak at a general meeting.
- (c) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
- (d) A Member's proxy or Representative may attend a general meeting only as provided by this constitution and the Act.

### **8.5 Amount of notice of general meetings**

- (a) Subject to clause 8.5(b), 8.38 and as provided under s249H of the Act, at least 21 days' notice must be given of a general meeting.
- (b) Except if a general meeting is called for the purpose of removing a Director or an Auditor, a general meeting may be held on shorter notice than 21 days if Members with at least 95% of the votes that may be passed at the meeting so agree before the meeting.

### **8.6 Calculation of period of notice**

In computing the period of notice under clause 8.5, the day on which the notice is given or taken to be given is to be disregarded but the day of the general meeting called by it is to be counted.

### **8.7 Right to receive a notice of general meeting**

Written notice of the general meeting must be given under clause 13 and must be given to any person entitled to receive notice under the Act including:

- (a) each Member entitled to vote at the meeting;
- (b) each Director; and
- (c) the Auditor (if any) of the Company.

### **8.8 Content of notice**

A notice calling a general meeting must comply with the Act and must:

- (a) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places or virtually, the technology that will be used to facilitate the general meeting);
- (b) state the general nature of the general meeting's business;
- (c) if a Special Resolution is to be proposed at the general meeting, set out an intention to propose a Special Resolution and state the resolution;
- (d) if a Member is entitled to appoint a proxy:
  - (i) contain a statement that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
  - (ii) be accompanied by an instrument of proxy in any form as the Board may from time to time prescribe or accept; and
- (e) contain information that is worded and presented in a clear, concise and effective manner.

### **8.9 Validity of resolutions**

The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

### **8.10 Cancellation or postponement of, or other changes to, general meetings**

- (a) The Board may:
  - (i) cancel a general meeting;
  - (ii) postpone a general meeting;
  - (iii) change the place at which a general meeting is to be held; or
  - (iv) change the manner in which a general meeting is to be conducted (including the technology that may be used to conduct a general meeting),

by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.

- (b) Any accidental 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 postponement, cancellation or changing the arrangements of the meeting.
- (c) Clauses 8.11(a)(i) and 8.11(a)(ii) do not apply to general meetings called by court order, or called in accordance with the Act:
  - (i) by the Board on the request of Members or by any three Directors, unless the Members or Directors who requested or called the meeting consent to the postponement or cancellation; or
  - (ii) by Members, unless the Members who called the meeting consent to the postponement or cancellation.

#### **8.11 Contents of notice postponing or cancelling, or changing the arrangements for a general meeting**

- (a) A notice of postponement or cancellation of or change in a general meeting must specify:
  - (i) the reasons for the postponement, cancellation or change to the place where the meeting is to be held or the manner in which the meeting will be conducted (including the technology to be used to conduct the meeting), as applicable;
  - (ii) if the general meeting is postponed:
    - (A) the postponed date and time for the holding of the general meeting;
    - (B) the place or places for the holding of (and, if applicable, the technology to be used in conducting) the general meeting, which may be either the same as or different from the place or technology specified in the notice calling the general meeting; and
    - (C) if the general meeting is to be held in two or more places or virtually, the technology that will be used to facilitate the holding of the general meeting in that manner; and
  - (iii) if the arrangements for the conduct of the general meeting are changed, the new arrangements, including details (as applicable) of the place at which the meeting will be held and the technology to be used.

#### **8.12 Business at postponed general meeting**

The only business that may be transacted at a general meeting the holding of which is postponed or cancelled is the business specified in the original notice calling the general meeting.

#### **8.13 Proxy or Representative at postponed general meeting**

Where:

- (a) an instrument or power of appointment authorises a proxy or Representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

#### **8.14 Validity of resolutions**

The non-receipt of notice of cancellation or postponement of a general meeting by, or the accidental omission to give notice of cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate the cancellation or postponement of a meeting or any resolution passed at the postponed general meeting.

