

Constitution

Aged & Community Services Australia
ACN 609 882 288

March 2021



www.acsa.asn.au

Rules of Aged & Community Services Australia

As approved by a special resolution of the members at a special general meeting held on 23 September 2020.

This constitution took effect on 17 March 2021, being the date of cancellation of the company's registration as a Registered Organisation pursuant to the Fair Work (Registered Organisations) Act 2009 (Cth)

Prepared 17 March 2021

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Rules of Aged & Community Services Australia

PRELIMINARY

1 DEFINED TERMS

1.1 In this Constitution unless the contrary intention appears:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), or any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework for the not-for-profit sector, as modified or amended from time to time and includes any regulations made under that Act or any other such legislation and any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Company.

Applicable Not-for-Profit Law means any law relating to the regulation of charities or not-for-profit entities applicable to the Company, including each Charitable Fundraising Act, the Tax Act, section 150 of the Corporations Act and the ACNC Act.

Associate means a body corporate or other organisation that wishes to be associated with the Company for a fee and includes a Community Benefit Organisation.

Auditor means the Company's auditor.

Charitable Fundraising Act means the legislation of any State or Territory of Australia, or the Commonwealth of Australia, regulating the raising of funds for charitable purposes and applicable to the Company.

Chairperson means the chairperson of the Company, being the Director of the Company who is elected by the Directors as Chairperson of the Company as referred to in **clause 48.1**.

Chief Executive Officer means the highest ranking officer responsible for the day-to-day management of the Company, as appointed by the Directors, who shall also be the company secretary as appointed under **clause 57.3**.

Community Benefit Organisation means any small employer organisation that is embedded in community and espouses the mission and values of the Company and includes a government body.

Company means ACSA.

Constitution means the constitution of the Company as amended from time to time.

Core Membership Division means the division within which a National Member Entity registers for the purposes of any nomination process applicable to the election of the Directors of the Company.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Councillor means an elected member of a Divisional Council.

CPI means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.

Deputy-Chairperson means the Director (if any) elected as such by the Directors in accordance with **clause 48**.

Director includes any person occupying the position of director of the Company.

Directors means all or some of the Directors acting as a board.

Division means a Division of the Company established by the Company under **clause 31**.

Divisional Council or Council means the advisory body elected by members within a Division for the purposes of assisting a Division in carrying out its business plan under any delegated authority from the Board of the Company.

First Director means a Director who consented to act as a Director of the Company after its registration under the Corporations Act and holds office until the conclusion of the first Annual General Meeting.

Incorporated Association means the incorporated association known as the Aged & Community Services Australia registered under the *Associations Incorporation Act 1991* (ACT).

Member means a member under **clause 7**:

- (a) being a Corporate Member; and
- (b) in **clauses 18, 19, 21 and 24**, includes a Member present in person or by proxy, attorney or Representative.

National Member Entity means a member organisation that operates across more than one Division.

Ordinary Member means a person admitted to membership of the Company as an ordinary member.

Register means the register of Members of the Company.

Representative means a person appointed by a Corporate Member to act as its representative under **clause 8**.

State means a State of Australia, being one of New South Wales, Tasmania, South Australia, Queensland, Victoria or Western Australia.

State Association means Aged and Community Services Western Australia (ACSWA), Aged and Community Services South Australia and Northern Territory (ACS SA & NT), Aged and Community Services Tasmania (ACS Tas) and Aged and Community Services New South Wales and Australian Capital Territory (ACS NSW & ACT).

Tax Act means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

Territory means either of the Australian Capital Territory or the Northern Territory.

Treasurer means the treasurer of the Company.

- 1.2 In this Constitution, except where the context otherwise requires (or where and to the extent otherwise provided for in **clause 67**), an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2 INTERPRETATION

2.1 In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
- (h) a reference to **applicable law** includes the applicable law and any applicable authorisation or licence granted thereunder.

2.2 Headings are for ease of reference only and do not affect interpretation.

2.3 For the purposes of this Constitution, if the provisions of the Corporations Act and this Constitution conflict on the same matter, the provisions of the Corporations Act prevail.

3 REPLACEABLE RULES

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

OBJECTS

4 NAME AND OBJECTS

4.1 The name of the Company is ACSA, hereafter referred to as the Company.

4.2 The principal object for which the Company is established as a charity and public benevolent institution is to support and enhance the provision of benevolent relief to frail, aged and disabled members of the community and its supporting objects are:

- (a) to encourage and support Members in their provision of appropriate standards of services for people who are aged, have a disability, or those who are marginalised or disadvantaged;
- (b) to promote the provision of quality residential and community care services and housing services in Australia;
- (c) to promote the work of, encourage co-operation between and to provide a focus for the exchange of information and ideas to assist Members and Divisional Councils in fulfilling their roles;

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- (d) to facilitate effective representation for and on behalf of Members both in Australia and internationally before all tiers of government and the community;
 - (e) to influence and develop the long term strategic direction, policies and programs for the care and well-being of older persons in Australia and internationally, especially those suffering from increasing frailty, disability or disadvantage, and to advocate on behalf of Members in connection with this;
 - (f) to promote the important role that church, charitable and not for profit agencies bring to the community, particularly their dominant role in providing services to special needs groups and in research to identify services for older Australians;
 - (g) to provide, encourage and support the development of educational programs aimed at improving standards of care for older persons in Australia.

And for the avoidance of doubt and for the purpose of section 150(1)(a) of the Corporations Act, it is confirmed that this Constitution requires the Company to pursue charitable purposes only and to apply its income in promoting those purposes.

4.3 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause; and
- (b) do all things incidental or convenient in relation to the exercise of power under **clause 4.3(a)**.

