

# **CONSTITUTION OF Your Side Australia Limited**

Australian Company Number (ACN) 614 403 039  
Australian Business Number (ABN) 87 309 151 625

A public company limited by guarantee

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## Preliminary

### 1. Name of the company

The name of the **company** is Your Side Australia Ltd.

### 2. Type of company

The **company** is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

### 4. The guarantee

Each **member** must contribute an amount of not more than \$2.00 (the guarantee) to the property of the **company** if the **company** is wound up while the **member** is a **member**, or within 12 months after they stop being a **member**, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member; or
- (b) costs of winding up.

### 5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 82 to 84.

## Charitable purposes and powers

### 6. Object

The **company** is established for benevolent relief purposes, working to address the physical and mental health needs and wellbeing of older people, people with disability, other vulnerable members of the community, and carers. The company will relieve poverty, sickness and distress of vulnerable communities by:

- (a) addressing care needs with support to access inclusive, responsive and affordable programs and services
- (b) addressing other needs through the provision of emergency or other supports or relief
- (c) supporting a vibrant and integrated service system in partnership with stakeholders
- (d) responding to emerging needs by developing services and raising funds or other aid; and
- (e) undertaking anything ancillary to these Objects.

### 7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the **Corporations Act**.

## 8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its **members**, except as provided in clauses 8.2 and 81.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a **member** for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**; or
  - (b) making a payment to a **member** in carrying out the **company**'s charitable purpose(s).

## 9. Amending the constitution

- 9.1 Subject to clause 9.2, the **voting members** may amend this constitution by passing a **special resolution**.
- 9.2 The **voting members** must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

## Members

### 10. Membership, register of members and membership fee

- 10.1 The members of the **company** are:
- (a) **initial members**, and
  - (b) any other person that the **directors** allow to be a **member**, in accordance with this constitution.
- 10.2 The **company** must establish and maintain a register of **members**. The register of **members** must be kept by the **company secretary** and must contain:
- (a) for each current **member**:
    - i. name;
    - ii. address;
    - iii. any alternative address nominated by the **member** for the service of notices;
    - iv. **membership** class; and
    - v. date the **member** was entered on to the register.
  - (b) for each person who stopped being a **member** in the last 7 years:
    - i. name
    - ii. address
    - iii. any alternative address nominated by the **member** for the service of notices, and
    - iv. dates the **membership** started and ended.
- 10.3 The **company** must give current **members** access to the register of **members**.
- 10.4 Information that is accessed from the register of **members** must only be used in a manner that is consistent with the **Corporations Act**.

### 11. Who can be a member

- 11.1 An individual or a body corporate is entitled to become a **member** if it:
- (a) supports the objects and purposes of the **company**:

- (b) satisfies the relevant class of **membership** as well as any criteria set out by the **directors** in the **membership** form from time to time;
- (c) agrees to comply with this **constitution** and any other by-laws created by the **directors** from time to time; and
- (d) lodges a **membership** application pursuant to clause 13.

## 12. Classes of membership

The **directors** may determine from time to time the classes of **membership**, the qualification for admission to each **membership** class, and the rights attached to each **membership** class.

## 13. How to apply to become a member

- 13.1 An individual or a body corporate may apply to become a **member** of the **company** by paying the entrance and **membership** fees (if any) pursuant to clause 15 and submitting a **membership** form (in the form issued by the **directors** from time to time) to the **company secretary** stating that they:
- (a) want to become a **member**, and indicating in which **membership** class;
  - (b) support the purpose(s) of the **company**;
  - (c) agree to any requirements set out by the **directors** in the **membership** form from time to time; and
  - (d) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.
- 13.2 Notwithstanding any other provision in this constitution, each class of **members** shall have those rights and obligations as determined by the **directors** from time to time.

## 14. Directors decide whether to approve membership

- 14.1 The **directors** must consider an application for **membership** within a reasonable time after the **company secretary** receives the application.
- 14.2 If the **directors** approve an application, the **company secretary** must as soon as possible:
- (a) enter the new **member** on the register of **members**, and
  - (b) write to the applicant to tell them that their application was approved, the date that their **membership** started, and their **membership** class
- 14.3 If the **directors** reject an application, the **company secretary** must write to the applicant as soon as possible, providing a refund of any entrance fee or **membership** fee paid pursuant to clause 15 and to tell them that their application has been rejected, but does not have to give reasons.
- 14.4 For the avoidance of doubt, the **directors** may approve an application even if the application does not state the matters listed in clauses 13.1(a), 13.1(b) or 13.1(c). In that case, by applying to be a **member**, the applicant agrees to those three matters.

## 15. Directors determine entrance fees, membership fees and levies

- 15.1 The **directors** determine the entrance fee and annual **membership** fee payable by classes of **members**.

- 15.2 The **directors** of the **company** may raise additional funds from **members** or classes of **members** by way of a levy from time to time as may be necessary for the purpose of delivering the objects of the **company**.
- 15.3 The **directors** of the **company** may in their discretion:
- (a) resolve that no entrance fee or **membership** fee is payable by a **member** or class of **members** in a given year; or
  - (b) extend the time for payment of the entrance fee or **membership** fee for any **member**.

#### 16. When a person becomes a member

Other than **initial members**, an applicant will become a **member** when they are entered on the register of members.

#### 17. When a person stops being a member

A person or body corporate immediately stops being a **member** if it:

- (a) in the case of a body corporate, is wound up or otherwise dissolved or deregistered;
- (b) becomes bankrupt or insolvent or makes an arrangement or composition with creditor of the member's joint or separate estate generally;
- (c) in the case of an individual member, dies;
- (d) ceases to meet the relevant **membership** criteria, unless transferred to another **membership** class;
- (e) resigns, by writing to the **company secretary**;
- (f) does not pay the annual **membership** fee within three months after the fee is due;
- (g) is expelled under clause 19; or
- (h) has not responded within three months to a written request from the **company secretary** that it confirms in writing that it wants to remain a **member**.