#### **8.15 Time and place for general meetings**

A general meeting must be held at a reasonable time and place.

#### **8.16 Arrangements**

- (a) A general meeting may be called and held:
  - (i) in person;
  - (ii) by telephone;
  - (iii) by audio visual linkup;
  - (iv) using any technology determined by the Board before the relevant meeting; or
  - (v) using any combination of the means set out in clauses (i) to (iv),which gives the Members as a whole a reasonable opportunity to participate.
- (b) A Member is regarded as present at a general meeting where the meeting is conducted by telephone, audio visual linkup or other technology if the Member is:
  - (i) afforded a reasonable opportunity to participate in the general meeting; and
  - (ii) enabled to vote on all polls held during the general meeting.
- (c) A meeting conducted by telephone, audio visual linkup or other technology will be deemed to be held at the place determined by the Board.

#### **8.17 Quorum for a general meeting**

The quorum for a general meeting or an adjourned general meeting is a majority of the Members and the quorum must be present at all times during the meeting, unless the Company only has one Member in which case that Member constitutes a quorum.

#### **8.18 Determination of quorum at general meeting**

In determining whether a quorum is present at a general meeting:

- (a) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
- (b) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
- (c) if an individual is attending both as a Member and as a proxy or Representative, that person is to be counted only once; and
- (d) if an individual is attending as a proxy or Representative for more than one Member, that person is to be counted only once.

#### **8.19 Absence of quorum at a general meeting**

- (a) If no quorum is present within 30 minutes after the time for the general meeting set out in the notice of general meeting, the general meeting:
  - (i) if called in accordance with the Act by the Board at the request of Members or by Members, is dissolved; and
  - (ii) in any other case, is to be adjourned to a date, time and place as specified by the Board.
- (b) If the Directors do not specify one or more of the requirements in clause 8.19(a)(ii), the general meeting is adjourned to:
  - (i) if the date is not specified, the same day of the following week;
  - (ii) if the time is not specified, the same time; and
  - (iii) if the place is not specified, the same place.

#### **8.20 Adjourned meeting (quorum)**

- (a) If no quorum is present at the general meeting adjourned under clause 8.19 within 30 minutes after the time for the general meeting, the Board may, in their absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.
- (b) If, before or during a general meeting conducted by telephone, audio visual linkup or other technology, any technical difficulty occurs where one or more of the matters set out in clause 8.16(b) is not satisfied, the Chair may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) subject to all applicable laws, continue to hold the meeting and transact business, and no member may object to the meeting being held or continuing.



#### **8.21 Appointment and powers of Chair of general meeting**

The Chair will be entitled to take the chair at general meetings.

#### **8.22 Absence of Chair at general meeting**

- (a) If there is no Chair or Deputy Chair, or if the Chair and the Deputy Chair are unable or unwilling to chair a general meeting, the Board may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.
- (b) If a general meeting is held and the Chair, or the person elected under clause 8.22(a) is not available within 30 minutes after the time appointed for the holding of the meeting or is unable to chair or declines to act, the following may take the chair of the meeting (in order of precedence):
  - (i) the Deputy Chair (if any);
  - (ii) a Director chosen by a majority of the Directors present;
  - (iii) the only Director present; or
  - (iv) a Member chosen by a majority of the Members present in person or by proxy or Representative who are entitled to vote at the meeting.
- (c) If the Chair becomes unable to chair or declines to act during the general meeting, a person referred to in clause 8.22(b) may take the chair, in the same order of precedence, until the time (if any) as the Chair becomes willing and able to take chair at that meeting.
- (d) Any person taking the chair of the general meeting under this clause will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this constitution.

#### **8.23 Powers of the Chair and conduct of general meetings**

- (a) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (b) Any decision of the Chair is final.
- (c) The Chair may delegate any power conferred by this clause to any person.