INCOME AND PROPERTY OF COMPANY

5 INCOME AND PROPERTY OF COMPANY

- 5.1 The income, profits and assets of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 4**, and the Company will not be carried on for the profit or gain of the Members, neither while it is operating nor on a winding up.
- 5.2 No income, profits or assets (whether in money, property or other benefits) will be paid, distributed or transferred directly or indirectly to any Member of the Company except, subject to clause 5.1, for payments to a Member as genuine compensation for services provided to, or reasonable expenses incurred on behalf of, the Company, or such other payments, distributions or transfers as may be permitted by the Applicable Not-for-Profit Laws.
- 5.3 Subject to **clauses 5.1 and 5.2**, the Company must not give or make a loan, grant or donation of more than \$1,000 to any person or organisation per annum, unless the Board has satisfied itself:
 - (a) that the making of the loan, grant or donation would be in accordance with the Constitution of the company; and
 - (b) in the case of a loan—that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory.
- 5.4 Subject to **clause 5.3**, no more than \$10,000 is to be provided to any one organisation in a financial year.
- 5.5 The Company shall develop and implement policies and procedures relating to the expenditures of the Company.

6 GIFT FUND AND RECEIPTS

If the Company accepts a gift, contribution or donation of money or property, the Company must:

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- (a) establish and maintain a gift fund as follows:
 - (i) the gift fund is for pursuing the objects of the Company set out in **clause 4**;
 - (ii) the gift fund must receive all gifts or money or property received by the Company for those objects and any money received because of such gifts must be credited to the gift fund's account;
 - (iii) the gift fund must not receive any other money or property; and
 - (iv) if the Company is wound up or has its deductible gift recipient endorsement revoked (whichever occurs first), the gift fund's surplus assets must be paid to a fund, authority or institution determined according to **clause 62** which is also endorsed on the same basis as the gift fund; and
 - (b) give the donor a receipt, and otherwise comply with all applicable laws in relation to any such gift, contribution or donation, including without limitation the Applicable Not-for-Profit Laws.

MEMBERSHIP

7 ELIGIBILITY AND PROCEDURE FOR ADMISSION

Eligibility for admission

- 7.1 The number of Members with which the Company proposes to be registered is unlimited.
- 7.2 There is one category of Members being Ordinary Members. A body corporate or organisation is eligible to seek admission to Ordinary Membership of the Company if it is a not-for-profit employer organisation that is:
 - (a) registered as a public benevolent institution with the Australian Charities and Not-for-profits Commission; or
 - (b) a charity predominantly for the relief of the needs of frail, aged and disabled people requiring personal care

Procedure for admission

- 7.3 The Ordinary Members of the Company are:
 - (a) the organisations who were members of the Incorporated Association on the date of registration of the Company as a company limited by guarantee under the Corporations Act; and
 - (b) any like persons bodies corporate or organisations who are admitted to membership in accordance with this Constitution,and whose membership has not ceased pursuant to **clause 12**.
- 7.4 The Company will inform applicants for membership, in writing, of the financial obligations arising from membership and the circumstances and the manner in which a Member may resign from the Company.
- 7.5 Applications for membership of the Company:
 - (a) may be made by any not-for-profit organisation which is eligible for admission to membership according to **clause 7.2**;

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- (b) must be in writing, signed by the applicant and in a form approved by, and containing the information required by, the Directors in their absolute discretion;
 - (c) if made by a body corporate or other organisation, must include the name and usual residential address of, and also be signed by, an individual whom the body (or organisation) nominates to represent it in respect of the affairs of the Company and who has consented to so represent it, such individual being the Representative of the body (or organisation); and
 - (d) may (and if the Directors so determine, shall) be accompanied by any first annual membership fee payable by the applicant, as calculated using the formula for the membership fee calculation, if their application is accepted.
- 7.6 The Directors will consider the application for membership as soon as convenient after the application is received. In considering an application for membership, the Directors may:
- (a) accept or reject the application (and, if they accept the application, the Directors shall determine whether the applicant is to be admitted as an Ordinary Member or such other category of membership as may exist at that time); or
 - (b) ask the applicant to give more evidence of eligibility or suitability for membership.
- 7.7 If the Directors ask for more evidence under **clause 7.6**, their determination of the application for membership is deferred until the evidence is given.
- 7.8 The Directors do not have to give any reason for rejecting an application for membership, nor for any determination whether to admit an applicant as an Ordinary Member or other category of Member, under **clause 7.6(a)**.
- 7.9 As soon as practicable following acceptance of an application for membership by the Directors under clause 7.6, the Chief Executive Officer will:
- (a) send, or cause to be sent to, the applicant written notice of the acceptance (and, unless it accompanied the applicant's application for membership, request payment of any first annual membership fee payable by the applicant); and
 - (b) subject to the Company's receipt of any first annual membership fee payable by the applicant (and the Directors not having cancelled their acceptance under **clause 7.10**), cause to be entered, the applicant's name in the Register (as an Ordinary Member or other existing category of Member, as the case may be), whereupon the applicant becomes a Member.
- 7.10 If a first annual membership fee payable by an applicant for membership is not paid within 60 days after the date the applicant is notified of acceptance of their application for membership, the Directors may cancel their acceptance of the applicant for membership of the Company.
- 7.11 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

8 REPRESENTATIVE OF MEMBER THAT IS A BODY CORPORATE

- 8.1 Any Member that is a body corporate may appoint an individual as its Representative as provided by the Corporations Act.
- 8.2 The appointment of a Representative may set out restrictions on the Representative's powers.
- 8.3 The original form of appointment of a Representative, a certified copy of the appointment, or a certificate of the body corporate evidencing the appointment of a Representative is prima facie evidence of a Representative having been appointed.