### Dispute resolution and disciplinary procedures

#### 18. Dispute resolution

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a **member** of the **company** or member of the **board** and:
- (a) one or more **members** of the **company**;
  - (b) one or more members of the **board**; or
  - (c) the **company**.
- 18.2 A **member** of the **company** must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure, including any appeals, is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 18.4 Subject to clause 18.2, if those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:
- (a) tell the **board** about the dispute in writing;
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 18.5 The mediator must:

- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - i. for disputes between **members**, a person chosen by the **board**; or
    - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 18.6 A mediator chosen by the **board** under clause 18.5:
- (a) may be a **member** or former **member** of the **company**;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 18.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and
  - (d) not make a decision on the dispute.

## 19. Disciplining members

- 19.1 In accordance with this clause 19, the **board** may resolve to warn, suspend or expel a **member** from the **company** if the **board** considers that:
- (a) the **member** has breached this constitution; or
  - (b) the **member's** behaviour is causing, has caused, or is likely to cause harm to the **company** or is inconsistent with the **company's** objectives.
- 19.2 At least 14 days before the **board** meeting at which a resolution under clause 19.1 will be considered, the **company secretary** must notify the **member** in writing:
- (a) that the **board** are considering a resolution to warn, suspend or expel the **member**;
  - (b) that this resolution will be considered at a **board** meeting and the date of that meeting;
  - (c) what the **member** is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and
  - (e) that the **member** may provide an explanation to the **board**, and details of how to do so.
- 19.3 Before the **board** pass any resolution under clause 19.1, the **member** must be given a chance to explain or defend themselves by:
- (a) sending the **board** a written explanation before that **board** meeting; and/or
  - (b) speaking at the meeting.
- 19.4 After considering any explanation under clause 19.3, the **board** may:
- (a) take no further action;
  - (b) warn the **member**;
  - (c) suspend the **member's** rights as a **member** for a period of no more than 12 months;
  - (d) expel the **member**;
  - (e) refer the decision to an unbiased, independent person on conditions that the **board** considers appropriate (however, the person can only make a decision that the **board** could have made under this clause); or
  - (f) require the matter to be determined at a **general meeting**.
- 19.5 The **board** cannot fine a **member**.



- 19.6 The **company secretary** must give written notice to the **member** of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the **member** as a result of any decision made in good faith under this clause.

## 20. Right of Appeal

- 20.1 The **board** will establish a committee for the purpose of determining appeals regarding disciplinary proceedings against a **member**.
- 20.2 The **disciplinary committee** will be composed of an independent panel of non-**board** members, who are experts on the type of alleged misconduct, all chosen by the **board**. The **disciplinary committee** may seek advice from any relevant source.
- 20.3 A **member** may appeal to the **disciplinary committee** against a resolution of the **board** which is made under clause 19.4. Written notice of such an appeal must be lodged with the **company secretary** within seven days of service of the notice required under clause 19.6.
- 20.4 Within twenty (20) **business days** of lodgement of a notice of appeal under clause 20.3, the **disciplinary committee** must convene a meeting.
- 20.5 At the meeting convened pursuant to clause 20.4:
  - (a) the **member** must be given the opportunity to state his or her case verbally or in writing, or both using any technology (reasonably available to the **board**) that gives the **member** a reasonable opportunity to do so; and
  - (b) the **disciplinary committee** must vote by ballot on the question of whether the **board's** decision made pursuant to clause 19.4 will be confirmed or withdrawn.
- 20.6 The **disciplinary committee's** decision made pursuant to clause 20.5(b) is final. Both the **member** party to these disciplinary procedures and the **board** are bound by the **disciplinary committee's** decision pursuant to clause 20.5(b), and the decision cannot be appealed.
- 20.7 The **member** the subject of these disciplinary procedures is entitled to, subject to clause 20.8, bring a support person to any meeting which is held pursuant to clause 19 and/or this clause 20.
- 20.8 If the support person brought pursuant to clause 20.7 is legally qualified, the **member** must notify the **board** at least five **business days** before the meeting that the support person attending the meeting will be legally qualified.
- 20.9 Natural justice will be applied during any disciplinary process under clause 19 and/or this clause 20, requiring the **disciplinary committee** to act fairly, in good faith and without bias or conflict of interest when making its decision.

## General meetings of members

### 21. General meetings called by the board

- 21.1 A majority of the **board** may, whenever the **board** thinks fit, call a **general meeting**.

- 21.2 Notwithstanding section 111L of the **Corporations Act**, if **voting members** with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the **board** must:
- (a) within 21 days of the **voting members'** request, give all **voting members** notice of a **general meeting**, and
  - (b) hold the **general meeting** within 2 months of the **voting members'** request.
- 21.3 The percentage of votes that **voting members** have for the purpose of clause 21.2 is to be worked out as at midnight before the **voting members** request the meeting.
- 21.4 The **voting members** who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the **company**.
- 21.5 Separate copies of a document setting out the request may be signed by **voting members** if the wording of the request is the same in each copy.

## 22. General meetings called by members

- 22.1 Notwithstanding section 111L of the **Corporations Act**, if the members of the **board** do not call the meeting within 21 days of being requested under clause 21.2, 50% or more of the **voting members** who made the request may call and arrange to hold a **general meeting**.
- 22.2 To call and hold a meeting under clause 22.1 the **voting members** must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
  - (b) call the meeting using the list of **voting members** on the **company's** member register, which the **company** must provide to the **voting members** making the request at no cost, and
  - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 22.3 The **company** must pay the **voting members** who request the **general meeting** any reasonable expenses they incur because the **board** did not call and hold the meeting.