#### **8.24 Adjournment of general meeting**

- (a) The Chair may, during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) The Chair must adjourn a general meeting if the Members present in person or by proxy or Representative with a majority of votes at the meeting agree or direct that the Chair must do so.

- (c) If any general meeting is adjourned for one month or more, a new notice of the adjournment must be given to the Members in the same manner as notice was or ought to have been given of the original meeting.

#### **8.25 Resumption of adjourned general meeting**

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 8.24 and any resolution passed at a meeting resumed after an adjournment is passed on the day that it was passed.
- (b) The resumed meeting may only be adjourned by the Chair.

#### **8.26 Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

#### **8.27 Resolution determined by majority**

At a general meeting, all resolutions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this constitution or the Act.

#### **8.28 Voting by Chair of general meetings**

In case of an equality of votes on a resolution at a general meeting, the Chair does not have a second or casting vote on that resolution in addition to any vote the Chair has in their other capacity.

#### **8.29 How voting is carried out**

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under clause 8.32 either before, on, or immediately after, the declaration of the result of the vote on a show of hands.
- (b) Unless a poll is demanded in accordance with this constitution, on a show of hands, either a declaration by the Chair that a resolution has been carried, carried by a particular majority or not carried and an entry to that effect in the minutes signed by the Chair is conclusive evidence of the result.
- (c) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

#### **8.30 Direct voting**

- (a) Despite anything to the contrary in this constitution, the Board may determine, in respect of any general meeting or class meeting, that a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the Company by post or any electronic means approved by the Board.
- (b) The Board may prescribe the procedures that apply in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

### **8.31 Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

- (a) the election of the Chair; or
- (b) the adjournment of the general meeting.

### **8.32 Demand for a poll**

- (a) Subject to clause 8.31, a poll may be demanded by:
  - (i) the Chair;
  - (ii) at least two Members present in person or by proxy or by Representative; or
  - (iii) any one or more Members holding not less than five percent of the total voting rights of all Members having the right to vote on the resolution.
- (b) Any demand for a poll may be withdrawn.
- (c) The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded.

### **8.33 Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken and the result of the poll is the meeting's resolution of the motion on which the poll was demanded.

### **8.34 Right to vote at general meetings**

Subject to the Act, this constitution and any rights or restrictions attached to any class of membership, at a general meeting:

- (a) on a show of hands, each Member present in person or by proxy or Representative has one vote, provided that if an individual (whether or not also a Member) attending as a proxy or Representative for one or more Members, that individual will only have one vote; and
- (b) on a poll;
  - (i) a Member present in person or by proxy or Representative has one vote;
  - (ii) a person that holds multiple proxies has one vote for each proxy;
  - (iii) a person that is a Representative for multiple corporate Members or corporate proxies, has one vote for each corporate Member or corporate proxies (as applicable).

### **8.35 Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (a) may only be made at the general meeting or adjourned meeting; and

- (b) must be determined by the Chair whose decision is final.

#### **8.36 Appointment of proxies and Representatives**

- (a) A Member who is entitled to attend and cast a vote at a general meeting may appoint a person as that Member's proxy or, if the Member is a body corporate, a Representative to attend and cast a vote at that meeting.
- (b) If a proxy appointed to attend and cast a vote at a general meeting under clause 8.37(a) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (c) Neither the proxy nor the Representative need be a Member.
- (d) Any proxy or Representative appointed under this clause must be appointed in accordance with, and will have the rights set out in, this constitution and the Act.
- (e) An appointment of proxy or Representative made by communicating a document electronically will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated in accordance with the Act.

#### **8.37 Validity of proxy vote**

- (a) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Member dies;
  - (ii) the Member is mentally incapacitated;
  - (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed by a third party.
- (b) If the appointing Member attends the meeting for which a proxy has been appointed by that Member, the proxy's appointment is not suspended or revoked unless the appointing Member actually votes on any resolution for which the proxy is proposed to be used.