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- 8.4 The chairperson of a general meeting may permit a person claiming to be a Representative to exercise the body's powers even if he or she has not produced a certificate or other satisfactory evidence of his or her appointment.

9 ASSOCIATES

In the absolute discretion of the Directors, organisations (including Community Benefit Organisations) may be registered with the Company as Associates. Associates must pay an annual fee, but do not have any voting rights and are not Members. They may attend and participate in committee meetings of the Company.

10 NOTIFICATION BY MEMBERS

A Member must promptly notify the Chief Executive Officer in writing of:

- (a) any change in their qualification to be a Member, including, in the case of an Ordinary Member, any change in their charitable status, income tax exemption status or public benevolent institution status;
- (b) a change in their name, address, facsimile number or electronic mail address; and
- (c) if a Corporate Member, a change of its Representative or the name, address, facsimile number or electronic mail address of its Representative.

11 ANNUAL MEMBERSHIP FEES AND LEVIES

11.1 The Company in general meeting:

- (a) may by ordinary resolution determine that an annual membership fee is payable by each Member or a particular class or sub-class of Members and an annual Associate fee payable by Associates; and
- (b) may, upon the recommendation of the Directors and by special resolution, impose a levy upon Members and Associates of such amount and on such terms and conditions as approved under the special resolution imposing the levy.

11.2 Following registration of the Company under the Corporations Act but subject to any determination by the Company in general meeting under **clauses 11.3 or 11.4(b)**:

- (a) annual membership fees or associate fees shall be payable by all Members or Associates in accordance with this Constitution; and
- (b) the amount of the annual membership fee payable by each Member or Associates shall be the same as the amount of the annual membership fee that would have been payable by the Member or Associate as a member or associate of the Incorporated Association (as determined in accordance with the formula for calculating annual membership and associate fees most recently approved by the members of the Incorporated Association).

11.3 The Company in general meeting may from time to time:

- (a) suspend any determination made under **clause 11.1(a)** or the requirements of **clause 11.2** for a particular annual membership or associate fee period or particular annual membership or associate fee periods (in which case no annual membership or associate fee will be payable by a Member or Associate in respect of that period or those periods); or
- (b) revoke any determination made under **clause 11.1(a)** or the requirements of **clause 11.2**, in which case annual membership or associate fees will not thereafter be payable by Members or Associates from the effective date of the revocation but:

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- (i) Members and Associates will not, unless the Directors determine otherwise, be entitled to any refund (or part refund) of any annual membership or associate fee paid to the Company before the effective date of the revocation; and
 - (ii) the Company in general meeting may subsequently make a new determination under **clause 11.1(a)** at any time.

11.4 The Company in general meeting:

- (a) shall, if it makes a determination under **clause 11.1(a)** that an annual membership or associate fee is payable by each Member or Associate, determine the amount, or the formula for calculating the amount, of the annual membership or associate fee payable by each Member or Associate required to pay such annual membership fee; and
- (b) may from time to time, vary the amount, or the formula for calculating the amount, of the annual membership or associate fee payable by each Member or Associate required to pay such annual membership or associate fee.

11.5 Unless otherwise determined by the Company in general meeting, the annual membership or associate fee period will commence on 1 July of each year, and, subject to **clause 11.6**, the annual membership or associate fee will be due in advance within 60 days after this date.

11.6 In the case of an applicant for membership (who applies for membership at a time when a determination under **clause 11.1(a)** is in force or the requirements of **clause 11.2** apply):

- (a) the first annual membership fee shall be payable by the applicant either with their application for membership or, subject to any determination of the Directors under clause 7.5, within 60 days after the date the applicant is notified under **clause 7.9(a)** of the acceptance of their application for membership; and
- (b) if the applicant is to be admitted as a Member at a date more than 6 months after the start of the applicable annual membership fee period, the Directors may determine that they will pay only a proportion of the annual membership fee (being an amount pro-rated to the number of months remaining in the annual membership fee period) until their next annual membership fee falls due.

11.7 If a Member or Associate who is required to do so does not pay their annual membership or associate fee within 60 days after it becomes due, the Directors:

- (a) will give the Member or Associate notice of that fact; and
- (b) if the annual membership or associate fee remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited or the forfeiture of the Associate relationship with the Company.

11.8 If, at a time when no determination under clause 11.1(a) is in force and the requirements of clause 11.2 do not apply, the Company in general meeting makes a determination under clause 11.1(a) that an annual membership or associate fee is payable by each Member or Associate or a particular class or sub-class of Members, the first annual membership or associate fee payable by a person who is such a Member or Associate at the time the determination is made will be payable:

- (a) if the determination is that annual membership or associate fees will be payable commencing with effect from the next annual fee period after the determination, in accordance with **clause 11.5**; or
- (b) if the determination is that annual membership or associate fees will be payable commencing immediately, including in respect of the current annual membership or

associate fee period, within 60 days after the date the Company notifies the Member or Associate of the determination and the amount payable (which amount the Company in general meeting may determine shall only be a pro rata amount of the normal annual membership or associate fee for a full year).

12 CEASING TO BE A MEMBER

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

- (a) if the Member gives the Chief Executive Officer written notice of resignation, from the date of receipt of that notice by the Chief Executive Officer (or any later date specified in the notice);
- (b) if three quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (i) who in the Directors' opinion, has failed to comply with the provisions of this Constitution, and therefore their conduct renders it undesirable that that Member continue to be a Member of the Company; and
 - (ii) only after the Member has been given at least 21 days' notice of the proposed resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed; or
- (c) if their membership is forfeited under **clause 11.7(b)**.

12.2 Any Member ceasing to be a Member:

- (a) will not be entitled to any refund (or part refund) of any annual membership fee; and
- (b) will remain liable for and will pay to the Company all annual membership fees and moneys which were due at the date of ceasing to be a Member.