## 23. Annual general meeting

- 23.1 Notwithstanding section 111L of the **Corporations Act**:
- (a) in the event that the **board** wishes to do so, it may convene an annual **general meeting**; and
  - (b) any annual **general meeting** that is convened must be done so in accordance with the **Corporations Act**.
- 23.2 Either:
- (a) a **general meeting**, called the annual **general meeting**; or
  - (b) an annual meeting of the **voting members**, if no annual **general meeting** is to be held, must be held at least once in every calendar year.
- 23.3 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting**, or similar annual meeting of **voting members**, may include:
- (a) a review of the **company's** activities;
  - (b) a review of the **company's** finances;
  - (c) any auditor's report;
  - (d) the election of **directors**; and

- (e) the appointment and payment of auditors, if any.
- 23.4 Before or at the annual **general meeting**, or similar annual meeting of **voting members**, the **board** must give information to the **voting members** on the **company's** activities and finances during the period since the last annual **general meeting**, or similar annual meeting of **voting members**.
- 23.5 The chairperson of the annual **general meeting**, or similar annual meeting, must give **voting members** as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

#### 24. Notice of general meetings

- 24.1 Notice of a **general meeting** must be given to:
  - (a) each **voting member** entitled to vote at the meeting;
  - (b) each **director** and **associate director**; and
  - (c) the auditor (if any).
- 24.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 24.3 Subject to clause 24.4, notice of a meeting may be provided less than 21 days before the meeting if:
  - (a) for an annual **general meeting**, all the **voting members** entitled to attend and vote at the annual **general meeting** agree in writing beforehand, or
  - (b) for any other **general meeting** or similar annual meeting, **voting members** with at least 95% of the votes that may be cast at the meeting agree in writing beforehand.
- 24.4 Notice of a meeting cannot be provided fewer than 21 days before the meeting if a resolution will be moved to:
  - (a) remove a **director** or **associate director**;
  - (b) appoint a **director** in order to replace a **director** who was removed;
  - (c) appoint an **associate director** in order to replace an **associate director** who was removed or
  - (d) remove an auditor.
- 24.5 Notice of a **general meeting** must include:
  - (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) the general nature of the meeting's business;
  - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
  - (d) a statement that **voting members** have the right to appoint proxies and that, if a **voting member** appoints a proxy:
    - i. the proxy does not need to be a **member** of the **company**;
    - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 24.6 If a **general meeting** is adjourned (put off) for one month or more, the **voting members** must be given new notice of the resumed meeting.

**25. Quorum at general meetings**

- 25.1 For a **general meeting** to be held, at least 10% of **voting members** who are entitled to vote (a quorum) must be present in person, which may include via technology (or by proxy or by representative) for the whole meeting.
- 25.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 25.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**:
- (a) the meeting, if convened upon the requisition of **voting members**, shall be dissolved; and
  - (b) in any other case, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
    - i. if the date is not specified – the same day in the next week;
    - ii. if the time is not specified – the same time; and
    - iii. if the place is not specified – the same place.
- 25.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for the adjourned meeting, the meeting is cancelled.

**26. Auditor's right to attend meetings**

- 26.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the **members** on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 26.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a **member** of the **company** is entitled to receive.

**27. Cancellation or postponement of general meeting**

- 27.1 Subject to the provisions of the **Corporations Act** and this constitution, the **board** may cancel a **general meeting** of the **company**:
- (a) convened by the **board**; or
  - (b) which has been convened by the **voting members** pursuant to clause 21.2 upon receipt by the **company** of a written notice withdrawing the requisition signed by that **voting member** or those **voting members**.
- 27.2 The **board** may postpone a **general meeting** or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the **voting members** relating to the original meeting.
- 27.3 Where any **general meeting** is cancelled or postponed or the venue is changed pursuant to this clause 27:
- (a) the **board** shall endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
  - (b) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## 28. Representatives of members

- 28.1 A body corporate **member** may appoint as a representative:
- (a) one individual to represent the **member** at meetings and to sign circular resolutions under clause 35; and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a **director** or **associate director** (as so appointed by the **board**).
- 28.2 The appointment of a representative by a body corporate **member** must:
- (a) be in writing;
  - (b) include the name of the representative;
  - (c) be signed on behalf of the **member**; and
  - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 28.3 A representative has all the rights of a **member** relevant to the purposes of the appointment as a representative.
- 28.4 An **associate director** has:
- (a) the right to attend and vote at all **board** meetings (but not the right to attend and vote at **directors'** meetings convened pursuant to this constitution);
  - (b) the right to vote on all circular resolutions of the **board** (but not the right to vote on circular resolutions of the **board** where only the **directors** have a right to vote on that resolution pursuant to this constitution);
  - (c) the right to receive and have access to all the information and documents that the **directors** have at law or under this constitution (but not the right to any information or documents related to any resolution where only the **directors** have a right to vote on that resolution pursuant to this constitution); and
  - (d) all the obligations of a director at law and/or under the constitution, except to the extent the obligation relates to any resolution where only the **directors** have a right to vote on that resolution pursuant to this constitution.
- 28.5 The appointment of a representative member and/or **associate director** may be standing (ongoing) or it may be limited in time or other manner as set out in the rights attached to the applicable **membership** class of the relevant appointing **member** or as the **board** otherwise determines in writing.

## 29. Using technology to hold meetings and resolutions

- 29.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the **voting members** as a whole a reasonable opportunity to participate, including to hear and be heard.
- 29.2 Anyone using this technology is taken to be present in person at the meeting.
- 29.3 The **company** may also use technology solutions approved by the **board** from time to time that enables ballots, resolutions or written circulars of the **company** to be conducted, circulated, considered and/or used, provided the technology solution allows the applicable rules of this constitution to be followed. This may include the use of electronic ballots to deal with the approval of officer appointments.

## 30. Chairperson for general meetings

- 30.1 The **elected chairperson** is entitled to chair **general meetings**.
- 30.2 The **voting members present** and entitled to vote at a **general meeting** may choose a **director** or **voting member** to be the chairperson for that meeting if:

- (a) there is no **elected chairperson**, or
- (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
- (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

### 31. Role of the chairperson

- 31.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give **voting members** a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 31.2 The chairperson does not have a casting vote in addition to a deliberative vote.