#### **8.38 Members' circulating resolution without a general meeting**

- (a) This clause 8.38 applies to all resolutions of Members that are required or permitted to be passed by a general meeting, other than a resolution to remove a Director or an Auditor.
- (b) The Members may pass a resolution without a general meeting being held if at least 75% of the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document (**Written Resolution**), provided that if all of the Members do not sign a Written Resolution, notice of the passage of the Written Resolution must be given to the Members that did not sign the Written Resolution. If a Member is not a natural person and has appointed a Representative, the Written Resolution may be signed by the Representative on behalf of the Member.

- (c) At a time when the Company has only one Member, that Member may pass a resolution by recording it in writing and signing the record of that resolution.
- (d) Separate copies of the Written Resolution may be used for signing by Members if the wording of the resolution and statement is identical in each copy. If each separate copy is signed by one or more Members entitled to vote on the resolution, they will be deemed to constitute one document containing the resolution and statement signed by those Members on the respective days on which they signed the separate copies.
- (e) The resolution made under clause 8.38(b) is passed when the resolution is signed by the last required Member entitled to vote.
- (f) When the Members are asked to consider a resolution under this clause, the Company satisfies any requirement of the Act:
  - (i) to give Members information or a document relating to the resolution, by giving Members that information or document with the Written Resolution to be signed;
  - (ii) to lodge with ASIC a copy of the notice of meeting to consider the resolution, by lodging a copy of the Written Resolution to be signed by Members; and
  - (iii) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution, by lodging a copy of the information or documents referred to in clause 8.38(f)(i).

### **8.39 Meetings of a class of Members**

- (a) General meeting provisions apply

The provisions of this constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of a class of Members (if applicable) except that:

- (i) a quorum is constituted by at least two persons who, between them, hold or represent one-quarter of the Members of the class (unless only one person is a Member of the class, in which case that person constitutes a quorum);
  - (ii) any Member of the class, present in person or by proxy or by Representative, may demand a poll; and
  - (iii) the Auditor is not entitled to notice of the meeting or to attend or speak at the meeting.
- (b) Directors are entitled to notice of class meetings
  - A Director is entitled to:
    - (i) receive notice of all separate meetings of the holders of any class of Members;
    - (ii) attend all those meetings;
    - (iii) to speak at those meetings.

## **9 Minutes of meetings**

### **9.1 Minutes**

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors and the Chair present at each meeting of the Directors and of any Committee;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any Committee.

### **9.2 Minutes to be signed by Chair**

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any Committee must be signed by the Chair of the meeting or by the Chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

### **9.3 Members' access to minutes**

- (a) The Board must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Directors must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Directors determine that payment should be made for the copies, within 14 days after the Company receives the payment.

## **10 Secretary**

### **10.1 Appointment of Secretary**

The Directors must appoint one or more persons to the office of secretary to the Company. At least one of them must ordinarily reside in Australia.

### **10.2 Notification to ASIC and ACNC**

- (a) The Company must if required notify ASIC and ACNC of the appointment of a Secretary.
- (b) The Directors may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

### **10.3 Terms and conditions of appointment**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Directors determine.
- (b) The exercise of those powers and authorities and the performance of those duties by a

Secretary is subject at all times to the control of the Directors and the requirements under the Act.

## **11 Auditor**

### **11.1 Appointment of Auditor**

If required under the Act, the Directors must appoint one or more persons to the office of Auditor to the Company unless the Members at general meeting have appointed an Auditor.

### **11.2 Auditor and meetings of Members**

- (a) The Auditor is ineligible to be elected or appointed as a Director.
- (b) The Auditor is entitled to receive notice of, attend, and be heard at general meetings.

## **12 Company books**

### **12.1 Registers**

#### **(a) Registers**

In accordance with the Act, the Directors must cause the Company to keep:

- (i) the register of Members (containing the information set out in clause 4.8);
- (ii) a register of the holders of any debentures issued by the Company; and
- (iii) a register of charges.