12.3 A notice of resignation from membership of the Company takes effect:

- (a) where the member ceases to be eligible to become a member of the Company:
 - (i) on the day on which the notice is received by the Company; or
 - (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member; whichever is later; or
- (b) in any other case:
 - (i) at the end of 2 weeks, after the notice is received by the Company; or
 - (ii) on the day specified in the notice; whichever is later.

13 POWERS OF ATTORNEY

13.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.

13.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

13.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

14 PATRONS

The Company in general meeting may, upon the recommendation of the Directors, appoint one or more patrons and/or vice-patrons (who need not be Members) upon such terms and conditions as the general meeting may, upon the recommendation of the Directors, determine.

GENERAL MEETINGS**15 CALLING GENERAL MEETING**

15.1 The Chairperson or any three or more other Directors may, at any time, call a general meeting.

15.2 A member may:

- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
- (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

15.3 The Directors must call an annual general meeting to be held each calendar year to the extent required by, and in accordance with, the Corporations Act.

16 NOTICE OF GENERAL MEETING

16.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.

16.2 A notice calling a general meeting:

- (a) must specify the place, date and time of 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) must state the general nature of the business to be transacted at the meeting;
- (c) must specify a place and facsimile number and may specify an electronic address or other electronic means for the purposes of proxy appointment or proxy appointment authorities;
- (d) if a special resolution is to be proposed at the meeting, must specify an intention to propose the special resolution and state the resolution; and
- (e) must comply with the Corporations Act.

16.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:

- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
- (b) the election of directors; or
- (c) the appointment and fixing of the remuneration of the Auditor.

16.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under **clause 15.2**).

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- 16.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in **clause 60** entitled to receive notices from the Company.
- 16.6 The failure or accidental omission to send a notice of a general meeting (including a proxy election form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

PROCEEDINGS AT GENERAL MEETINGS

17 MEMBER

In **clauses 18, 19, 21 and 24**, Member includes a Member present in person or by proxy, attorney or Representative.

18 QUORUM

- 18.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 18.2 A quorum is 25 Members (unless there are less than 25 Members, in which case it is a majority of Members).
- 18.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

19 CHAIRPERSON

- 19.1 The Chairperson, or in the Chairperson's absence, the Deputy-Chairperson, will be the chairperson at every general meeting.
- 19.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no Chairperson or Deputy-Chairperson; or
 - (b) neither the Chairperson nor the Deputy-Chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the Chairperson and Deputy-Chairperson are unwilling to act as chairperson of the general meeting.
- 19.3 If no election is made under **clause 19.2**, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or willing to take the chair, the Members may elect one of the Members present as chairperson.
- 19.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

19.5 The chairperson of an annual general meeting must allow a reasonable opportunity for the Members at the meeting to ask questions about or make comments on the management of the Company.

20 ADJOURNMENT

20.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the Members' consent; and
- (b) must adjourn the general meeting if a majority of Members directs him or her to do so.

20.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

20.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

20.4 Notice of an adjourned general meeting must only be given in accordance with **clause 16.1** if a general meeting has been adjourned for more than 21 days.

21 DECISIONS ON QUESTIONS

21.1 Subject to **clause 21.6** and the Corporations Act in relation to special resolutions¹, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

21.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.

21.3 Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

21.4 The demand for a poll may be withdrawn.

21.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

21.6 Any proposal for the Company to merge with another body corporate, organisation or entity must, in addition to any applicable requirements of the Corporations Act, be approved by a special resolution passed in general meeting (and the Company must not agree or commit to, nor implement, any such proposal without such approval).

21.7 Any changes to this Constitution shall be approved by a special resolution passed in a general meeting.

22 TAKING A POLL

22.1 A poll will be taken when and in the manner that the chairperson directs.

¹ As at the date of adoption of this document as the constitution of the Company, the Corporations Act defined a special resolution as a resolution: (i) of which notice as set out in paragraph 249L(1)(c) of the Corporations Act has been given; and (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

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- 22.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 22.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 22.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 22.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 22.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

23 CASTING VOTE OF CHAIRPERSON

The chairperson has a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

24 ENTITLEMENT TO VOTE

- 24.1 A Member entitled to vote has one vote on a show of hands.
- 24.2 A Member is not entitled to vote at a general meeting if:
- (a) any annual membership fee payable by the Member is more than one month in arrears from the date of issue of a fee tax invoice at the date of the meeting.

25 OBJECTIONS

- 25.1 An objection to the rights of a Member, Representative or other person or entity to vote may only be raised at the general meeting or adjourned general meeting at which the Member, Representative or other person or entity tendered its vote.
- 25.2 An objection must be referred to the chairperson of the general meeting, whose decision made in good faith is final.
- 25.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

26 VOTES BY PROXY

- 26.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may, subject to the Corporations Act, vote on a show of hands.
- 26.2 A proxy need not be a Member.
- 26.3 A proxy may demand or join in demanding a poll.
- 26.4 A proxy or attorney may vote on a poll.
- 26.5 A proxy may vote or abstain as he or she chooses except where the election of the proxy directs the way the proxy is to vote on a particular resolution. If an election directs the way the proxy is to vote on a particular resolution:
- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (b) if the proxy has two or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;
 - (c) if the proxy is the chair - the proxy must vote on a poll, and must vote that way; and

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- (d) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

27 DOCUMENT APPOINTING PROXY

- 27.1 An appointment of a proxy is valid if it is signed, or authenticated in accordance with the Corporations Act, by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 27.2 The Company may send a proxy appointment form to Members in a form which has been approved by the Directors.
- 27.3 A proxy's appointment is valid at an adjourned general meeting.
- 27.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 27.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 27.6 If a proxy appointment is signed or authenticated by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the proxy appointment by inserting the name or names of one or more Directors.