### 32. Adjournment of meetings

- 32.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **voting members present** direct the chairperson to adjourn it.
- 32.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Members' resolutions and statements

### 33. Members' resolutions and statements

- 33.1 **Voting members** with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the **company** of a resolution they propose to move at a **general meeting**, and/or
  - (b) a written request to the **company** that the **company** give all of its **voting members** a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting**.
- 33.2 A notice of a **members' resolution** must set out the wording of the proposed resolution and be signed by the **voting members** proposing the resolution.
- 33.3 A request to distribute a **members' statement** must set out the statement to be distributed and be signed by the **voting members** making the request.
- 33.4 Separate copies of a document setting out the notice or request may be signed by **voting members** if the wording is the same in each copy.
- 33.5 The percentage of votes that **voting members** have (as described in clause 33.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 33.6 If the **company** has been given notice of a **members' resolution** under clause 33.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 33.7 This clause does not limit any other right that a **voting member** has to propose a resolution at a **general meeting**.

### 34. Company must give notice of proposed resolution or distribute statement

- 34.1 If the **company** has been given a notice or request under clause 33:

- (a) in time to send the notice of proposed **members' resolution** or a copy of the **members' statement to voting members** with a notice of meeting, it must do so at the **company's** cost, or
  - (b) too late to send the notice of proposed **members' resolution** or a copy of the **members' statement to voting members** with a notice of meeting, then the **voting members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving **voting members** notice of the proposed **members' resolution** or a copy of the **members' statement**. However, at a **general meeting**, the **voting members** may pass a resolution that the **company** will pay these expenses.
- 34.2 The **company** does not need to send the notice of proposed **members' resolution** or a copy of the **members' statement to voting members** if:
- (a) it is more than 1,000 words long;
  - (b) the **board** considers it may be defamatory;
  - (c) clause 34.1(b) applies, and the **voting members** who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed **members' resolution** or a copy of the **members' statement to voting members**; or
  - (d) in the case of a proposed **members' resolution**, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **voting members**.

### 35. Circular resolutions of members

- 35.1 Subject to clause 35.2, the **board** may put a resolution to the **voting members** to pass a resolution without a **general meeting** being held (a circular resolution).
- 35.2 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a **director** or remove a **director** or **associate director**; or
  - (b) where the **Corporations Act** or this constitution requires a meeting to be held.
- 35.3 A circular resolution is passed if a majority of the **voting members** entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 35.4 or clause 35.5.
- 35.4 **Voting members** may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 35.5 The **company** may send a circular resolution by email to **voting members** and **voting members** may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## Voting at general meetings

### 36. How many votes a member has

Subject to clause 12, each **voting member** has one vote.

### 37. Challenge to member's right to vote

- 37.1 A **voting member** or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 37.2 If a challenge is made under clause 37.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 38. How voting is carried out

- 38.1 Voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing (which satisfies the requirements of a poll for the purposes of the **Corporations Act**); or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 38.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 38.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 38.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 39. When and how a vote in writing must be held

- 39.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **voting members present**;
  - (b) **voting members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
  - (c) the chairperson.
- 39.2 A vote in writing must be taken when and how the chairperson directs, unless clause 39.3 applies.
- 39.3 A vote in writing must be held immediately if it is demanded under clause 39.1:
- (a) for the election of a chairperson under clause 30.2, or
  - (b) to decide whether to adjourn the meeting.
- 39.4 A demand for a vote in writing may be withdrawn.

### 40. Appointment of proxy

- 40.1 A **voting member** or a representative of a **voting member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 40.2 A proxy does not need to be a **member**.
- 40.3 A proxy appointed to attend and vote for a **voting member** or a representative of a **voting member** has the same rights as the **voting member** or representative of a **voting member** to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 39.1.



- 40.4 An appointment of proxy (proxy form) must be signed by the **voting member** or representative of the **voting member** appointing the proxy and must contain:
- (a) the **voting member** or representative of the **voting member's** name and address;
  - (b) the **company's** name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.
- 40.5 A proxy appointment may be standing (ongoing).
- 40.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 24.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 40.7 A proxy does not have the authority to speak and vote for a **voting member** or a representative of a **voting member** at a meeting while the **voting member** or representative of the **voting member** is at the meeting.
- 40.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **voting member** or representative of the **voting member**:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 40.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

#### 41. Voting by proxy

- 41.1 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also a **voting member** or holds more than one proxy, may cast the votes held in different ways.

## Directors and associate directors

#### 42. Number of directors and associate directors

- 42.1 Subject to clause 42.3, the **board** must have at least five and no more than nine **directors**. In addition, the **board** may have no more than five **associate directors**.
- 42.2 Subject to section 201P of the **Corporations Act** and subject to clause 42.3, the **board** may by resolution vary the number of **directors** and/or **associate directors** holding office from that referred to in clause 42.1.
- 42.3 The **board** must ensure, at all times whilst it has five or more **board** members, that the **board** is comprised of:
- (a) a majority of non-executive **directors** and/or **associate directors**; and
  - (b) at least one **board** member must have experience in the provision of clinical care.

#### 43. Election and appointment of directors

- 43.1 The initial **directors** are the people who have agreed to act as **directors** and who are named as proposed **directors** in the application for registration of the **company**.
- 43.2 Apart from the **directors** appointed under clause 43.6:
- (a) the **voting members** may elect up to nine **directors** by a resolution passed in an annual **general meeting** or similar annual meeting or by an approved electronic solution pursuant to clause 29.3; and
  - (b) to the extent that the **voting members** have elected less than nine **directors** under clause 43.2(a), and subject to the maximum number of **directors** under clause 42, the **directors** may appoint up to three additional **directors** with specific skills, by a **directors'** resolution in a **directors'** meeting.
- 43.3 Each of the **directors** elected under clause 43.2(a) must be elected by a separate resolution, unless:
- (a) the **voting members** present (or through the approved technology solution pursuant to clause 29.3) have first passed a resolution that the appointments may be voted on together; and
  - (b) no votes were cast against that resolution.
- 43.4 A person is eligible for election as a **director** of the **company** under clause 43.2(a) if they:
- (a) subject to clause 12, are a **voting member** of the **company**, or a representative of a **voting member** of the **company** (appointed under clause 28);
  - (b) are nominated by two other **members** or representatives of **members**;
  - (c) give the **company** their signed consent to act as a **director** of the **company**; and
  - (d) are not ineligible to be a director under the **Corporations Act**, the **ACNC Act**, or the **Aged Care Act**.
- 43.5 If the number of nominations received for **directors** exceeds the number of positions to be filled, a ballot shall be held.
- 43.6 The **directors** may appoint a person as a **director** to fill a casual vacancy.
- 43.7 The **directors** may appoint a person as an additional **director** under clause 43.2(b) or for a casual vacancy under clause 43.6 if that person:
- (a) gives the **company** their signed consent to act as a **director** of the **company**; and
  - (b) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 43.8 If the number of **directors** is reduced to fewer than five, or is less than the percentage required for a quorum, the continuing **directors** may act for the purpose of increasing the number of **directors** to five (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