#### **(b) Branch registers**

- (i) The Company may cause a branch register of Members to be kept at any place outside Australia.
- (ii) Subject to the Act, the Directors may make any provisions or arrangements they think fit for the keeping of any branch register and to ensure compliance with the requirements of clause 4.8 and any local law.

### **12.2 Financial records, statements and reports**

#### **(a) Financial records**

- (i) The Board must cause financial and other records to be kept to:
  - (A) correctly record and explain the transactions and financial position of the Company,
  - (B) enable true and fair statements of financial performance and financial position to be prepared; and

- (C) to permit preparation of any other documents required by the Act or this constitution.
- (ii) The financial records must be kept:
  - (A) in a manner which will enable them to be conveniently and properly audited;
  - (B) for seven years after the completion of the transactions or operations to which they relate; and
  - (C) at the Registered Office or at any other place as the Directors think fit and at all times be open to inspection by the Directors.
- (b) Financial, Board and Auditor's annual reports

If required under the Act, at each annual general meeting, the Directors must lay before the Company a financial report, a Directors' report and an Auditor's report for the last financial year of the Company that ended before that annual general meeting which comply with all applicable provisions of the Act.
- (c) Financial statements and reports

If required under the Act, the Company must cause copies of the Company's financial statements and other reports to be lodged with ASIC and sent to holders of its securities as, and to the extent, required by the Act.

### **12.3 Inspection**

- (a) The Board must allow persons to inspect or copy the registers referred to in clause 12.1 as required by the Act.
- (b) Inspection of financial records
  - (i) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
  - (ii) Subject to the Act, a majority of the Directors or the Members by Special Resolution may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the books of the Company, including its financial records.
  - (iii) This clause does not limit the rights of a Director or former Director to inspect the books of the Company under the Act.
- (c) Copying financial records
  - (i) After inspecting the financial records a Member may request permission to copy them.
  - (ii) The request under clause 12.3(c)(i) must be in writing, must specify the records the Member wishes to copy and must be delivered to the Company at its Registered Office.



- (iii) Subject to the Act, the Directors must consider the request at their next meeting and may (but need not) consent to the request or any part of the request on any terms as they think fit.

## **12.4 Audit**

- (a) Financial statements to be audited

If required under the Act, the financial statements of the Company for each financial year must be audited by the Auditors under the Act.

- (b) Approval of financial statements

- (i) The financial statements of the Company once put before an annual general meeting (if the Company is required to do so) will be conclusive except as regards any error identified within three months after the date of that meeting.
- (ii) If any error is identified within the period referred to in clause 12.4(b)(i), the financial statements must then be corrected and are then conclusive.

## **13 Service of documents**

### **13.1 Document includes notice**

In clauses 13.2 to 13.7, a reference to a document includes a notice.

### **13.2 Giving a document to Members**

- (a) The Company may give a document to a Member:
  - (i) in person;
  - (ii) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member; or
  - (iii) by sending it to the Member by electronic means in accordance with the Act.
- (b) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by airmail, air courier, or electronic means.

### **13.3 Evidence of service of a document on a Member**

A certificate in writing signed by a Director or Secretary stating that a document was sent is evidence on its face of service.

### **13.4 Giving a document to a Director**

The Company may give a document to a Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;

- (c) by communicating to any electronic address nominated by that person; or
- (d) by any other means agreed between the Company and that person.

### **13.5 Giving a document to the Company**

A person may give a document to the Company:

- (a) by leaving it at the Registered Office;
- (b) by sending it by post to the Registered Office;
- (c) by electronic means sent to any electronic address nominated by the Company for that purpose; or
- (d) by any other means prescribed by the Act.