28 LODGEMENT OF PROXY

- 28.1 Subject to **clause 28.3**, the appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- 28.2 If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).
- 28.3 The Company receives an appointment of a proxy or attorney or other authority under which it was signed when they are:
- (a) received at:
 - (i) the Company's registered office;
 - (ii) a facsimile number at the Company's registered office; or

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- (iii) a place, facsimile number or electronic address specified for that purpose in the notice of general meeting; or
 - (b) if the notice of general meeting specifies other electronic means by which a Member may give an appointment, received by the Company in accordance with the Corporations Act.

29 VALIDITY

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company at least 48 hours before the relevant general meeting or adjourned general meeting.

30 REPRESENTATIVES OF BODIES CORPORATE

- 30.1 Any Member that is a body corporate may appoint an individual as its representative as provided by the Corporations Act.
- 30.2 The appointment of a Representative may set out restrictions on the Representative's powers.
- 30.3 The original form of appointment of a Representative, a certified copy of the appointment, a certificate of the body corporate evidencing the appointment of a Representative, or a notice of the appointment to the Company from the body corporate under **clause 10(c)** is prima facie evidence of a Representative having been appointed.
- 30.4 The chairperson of a general meeting may permit a person claiming to be a Representative to exercise the body's powers even if he or she has not produced a certificate or other satisfactory evidence of his or her appointment.

ELECTION AND REMOVAL OF DIRECTORS

31 DIVISIONS

- 31.1 (a) Following the adoption of this Constitution, there shall be 6 Divisions within the Company:
 - (i) Queensland;
 - (ii) New South Wales and the Australian Capital Territory;
 - (iii) Victoria;
 - (iv) Tasmania;
 - (v) South Australia and the Northern Territory; and
 - (vi) Western Australia.
- (b) The Company may increase or decrease the number of Divisions at any time by ordinary resolution, subject to no State or Territory being entitled to have more than one Division.

(c) A Division established under this **clause 31**:

- (i) is advisory in nature, assisting in developing the priorities of the Company and developing proposals about activities to address the objects of the Company in particular in relation to actions within the Division;
- (ii) does not create or otherwise constitute any separate unincorporated association, partnership or other body which is distinct from the Company;
- (iii) may only conduct and manage its affairs as delegated from time to time by the Company; and
- (iv) does not confer on members of the Division (as between themselves) any separate, distinct or additional rights from the rights conferred on Members of the Company under this Constitution.

32 COMPOSITION OF COUNCILS

- 32.1 Each Division shall have a Divisional Council (“Council”) to assist the Division in carrying out its approved business plan. Members within the Division shall be consulted from time to time to determine the appropriate number of Council members required for this role.
- 32.2 The term of each Councillor is three years and shall commence anytime before and up to the first annual general meeting of the Company after adoption of this Constitution. If the Councillor term commences before the first annual general meeting, this period does not count towards the term of three years.
- 32.3 The election of a Councillor shall take place at the times and in the manner and adopting the procedures determined by the Directors from time to time provided that, in each case, the election shall be conducted in accordance the procedures specified in the by-laws, or as otherwise determined by the Directors from time to time.
- 32.4 Where a casual vacancy occurs on the Council, the Company shall fill the vacancy from a nomination provided by the Council. The new Councillor shall hold the appointment until the conclusion of the annual general meeting of the Company at the which the appointment of the vacant Councillor would have become vacant;

33 NUMBER OF DIRECTORS

- 33.1 There shall not be less than one (1) Director representing each of the current Divisions of the Company, unless the Company by resolution passed in general meeting changes this number;
- 33.2 Each Division of the Company (as approved from time to time) shall be entitled to appoint a Director in accordance with **clause 35**.
- 33.3 The Directors may appoint up to three (3) non-voting advisors (who are not Directors) to meet the skill mix requirements of the Board from time to time. These appointments need not be Members and may be appointed on whatever terms and timeframe the Directors determine.

34 FIRST DIRECTORS

The First Directors of the Company are the persons who consented to act as Directors from those nominated by the Subscribers. Those persons hold office until the first Annual General Meeting.

35 ELECTION OF DIRECTORS

- 35.1 (a) Subject to **clause 35.2** any member of the Council is eligible to put themselves forward for consideration as the nominated Director from that Division to the Company at the time of election of the Board of Directors of the Company. If more than one member of the Council wishes to be considered then an election will be held. All members of the

Division are eligible to put themselves forward for consideration as members of the Council.

- (b) When a Director is to retire at the conclusion of an annual general meeting, the Members, within the respective Division, shall elect a Director in accordance with **clause 32** and this **clause 35** shall elect a Director with **clause 40.3** to fill (at the conclusion of that annual general meeting) the office that will be vacated by the retiring Director.
- (c) Only Members who have voting rights and are registered within that Division are eligible to vote for the Director representing that Division on the Company. Member organisations (including those organisations that are part of National Member Entities) operating within the Division are eligible to vote at Divisional elections for Councillors, even if the Division is not the Core Membership Division for that organisation.
- (d) Directors of the Company may determine by-laws under **clause 43.3** that relate to voting processes and member registration at Divisional level.

35.2 Councillors who wish to be considered as the nominated Director for a Division to the Company must have that Division registered as the Core Membership Division for the Member irrespective of where else that Member organisation (as a National Member Entity) may operate and be active in membership within the Company.

36 QUALIFICATION

36.1 A Director:

- (a) must be a Divisional Councillor, and must be a Nominated Representative of a Corporate Member; and
- (b) must not be the Chief Executive Officer or an employee of, or hold an office or place of profit with, the Company, or be disqualified from standing as a Director at law.