#### 44. Appointment of associate directors

- 44.1 If the membership terms of an **associate member** grant that **associate member** the right to nominate one or more **associate director** positions on the **board**, or the company otherwise offers in writing that **associate member** one or more **associate director** position/s on the **board**, then that **associate member** may nominate such person/s as it thinks fit to be **associate director/s** and its representative/s on the

**board** in accordance with those membership rights or **company** offer, as applicable. If an **associate director** is so duly nominated pursuant to this clause, then the **directors** will appoint each nominated person to be an **associate director** by a **directors'** resolution in a **directors'** meeting (or by written circular of the **directors**), provided that:

- (a) each nominated person signs and returns a letter of appointment in the form provided by the **company**;
- (b) clause 42 is not breached; and
- (c) each nominated person is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

- 44.2 An **associate member** who has appointed an **associate director** under clause 44.1 may replace the person so appointed from time to time with the nomination of a replacement person on and subject to the terms and conditions of clause 44.1.
- 44.3 An **associate member** may also appoint a person as an alternative **associate director** on written notice to the **company** if their nominated **associate director** is not available for a **board** meeting. The alternative **associate director** will have all the powers, rights and responsibilities of the relevant absent **associate director** at that meeting and their appointment will automatically end when that meeting closes.
- 44.4 If an **associate director** has a limited term of office attached to its appointment (as set out in the relevant letter of appointment for that **associate director**), then on the expiry date of that limited term, the term of office of that **associate director** will automatically end and the **associate director** will be deemed to have voluntarily resigned their office as an **associate director**, without liability to the **company**, or to any member of the **board** or to any **member** of the **company**, unless the **company** has otherwise extended that term of office by written notice.

#### 45. Election of chairperson

- 45.1 The **directors** must elect a **director** as the **company's** **elected chairperson**.
- 45.2 The term of office of the **elected chairperson** will be one year.
- 45.3 Subject to clause 45, there is no limit on the number of terms a **director** can serve as the **elected chairperson**.

#### 46. Term of office

- 46.1 At each annual **general meeting** or other annual meeting:
  - (a) any **director** appointed by the directors since the previous annual **general meeting** or other annual meeting to fill a casual vacancy; and
  - (b) at least one-third of the remaining **directors**, as elected by **voting members** under clause 43.2(a), must retire.
- 46.2 The **directors** who must retire at each annual **general meeting** under clause 46.1(b) will be the **directors** who have been longest in office since last being elected. Where **directors** were elected on the same day, the **director(s)** to retire will be decided by lot unless they agree otherwise.

- 46.3 Other than a **director** appointed under clause 43.2(b) or 43.6, a **director's** term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 46.4 Subject to clause 46.5, the **directors** may determine the length of time that an additional **director** who is appointed under clause 43.2(b) is to serve as a **director**.
- 46.5 Notwithstanding any other provision of this constitution, each **director** and **associate director** must retire at least once every three years.
- 46.6 A **director** who retires under clause 46.1 may nominate for election or re-election, subject to clause 46.7.
- 46.7 A **director** who has been appointed under clause 43.2(a) and has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution** of the **voting members** and following approval by a majority of the **directors**.

#### 47. When a director stops being a director

- 47.1 A **director** and **associate director** stops being a director if he or she:
- (a) gives written notice of resignation as a director to the **company**;
  - (b) dies;
  - (c) is removed as a director by a resolution of the **voting members** pursuant to section 203D of the Corporations Act;
  - (d) is an **associate director** under clause 44.1, and the relevant **associate member** that nominated that **associate director** pursuant to clause 44.1 stops being a **member** of the **company** or a **member** of a **membership** class that is attributed with the right to be that **associate director**;
  - (e) is a representative of a **voting member**, and that **voting member** stops being a **voting member** or a **member** of a **membership** class that is attributed with the right to be a director;
  - (f) is a representative of a **voting member**, and the **voting member** notifies the **company** that the representative is no longer a representative;
  - (g) is an **associate director** of an **associate member** and the **associate member** notifies the **company** that the **associate director** is no longer an **associate director** of that **associate member**;
  - (h) is a **director** and is absent for three consecutive meetings that occur of the **board** and/or **directors'** (as applicable) without approval from the **directors**, and the **directors** resolve that this constitutes resignation;
  - (i) is an **associate director** and is absent for three consecutive **board** meetings without approval from the **board**, and the **board** resolves that this constitutes resignation; or
  - (j) becomes ineligible to be a **director** of the **company** under the **Corporations Act**, the **ACNC Act**, or the **Aged Care Act**.

## Powers of the board

#### 48. Powers of directors

- 48.1 The **board** is responsible for managing and directing the activities of the **company** to achieve the objects set out in clause 6.

- 48.2 The members of the **board** may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by **members**.
- 48.3 The **board** must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 48; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 48.4 The **board** cannot remove a **director** or auditor. **Directors** and auditors may only be removed by a **members' resolution** at a **general meeting**.
- 48.5 The **directors** are responsible for managing and exercising their rights and using their powers conferred under this constitution to the extent the right or power is reserved to the **directors** only under this constitution.

#### 49. Delegation of board powers

- 49.1 The **board** may delegate any of their powers and functions to a committee, a **director**, an **associate director**, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 49.2 The delegation must be recorded in the **company's** minute book.
- 49.3 Any committee, **director**, **associate director** or employee to whom the **directors'** powers are delegated must conform to any directions or restrictions imposed on them by the **board**.