### **13.6 Time of service of a document**

- (a) A document sent by post from within Australia to an address within Australia is taken to be given the day after the of posting.
- (b) A document sent by post or airmail from within Australia to an address outside Australia, or from outside Australia to an address outside Australia, is taken to be given:
  - (i) despite anything else in this clause, in the case of a notice of meeting, three Business Days after it is posted; or
  - (ii) in the case of any document other than a notice of meeting, seven Business Days after the date of posting.
- (c) A document sent by air courier from within Australia to an address within Australia is taken to be given one Business Day after delivery to the air courier, and in any other case, is taken to be given three Business Days after delivery to the air courier.
- (d) A document communicated electronically is taken to be given one hour after the communication is recorded as being sent by the device from which the sender sent it, unless the sender knows or could reasonably be expected to know that an electronic communication system has failed and as a result, the communication was not received, and provided that if the document is sent after 5.00 pm on a Business Day in the place of receipt or at any time on a non-Business Day, that document is taken to be given at 9.00 am on the next Business Day in the place of receipt.
- (e) A document given to a Member under clause 13.2(a)(iii) is taken to be given on the day on which the Member is notified that the document is available.

### **13.7 Signatures**

Where, by a provision of this constitution, a document is required to be signed, that requirement may be satisfied in relation to a document communicated electronically in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Board.

## **14 Proceedings involving officers**

### **14.1 Company to indemnify Officers**

Subject to clause 14.2, the Company must indemnify each current or former Officer:

- (a) for any liability (other than for liabilities for legal costs) incurred by the Officer in the Officer's capacity as an officer of the Company unless the liability arises out of conduct by an Officer involving a lack of good faith; and
- (b) for legal costs incurred by the Officer in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that person's capacity as an officer of the Company.

### **14.2 Indemnity prohibited in certain circumstances**

The indemnity in clause 14.1 does not extend to any amount in respect of which:

- (a) the Company is prohibited by the Act or any other statute from indemnifying against; or
- (b) an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

### **14.3 Company may make an advance**

Subject to clauses 14.2 and 14.4, the Act and any other applicable statute, the Board may determine that the Company may pay, by way of a loan, an advance or any other payment and may be on whatever terms the Company, in its sole discretion, thinks fit, legal costs of the type referred to in clause 14.1(b) that are reasonably incurred or reasonably anticipated to be incurred by the Officer.

### **14.4 Repayment of advance in certain circumstances**

An Officer must repay amounts paid by the Company under clause 14.3 to, or on behalf of, the Officer in relation to a liability incurred by Officer in the Officer's capacity as an officer of the Company if:

- (a) that liability is or becomes a liability excluded by the Act or any other statute from the indemnity in clause 14.1;
- (b) a court determines that the Officer is not entitled to be indemnified by the Company for that liability; or
- (c) the liability is covered by insurance and the Officer receives payment from an insurer in respect of that liability or an insurer pays, discharges, or satisfies that liability directly.

### **14.5 Company may pay insurance premium**

Subject to clause 14.6, the Board may determine that the Company pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Officer against liability incurred by the Officer in the Officer's capacity as an officer of the Company, including a liability for legal costs.

#### **14.6 Payment of premium prohibited in certain circumstances**

The Company must not pay or agree to pay a premium under clause 14.5 where:

- (a) the liability incurred arises out of conduct by the Officer involving wilful breach of its duty to the Company or contravention of the Act;
- (b) the Company is prohibited by the Act or any other statute from paying or agreeing to pay such a premium; or
- (c) the payment of such a premium would otherwise be illegal, void, unenforceable or not permitted by law.

### **15 Winding up**

#### **15.1 Wind-up and distribution of surplus assets or property in circumstances where clause 15.2 does not apply**

If:

- (a) the Members determine by Special Resolution that the Company is to be wound up or dissolved; or
- (b) the Company is wound up or dissolved,

then:

- (c) the Members have no right to participate in any distribution or payment of the assets or property of the Company; and
- (d) any surplus of assets or property of the Company remaining after the satisfaction of all debts and liabilities must, at the direction of the Members, be given or transferred to another organisation or institution which has similar objects to those of the Company.