37 INCREASE NUMBER OR REMOVAL OF DIRECTORS BY GENERAL MEETING

37.1 The Company may by resolution passed in general meeting:

- (a) increase the maximum number of Directors; and
- (b) remove any Director (subject to **clause 38**).

38 SUSPENSION OF DIRECTORS

38.1 If the conduct, position or circumstances of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, the matter will be raised with the Director and investigated by an appropriately qualified independent person chosen by the Directors.

38.2 The Director accused of prejudicial actions will be given at least 21 days' notice of the proposed meeting at which the Directors will examine the accusation and decide if suspension is warranted. The Director accused of any prejudicial behaviour will have the opportunity to be heard at the meeting at which the resolution for suspension is proposed.

38.3 A majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director. Such conduct would include:

- (i) misappropriation of the Company's funds;
- (ii) a substantial breach of the Constitution of the Company;
- (iii) gross misbehaviour or gross neglect of duty; or

(iv) if he or she has ceased, under the Constitution, to be eligible to hold the office.

38.4 Unless the Director resigns within 14 days of any suspension under **clause 38.1**, the Directors must call a general meeting, at which the Members entitled to vote may either confirm the suspension and remove the Director from office in accordance with **clause 37.1(b)** or annul the suspension and reinstate the Director. The Director may put their case to Members, as stated in section 203D in the Corporations Act 2001.

39 TERM OF OFFICE

39.1 Each first Director described in **clause 34** shall retire at the conclusion of the first annual general meeting after the registration of the Company under the Corporations Act, but is eligible for re-election.

39.2 The term of office is three (3) years.

39.3 Subsequent Directors are elected in accordance with the by-laws.

39.4 At the close of each annual general meeting after the fourth annual general meeting after registration of the Company under the Corporations Act, those Directors whose term has completed shall retire.

39.5 Subject to **clause 39.6a** retiring Director will be eligible for re-election.

39.6 A retiring Director will be ineligible for re-election after serving three consecutive terms in office (a 'term' for this purpose being the period between election in accordance with **clause 39.2** and retirement pursuant to this clause 39, noting that the period from the registration of the Company under the Corporations Act until the first annual general meeting following such registration shall not be regarded as a 'term').

39.7 A person who has previously been a Director but who is not currently, and who has not been a Director of the Company for more than 12 months, is eligible for election as a Director.

40 DIRECTOR ELECTION PROCESS

40.1 Before the first annual general meeting after registration of the Company under the Corporations Act, the Members shall elect, in accordance with **clause 35** Directors, to take office with effect from the conclusion of the first annual general meeting.

40.2 When a Director is to retire at the conclusion of an annual general meeting, the Members, before the annual general meeting and in accordance with **clause 35**, shall elect a Director to fill (at the conclusion of that annual general meeting) the office that will be vacated by the retiring Director.

40.3 The election of a Director shall take place at the times and in the manner and adopting the procedures determined by the Directors from time to time provided that, in each case, the election shall be conducted in accordance the procedures specified in the by-laws, or as otherwise determined by the Directors from time to time.

41 CASUAL VACANCY IN OFFICE OF A DIRECTOR

41.1 If the office of a Director elected in accordance with **clause 35** (the **Vacating Director**) becomes vacant pursuant to **clause 42**:

(a) the Board may appoint a Director to fill the vacancy, in which case:

(i) the Director appointed pursuant to the **clause 41.1(a)** holds office until the close of the next annual general meeting of the Company after their appointment; and

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- (ii) the vacancy is then to be filled (at the conclusion of that annual general meeting) by the election, in accordance with **clause 35**, of a new Director; or
 - (b) if the vacancy is not filled by the Board under **clause 41.1(a)**, the vacancy shall be filled (at, if practicable, the conclusion of the next annual general meeting after the vacancy arose) by the election, in accordance with **clause 35**, of a new Director;
 - (c) the new Director elected **clause 41.1(a)(ii)** or **clause 41.1(b)** holds office until:
 - (i) the conclusion of the annual general meeting of the Company at which the office of the Vacating Director would have become vacant under **clause 35** had they not vacated their office under **clause 42**; or
 - (ii) if the new Director is taking office at the conclusion of the annual general meeting at which the Vacating Director's office would have become vacant under **clause 35** had they not vacated their office under **clause 42**, until the conclusion of the third annual general meeting following the annual general meeting at the conclusion of the which their election as a Director became effective.

42 VACATION OF OFFICE

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) in the opinion of the Directors, is incapable of managing their affairs due to mental or physical incapacity, or becomes, in the opinion of the Directors, incapable of performing his or her duties, or is a person whose estate is liable to have a person appointed, under the law relating to the administration of estates of persons who through mental or physical infirmity are incapable of managing their affairs, to administer it;
- (c) is committed of an indictable offence;
- (d) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (e) resigns by notice in writing to the Company;
- (f) is removed by a resolution of the Company pursuant to **clause 37.1(b)**;
- (g) ceases to be a Member or the Nominated Representative of a Member;
- (h) is absent from Directors' meetings for three consecutive meetings without leave of absence from the Directors;
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (j) becomes employed by the Company or accepts or holds an office of profit with the Company;
- (k) becomes the Chief Executive Officer; or
- (l) dies.

POWERS AND DUTIES OF DIRECTORS

43 POWERS AND DUTIES OF DIRECTORS

- 43.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 43.2 Without limiting the generality of **clause 43.1**, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 43.3 The Directors may make, amend or repeal by-laws and regulations not inconsistent with this Constitution for the general conduct and management of the Company and the business of the Directors.