#### 50. Payments to directors and associate directors

- 50.1 The **company** may:
- (a) pay fees to a **director** or **associate director** for carrying out the duties and responsibilities of the office of director,
  - (b) pay a **director** or **associate director** for work they do for the **company**, other than as a **director** or **associate director**, if the amount is no more than a reasonable fee for the work done, or
  - (c) reimburse a **director** or **associate director** for expenses properly incurred by the **director** or **associate director** in connection with the affairs of the **company**.
- 50.2 No **director** may be paid any fees under clause 50.1(a) unless:
- (a) the **voting members** approve the **total remuneration pool** to be paid to the **directors** and **associate directors**, which the **voting members** may set and approve from time to time, provided that the change is no greater in percentage terms than the *All Groups CPI Sydney percentage changes* for the relevant financial year (when comparing it from the previous financial year), as published [here](#) by the Australian Bureau of Statistics from time to time;
  - (b) the **total remuneration pool** is no more than is reasonable for the nature and scale of the **company's** affairs and activities; and
  - (c) the distribution of the **total remuneration pool** between **directors** and **associate directors** will be at the discretion of the **directors**.

- 50.3 Any payment made under clause 50.1 must be approved by the **board**.
- 50.4 The **company** may pay premiums for insurance indemnifying **directors** and **associate directors**, as allowed for by law (including the **Corporations Act**) and this constitution.

#### 51. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two **directors** of the **company**; or
- (b) a **director** and **associate director** of the **company**; or
- (c) a **director** and the **company secretary** of the **company**.

### Duties of directors and associate directors

#### 52. Duties of directors and associate directors

The **directors** and **associate directors** must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**;
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53;
- (f) to ensure that the financial affairs of the **company** are managed responsibly; and
- (g) not to allow the **company** to operate while it is insolvent.

#### 53. Conflicts of interest

- 53.1 A **director** and **associate director** must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the **board** or **directors**, as applicable (or that is proposed in a circular resolution):
- (a) to the other members of the **board** or **directors**, as applicable; or
  - (b) if all of the members of the **board** or **directors**, as applicable have the same conflict of interest, to the **voting members** at the next **general meeting**, or at an earlier time if reasonable to do so.
- 53.2 The disclosure of an actual or perceived material conflict of interest by a **director** or **associate director** must be recorded in the minutes of the relevant meeting.
- 53.3 Each **director** or **associate director** who has a material personal interest in a matter that is being considered at a meeting of the **board** or the **directors** as applicable (or

that is proposed in a circular resolution) must not, except as provided under clauses 53.5:

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

53.4 A **director** or **associate director** who attends a meeting but is not present while a matter in which he or she has a material personal interest pursuant to clause 53.3 is being considered, may still be counted in whether there is a quorum at all times of the meeting.

53.5 A **director** or **associate director** may still be present and vote if:

- (a) their interest arises because they are a **member** of the **company**, and the other **members** have the same interest;
- (b) in the case of an **associate director**, the interest arises because of a matter related to their **associate member** who appointed them, or to the class of membership of their **associate member** who appointed them, or to a business division in the company whose interests the **associate director** and **associate member** have a primary responsibility to (as indicated in their class of membership);
- (c) their interest relates to an insurance contract that insures, or would insure, the **director** or **associate director** against liabilities that the **director** or **associate director** incurs as a director of the **company** (see clause 78);
- (d) their interest relates to a payment by the **company** under clause 77; (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- (e) the Australian Securities and Investments Commission (ASIC) makes an order allowing the **director** to vote on the matter; or
- (f) the members of the **directors** or of the **board**, as applicable, who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the conflicted **director** or **associate director**, the nature and extent of the **director/associate director's** interest in the matter and how it relates to the affairs of the **company**; and
  - (ii) says that those members of the **directors** or **board**, as applicable, are satisfied that the interest should not stop the applicable **director** or **associate director** from voting or being present.

## Directors' meetings

### 54. When the directors meet

54.1 The **directors** may decide how often, where and when they meet to consider and resolve on matters where only the **directors** have a right to vote on the matter pursuant to this constitution.

### 55. Calling directors' meetings

55.1 A **director** may call a **directors'** meeting by giving reasonable notice to all of the **directors**.

- 55.2 A **director** may give notice in writing or by any other means of communication that has previously been agreed to by all of the **directors**.

#### 56. Chairperson for directors' meetings

- 56.1 The **elected chairperson** is entitled to chair **directors'** meetings.
- 56.2 The **directors** at a **directors'** meeting may choose a **director** to be the chairperson for that meeting if the **elected chairperson** is:
- (a) not present within 30 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.

#### 57. Quorum at directors' meetings

- 57.1 Unless the **directors** determine otherwise, the quorum for a **directors'** meeting is **directors** being personally present (or in conference pursuant to clause 58) who represent a majority of the total number of **directors**.
- 57.2 A quorum must be present for the whole **directors'** meeting.

#### 58. Using technology to hold directors' meetings

- 58.1 The **directors** may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by a majority in number of the **directors**.
- 58.2 The agreement of the **directors** under clause 58.1 may be a standing (ongoing) one.

#### 59. Passing directors' resolutions

A resolution of the **directors** must be passed by a majority of the votes cast by the **directors** present and entitled to vote on the resolution.

#### 60. Circular resolutions of the directors

- 60.1 The **directors** may pass a circular resolution without a **directors'** meeting being held.
- 60.2 A circular resolution is passed if a majority of the **directors** sign or otherwise agree to the resolution in the manner set out in clause 60.3 or clause 60.4.
- 60.3 Each **director** may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 60.4 The **company** may send a circular resolution by email to the **directors** and the **directors** may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 60.5 A circular resolution is passed when the last **director** required to meet the majority requirement in clause 60.2, signs or otherwise agrees to the resolution in the manner set out in clause 60.3 or clause 60.4.

## Board meetings

#### 61. When the board meets

- 61.1 The **board** may decide how often, where and when they meet.