#### **15.2 Wind-up and distribution of surplus assets or property (in special circumstances)**

- (a) Wind up or dissolution

If when the Company is wound up or dissolved (**Wind-up Time**) it is:

- (i) endorsed or otherwise eligible under the Tax Acts to be an entity that is exempt from taxation (as an income tax exempt charity or otherwise); and/or
- (ii) endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise); and/or
- (iii) registered (or otherwise recognised) under the ACNC Act for registration as a registered charity,

then any surplus of assets or property of the Company representing:

- (iv) gifts or contributions of money or property for the objects of the Company; and
- (v) money received by the Company because of such gifts and contributions,

and which is available for distribution after satisfaction of all debts and liabilities must, at the direction of the Members:

- (vi) be given or transferred to another organisation or institution which has similar objects to those of the Company (**Recipient Organisation**); and
- (vii) if at the Wind-up Time, the Company is endorsed or otherwise eligible under the Tax Acts to be an entity that is exempt from taxation (as an income tax exempt charity or otherwise) the Recipient Organisation must also be endorsed under the Tax Acts to be an entity that is exempt from taxation (as an income tax exempt charity or otherwise); and
- (viii) if at the Wind-up Time, the Company is endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise) the Recipient Organisation must also be endorsed under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise); and
- (ix) if at the Wind-up Time, the Company is registered or otherwise eligible under the ACNC Act for registration as a registered charity, the Recipient Organisation must also be registered under the ACNC Act for registration as a registered charity.

(b) Identification of organisation or institution

For the purposes of clause 15.2, the Members shall identify the organisation, institution or institutions at the time of dissolution.

(c) Failure to identify institution

If the Members fail to identify the institution or institutions under clause 15.2 the Supreme Court of Victoria shall make that determination.

### 15.3 Wind-up event

If at any time the Company is:

- (a) endorsed or otherwise eligible under the Tax Acts to be exempt from taxation (as an income tax exempt charity or otherwise); and/or
- (b) endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise); and/or
- (c) registered (or otherwise recognised) under the ACNC Act as a registered charity,

and the Company's status under any of these categories ceases or is revoked, the directors and/or the members must cause the Company to be wound-up or dissolved and its assets are to be dealt with in the manner prescribed at clause 15.2 as if the above endorsements or registrations were still in effect.

## **16 Public fund requirements**

### **16.1 Application**

This clause 16 only applies in the event that the Company is required to meet the public fund rules requirements as provided in Taxation Ruling TR 95/27 (or equivalent rulings and guidance materials).

### **16.2 Receipts**

Any receipts generated and issued by the Company in respect of a gift or contribution to the Company must be issued in the name of the Company.

### **16.3 Contributions**

The Company must invite the public to make gifts or contributions to the Company.

### **16.4 Notice to the Commissioner**

The Company must provide written notice to the Commissioner of any alteration, variation or amendment to this constitution within 30 days of it being made.

## **17 Transitional Provisions**

Notwithstanding any other clauses of this constitution:

- (a) A person who is a Director, Chair or Deputy Chair of the Company immediately before the commencement of this constitution is taken to be a Director, Chair or Deputy Chair under this constitution for the remainder of that person's then current term.
- (b) A person who is the CEO or a Secretary immediately before the commencement of this Constitution is taken to be the CEO or Secretary under this constitution pursuant to the terms of their contract then in place.
- (c) A person who is a Member of the Company immediately before the commencement of this constitution is taken to be a Member under this constitution having the same rights attaching to its class of membership under the former constitution of the Company immediately before the commencement of this constitution, unless the Board determines otherwise.
- (d) A Committee of the Company immediately before the commencement of this constitution is taken to be a committee under this constitution pursuant to any terms of reference then in place.
- (e) A person who is an auditor of the Company immediately before the commencement of this constitution is taken to be the auditor under this constitution pursuant to the terms of any contract then in place.