44 DELEGATION

- 44.1 Subject to **clause 44.2**, the Directors may delegate their powers, other than those which by law must be dealt with by the Directors as a board (in accordance with section 190 of the Corporations Act), to:
- (a) a committee of Directors (which may include persons other than Directors in addition to at least one Director);
 - (b) a Director;
 - (c) an employee of the Company; or
 - (d) any other person (including a Member or the Representative of a Member),
- on and subject to such terms, conditions and limitations as the Directors may determine.
- 44.2 The Directors may not delegate a power or function relating to -
- (a) the management of the affairs of the Company (other than to the Chief Executive Officer as per **clause 57**);
 - (b) the determination of policy for the Company;
 - (c) the making, alteration or rescission of any by-laws or regulations made by the Directors under **clause 43.3**; or
 - (d) the enforcement of the Constitution, or the performance of functions in relation to the Constitution.
- 44.3 A committee or person to which any powers have been delegated must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 44.4 A committee or person to which any powers have been delegated may be authorised to sub-delegate all or any of the powers for the time being vested in it.

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- 44.5 The Directors may at any time revoke any delegation of power.
- 44.6 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

PROCEEDINGS OF DIRECTORS

45 DIRECTORS' MEETINGS

- 45.1 The Chairperson or any three Directors may at any time, and the Chief Executive Officer (acting as company secretary) must on the request of the Chairperson or any three Directors, call a Directors' meeting.
- 45.2 Unless otherwise determined by the Directors, there shall be at least six Directors' meetings each calendar year.
- 45.3 A Directors' meeting must be called by not less than 48 hours notice of a meeting to each Director, unless the Directors unanimously agree otherwise. The notice may be in writing (including electronic transmission, such as email) or given using any other technology consented to by all the Directors.
- 45.4 An accidental omission to send a notice of a meeting of Directors to any Director or the non-receipt of such a notice by any Director does not invalidate the proceedings, or any resolution passed, at the meeting.
- 45.5 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 45.6 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 45.7 Subject to **clause 53**, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 45.8 **Clauses 45.5** to 45.7 apply to meetings of Directors' committees as if all committee members were Directors.
- 45.9 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 45.10 A quorum is more than 50% of the number of appointed Directors under clause 33. The quorum must be present at all times during the meeting.
- 45.11 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.

46 DECISIONS ON QUESTIONS

- 46.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting.
- 46.2 Subject to **clause 53** and the Corporations Act, each Director has one vote.
- 46.3 If there is an equality of votes, the chairperson of a meeting has a casting vote in addition to his or her deliberative vote.

47 REMAINING DIRECTORS

- 47.1 The Directors may act even if there are vacancies on the board.

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- 47.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) adjourn the meeting; or
 - (b) call a general meeting.

48 CHAIRPERSON AND DEPUTY-CHAIRPERSON

- 48.1 The Directors shall elect a Director, from amongst their number, as Chairperson who shall:
- (a) be chairperson of Directors' meeting;
 - (b) hold such office for such period as the Directors may determine, and may be removed from such office by the Directors; and
 - (c) have such responsibilities as are consistent with the office of Chairperson as the Directors determine from time to time or as are set out in any relevant rules made under **clause 43.3**.
- 48.2 If there is no Chairperson or if the Chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 48.3 The Directors shall elect, from amongst their number, a Director as Deputy-Chairperson to act as chairperson of Directors' meetings in the chairperson's absence and may determine the period for which the Deputy-Chairperson will hold office.
- 48.4 A person holding the office of Chairperson or Deputy-Chairperson shall immediately cease to hold that office if they cease to be a Director.
- 48.5 The Chairperson and the Deputy-Chairperson will be officers for the purposes of the Corporations Act by virtue of being Directors.
- 48.6 Except to the extent functions and powers are delegated to them by the Directors pursuant to **clause 44**, the Chairperson and the Deputy-Chairperson:
- (a) have only the procedural powers expressly conferred on them under this Constitution or under the common law in respect of meeting procedures; and
 - (b) do not have any substantive functions or powers beyond that of a Director.

49 WRITTEN RESOLUTIONS

- 49.1 The Directors may pass a resolution without a Directors' meeting being held if a majority of the Directors entitled to vote on the resolution (except a Director who is outside Australia and who has not given the Company a facsimile number or email address for receipt of notices) sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when a majority of Directors have signed the document.
- 49.2 For the purposes of **clause 49.1**, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 49.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission (including email) or notification (and such a transmission that is received by the Company and which purports to be signed by a Director shall be treated as a document signed by the Director for the purposes of this **clause 49**).
- 49.4 The minutes of Directors' meetings must record that a resolution was passed in accordance with this clause.

49.5 This clause applies to meetings and resolutions of Directors' committees as if all members of the committee were Directors.

50 VALIDITY OF ACTS OF DIRECTORS

If it is discovered that:

- (a) there was a defect in the Election of a person as a Director or member of a Directors' committee; or
- (b) a person elected to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

51 MINUTES AND REGISTERS

51.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Members in accordance with the Corporations Act;
- (d) all resolutions passed by Directors in accordance with **clause 49**;
- (e) all elections of the Chairperson and Deputy Chairperson;
- (f) all orders made by the Directors and Directors' committees; and
- (g) all disclosures of interests made under **clause 53**.

51.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body, and if so signed will as between the Directors be conclusive evidence of the matters stated in such minutes.

51.3 The Company must keep all registers required by this Constitution and the Corporations Act.

PAYMENTS TO DIRECTORS AND DIRECTORS INTERESTS

52 PAYMENTS TO DIRECTORS

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses reasonably and properly incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service, and the amount payable, has the prior approval of the Directors and is not more than an amount which commercially would be reasonable payment for the service; and
- (c) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

53 DIRECTORS' INTERESTS

53.1 As required by the Corporations Act, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company.

53.2 Subject to this Constitution, including the provisions of this **clause 53** and **clauses 36.1(b)** and **57.1(a)**, 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; and
- (b) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or acting in a professional capacity with the Company.