- 61.2 Notwithstanding clause 61.1, members of the **board** must hold a minimum of four **board** meetings each year.

## **62. Calling board meetings**

- 62.1 A member of the **board** may call a **board** meeting by giving reasonable notice to all of the other members of the **board**.
- 62.2 A member of the **board** may give notice in writing or by any other means of communication that has previously been agreed to by all of the members of the **board**.

## **63. Chairperson for board meetings**

- 63.1 The **elected chairperson** is entitled to chair **board** meetings.
- 63.2 The members of the **board** at a **board** meeting may choose a **director** to be the chairperson for that meeting if the **elected chairperson** is:
- (a) not present within 30 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.

## **64. Quorum at board meetings**

- 64.1 Unless the **board** determines otherwise, the quorum for a **board** meeting is members of the **board** being personally present (or in conference pursuant to clause 65) who represent a majority of the total number of members of the **board**.
- 64.2 A quorum must be present for the whole **board** meeting.

## **65. Using technology to hold board meetings**

- 65.1 The **board** may hold its meetings by using any technology (such as video or teleconferencing) that is agreed to by a majority in number of the members of the **board**.
- 65.2 The agreement of the **board** under clause 65.1 may be a standing (ongoing) one.

## **66. Passing board resolutions**

A resolution of the **board** must be passed by a majority of the votes cast by the members of the **board** present and entitled to vote on the resolution.

## **67. Circular resolutions of the board**

- 67.1 The members of the **board** may pass a circular resolution without a **board** meeting being held.
- 67.2 A circular resolution is passed if a majority of the members of the **board** sign or otherwise agree to the resolution in the manner set out in clause 67.3 or clause 67.4.
- 67.3 Each member of the **board** may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

- 67.4 The **company** may send a circular resolution by email to the members of the **board** and the members of the **board** may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 67.5 A circular resolution is passed when the last member of the **board** required to meet the majority requirement in clause 67.2, signs or otherwise agrees to the resolution in the manner set out in clause 67.3 or clause 67.4.

## Company Secretary

### 68. Appointment and role of company secretary

- 68.1 The **company** must have at least one **company secretary**, who may also be a **director** (but not an **associate director**).
- 68.2 A **company secretary** must be appointed by the **board** (after giving the **company** their signed consent to act as **company secretary** of the **company**) and may be removed by the **board**.
- 68.3 The **board** must decide the terms and conditions under which the **company secretary** is appointed, including any remuneration.
- 68.4 The role of the **company secretary** includes:
- (a) maintaining a register of the **company's members**; and
  - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), **board** meetings, **directors'** meetings and circular resolutions (of the **board** or of the **directors** only).

## Minutes and records

### 69. Minutes and records

- 69.1 The **company** must make and keep the following records within the following timeframes:
- (a) minutes of proceedings and resolutions of **general meetings** within one month of the **general meeting** occurring;
  - (b) minutes of circular resolutions of **voting members** within one month of the circular resolution being passed;
  - (c) a copy of a notice of each **general meeting** within one month of the notice being sent; and
  - (d) a copy of a **members' statement** distributed to **voting members** under clause 34 within one month of the statement being distributed.
- 69.2 The **company** must make and keep the following records:
- (a) minutes of proceedings and resolutions of **board** meetings and of **directors'** meetings (including meetings of any committees) within one month of the meeting occurring; and
  - (b) minutes of circular resolutions of the **board** or of the **directors** within one month of the resolution being passed.
- 69.3 To allow **voting members** to inspect the **company's** records:
- (a) the **company** must give a **voting member** access to the records set out in clause 69.1; and

- (b) subject to clause 28.4(c), the **directors** may authorise a **voting member** to inspect other records of the **company**, including records referred to in clause 69.2 and clause 70.1.
- 69.4 The **board** must ensure that minutes of a **general meeting** or of the **board** or of a **directors'** meeting are signed within a reasonable time after the meeting by:
  - (a) the chairperson of the meeting; or
  - (b) the chairperson of the next meeting.
- 69.5 The **board** must ensure that minutes of the passing of a circular resolution (of **voting members, board** or **directors**) are signed by a member of the **board** within a reasonable time after the resolution is passed.

## 70. Financial and related records

- 70.1 The **company** must make and keep written financial records that:
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 70.2 The **company** must also keep written records that correctly record its operations.
- 70.3 The **company** must retain its records for at least 7 years.
- 70.4 The **board** must take reasonable steps to ensure that the **company's** records are kept safe.

## By-laws

### 71. By-laws

- 71.1 The **board** may from time to time make such by-laws as are in its opinion necessary and desirable for the proper control, administration and management of the **company's** affairs, operations, finances, interests, effects, property and any business divisions, and to amend and repeal those by-laws from time to time.
- 71.2 A by-law must be subject to this constitution and must not be inconsistent with any provision contained in this constitution
- 71.3 **Members** and officers of the **company** must comply with by-laws as if they were part of this constitution.
- 71.4 The **board** will adopt such measures as it deems appropriate to bring to the notice of the **members** and officers of the **company** all by-laws, amendments and repeals.

## Notice

### 72. What is notice

- 72.1 Anything to be written to or from the **company** under any clause in this constitution is to occur pursuant to clauses 73 to 75, unless specified otherwise.
- 72.2 Clauses 73 to 75 do not apply to a notice of proxy under clause 40.6.

### 73. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the **board**, the **directors** or the **company secretary** by:

- (a) delivering it to the **company's** registered office;

- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the **company** to the **members** as the **company's** email address or other electronic address; or
- (d) sending it to the fax number notified by the **company** to the **members** as the **company's** fax number.

#### 74. Notice to members

74.1 Written notice or any communication under this constitution may be given to a **member**:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the **member** in the register of **members** or an alternative address (if any) nominated by the **member** for service of notices;
- (c) sending it to the email or other electronic address nominated by the **member** as an alternative address for service of notices (if any);
- (d) sending it to the fax number nominated by the **member** as an alternative address for service of notices (if any); or
- (e) if agreed to by the **member**, by notifying the **member** at an email or other electronic address nominated by the **member**, that the notice is available at a specified place or address (including an electronic address).

74.2 If the **company** does not have an address for the **member**, the **company** is not required to give notice in person.

#### 75. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third **business day** after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the **business day** after it is sent; and
- (d) given under clause 74.1(e) is taken to be given on the **business day** after the notification that the notice is available is sent.

## Financial year

#### 76. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the **board** passes a resolution to change the financial year.

## Indemnity, insurance and access

#### 77. Indemnity

- 77.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 77.2 In this clause, 'officer' means a **director, associate director, or company secretary** and such other responsible persons of the **company** (for example, an executive officer or committee member of a business division) as approved by the **board** from time to time, and includes a **director, associate director, company secretary** and such approved responsible persons (if any) after they have ceased to hold that office.
- 77.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 77.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

#### 78. Insurance

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

#### 79. Directors' and associate directors' access to documents

- 79.1 Subject to clause 28.4(c), a **director** and **associate director** has a right of access to the financial records of the **company** at all reasonable times.
- 79.2 Subject to clause 28.4(c), if the **directors** agree, the **company** must give a **director** or former **director or associate director** or former **associate director** access to:
- (a) certain documents, including documents provided for or available to the **board**, and
  - (b) any other documents referred to in those documents.

### Winding up

#### 80. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a **member** or a former **member** of the **company**, unless that **member** or former **member** is a charity as described in clause 81.1.

#### 81. Distribution of surplus assets

- 81.1 Subject to clause 81.2, if any surplus arising from deductible gifts and contributions, and any money received in respect of such gifts and contributions, remains following the winding up of the **company**, that surplus will not be paid or distributed to the **members**, but will be given or transferred to another institution(s) or corporation(s) which has:
- (a) objects which are similar to the object of the **company**;

- (b) a constitution which requires its income and property to be applied in promoting its objects;
  - (c) a constitution which prohibits it from paying or distributing its income and property amongst its **members** to an extent at least as great as imposed on the **company** by clause 8; and
  - (d) which is endorsed as a deductible gift recipient and is charitable.
- 81.2 If a **member** satisfies the requirements set out in clause 81.1, it may receive the surplus under that clause.
- 81.3 The identity of the corporation(s) or institution(s) referred to in clause 81.1 is to be determined:
- (a) by the **voting members**; or
  - (b) if the **voting members** do not decide or do not wish to decide, then by the **board**,  
in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.
- 81.4 In the event that the **company** ever has its endorsement as a deductible gift recipient revoked, the **company** must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another deductible gift recipient (which may be, but not need be, a **member**), such deductible gift recipient to be determined by the **voting members**, or failing the **voting members**, the **board**, and failing such determination being made by either the **board** or the **voting members**, by application to the Supreme Court of New South Wales for determination.
- 81.5 Subject to clause 81.6, any surpluses remaining which are not within the ambit of clause 81.1, will be paid to or distributed to another institution(s) or corporation(s) which has:
- (a) objects which are similar to the object of the **company**;
  - (b) a constitution which requires its income and property to be applied in promoting its objects; and
  - (c) a constitution which prohibits it from paying or distributing its income and property amongst its **members** to an extent at least as great as imposed on the **company** by clause 8.
- 81.6 If a **member** satisfies the requirements set out in clause 81.5 and is charitable, it may receive the surplus under that clause.
- 81.7 The identity of the corporation(s) or institution(s) referred to in clause 81.5 is to be determined:
- (a) by the **voting members**; or
  - (b) if the **voting members** do not decide or do not wish to decide, then by the **board**,  
in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

## Definitions and interpretation

### 82. Definitions

In this constitution:

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

**Aged Care Act** means the *Aged Care Act 1997* (Cth).

**annual membership fee** means the sum payable by a **member**, determined by the **directors** from time to time.

**associate director** means any person holding the position of an associate director on the **board** of the **company**, and **associate directors** means the associate directors for the time being of the **company**.

**associate member** means any person who is in the **membership** class of an **associate member** as set out in the register of members of the **company**.

**board** means the board of **directors** and, if applicable, **associate directors** of the **company**.

**business day** means a day that is not a Saturday, Sunday or public holiday in New South Wales.

**company** means the **company** referred to in clause 1.

**company secretary** means the secretary of the **company** for the purposes of the Corporations Act, appointed pursuant to clause 60.

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

**director** means any person holding the position of a director on the **board** of the **company** (but it does not include an **associate director**), and **directors** means the those directors for the time being of the **company** or, as the context permits, such number of them as has authority to act for the **company**.

**disciplinary committee** means the committee established pursuant to clause 20.1

**elected chairperson** means a person elected by the **directors** to be the **company's** chairperson under clause 45.

**general meeting** means a meeting of **voting members** and includes the annual **general meeting**, under clause 23.1.

**initial members** means a **member** as at the date of incorporation of the **company**.

**member** means a member of the **company** pursuant to clause 10, including a **non-voting member** and a **voting member**, and including an **associate member**, and **membership** has the corresponding meaning.

**member present** means, in connection with a **general meeting**, a **voting member** present in person, by representative or by proxy at the venue or venues for the meeting.

**members' resolution** means a resolution proposed pursuant to clause 33.1(a).

**members' statement** means a statement that is the subject of a request made pursuant to clause 33.1(b).

**non-voting member** means a **member** who is in a **membership** class that does not grant them the right to attend or vote at a **general meeting**, and **non-voting members** has the corresponding meaning.

**registered charity** means a charity that is registered under the **ACNC Act**.

**special resolution** means a resolution:

- i. of which notice has been given under clause 24.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.

**voting member** means a **member** who is in a **membership** class that grants them the right to attend and to vote at a **general meeting**, and **voting members** has the corresponding meaning.

### **83. Reading this constitution with the Corporations Act**

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

### **84. Interpretation**

In this constitution, unless the context suggests otherwise:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations);
- (c) words in bold, outside of headings, refer to the corresponding defined term in section 74; and
- (d) headings are for convenience only and do not affect the interpretation of this constitution.