53.3 The fact that a Director holds office as a director, and has fiduciary obligations arising out of that office:

- (a) will not void or render voidable a contract made by a Director with the Company;
- (b) will 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 any interest; and
- (c) will 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 any interest.

53.4 A Director may be or become a director or other officer (for the purposes of the Corporations Act) 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 vendor, shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer (for the purposes of the Corporations Act) of, or from having an interest in, that other body corporate.

53.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

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

unless permitted to do so by the Corporations Act, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or a proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or a proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

54 CONFLICTS OF INTEREST

In addition to clause 53.5, the Directors shall, to the extent required by any applicable law, establish a mechanism for dealing with any conflicts of interest that may occur involving a Director, officer (for the purposes of the Corporations Act) or employee of the Company.

LOCAL MANAGEMENT**55 LOCAL MANAGEMENT**

55.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

55.2 Without limiting **clause 55.1** the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (b) delegate to any person appointed under **clause 55.2(a)** any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

55.3 The Directors may at any time revoke or vary any delegation under this clause.

56 APPOINTMENT OF ATTORNEYS AND AGENTS

56.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,

determined by the Directors.

56.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local committee established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm; or
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

56.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

56.4 The Directors may appoint attorneys or agents by facsimile or electronic transmission to act for and on behalf of the Company.

56.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

CHIEF EXECUTIVE OFFICER

57 CHIEF EXECUTIVE OFFICER

57.1 Without limiting any other provision in this **clause 57**, the Directors may:

- (a) appoint any person (other than a Director) to the position of Chief Executive Officer for such period and on such terms and conditions (including as to remuneration) as the Directors determine; and
- (b) subject to the terms of any employment contract with a person so appointed, vary or revoke the appointment or suspend, remove or dismiss the Chief Executive Officer.

57.2 The Directors shall determine the duties of the Chief Executive Officer which shall be included in or supplementary to the employment contract with the person so appointed.

57.3 Unless otherwise determined by the Directors, the duties of the Chief Executive Officer will include those as company secretary, as required by the Corporations Act, and for this purpose, the company secretary shall be appointed by the Directors, under section 204D of the Corporations Act, on conditions determined by them.

57.4 The Chief Executive Officer is entitled to attend and be heard on any matter at all Directors' and general meetings.

INSPECTION OF RECORDS

58 INSPECTION OF RECORDS

58.1 Except as otherwise required by the Corporations Act or any other legal requirement, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.

58.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

NOTICES

59 SERVICE OF NOTICES

59.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:

- (a) by serving it on the person; or
- (b) by sending it by post, facsimile transmission or electronic notification (or email) to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person; or
- (c) if it is a notice of a meeting of Members, by giving it in accordance with section 249J(3) of the Corporations Act.

59.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and

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- (b) on the day after the day on which it was posted.
- 59.3 Subject to the Corporations Act, a notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (b) on the day after its despatch.
- 59.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted:
- (a) on a notice board at the Company's registered office; or
- (b) on the Company's website.
- 59.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of **clause 59.1**.
- 59.6 A certificate in writing signed by a Director, the Chief Executive Officer or other officer (for the purposes of the Corporations Act) of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 59.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 59.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

60 PERSONS ENTITLED TO NOTICE

- 60.1 Notice of every general meeting must be given to:
- (a) every Member who is entitled to attend the general meeting;
- (b) every Director; and
- (c) any Auditor.
- 60.2 No other person is entitled to receive notice of a general meeting.

AUDIT AND ACCOUNTS

61 AUDIT AND ACCOUNTS

- 61.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company, and to prepare financial documents and reports, in accordance with the requirements of the Corporations Act and any other applicable laws.
- 61.2 The Directors must cause the annual financial records and financial documents of the Company to be audited to the extent required by, and in accordance with the requirements of, the Corporations Act and any other applicable laws.

WINDING UP

62 WINDING UP

- 62.1 If the Company is wound up:
- (a) each Member; and

(b) each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Company for the:

(c) payment of debts and liabilities of the Company (in relation to **clause 62.1(b)**, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and

(d) adjustment of the rights of the contributories amongst themselves,

such amount as may be required, not exceeding \$100.00 (and otherwise has no liability for the payment of debts and liabilities of the Company nor obligation to contribute to the property of the Company).

62.2 On the winding up of the Company, any surplus remaining following the satisfaction of all debts and liabilities of the Company will not be paid or distributed amongst Members, but will, unless otherwise required by law, be given or transferred to another corporation or body which, by its constitution, is:

(a) required to pursue charitable purposes only, being charitable purposes similar (as far as possible) to those of the Company;

(b) required to apply its income in promoting its charitable purposes; and

(c) prohibited from making any distribution to its members and paying fees to its directors, to at least the same extent of such prohibitions under this Constitution,

such corporation or body to be determined by the Members and in default, by application to the Supreme Court of New South Wales for determination.

62.3 If the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act and it ceases to be so endorsed, then after first satisfying all debts and liabilities of the Company, any surplus:

(a) gifts of money or property for the Company's principal purpose;

(b) contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for that purpose; and

(c) money received by the Company because of such gifts or contributions,

will not be paid to or distributed amongst Members, but will, unless otherwise required by law, be given or transferred to another corporation or body:

(d) which, by its constitution, is:

(i) required to pursue charitable purposes only, being charitable purposes similar (as far as possible) to those of the Company;

(ii) required to apply its income in promoting its charitable purposes; and

(iii) prohibited from making any distribution to its members and paying fees to its directors, to at least the same extent of such prohibitions under this Constitution, and

(e) is one to which gifts can be deducted under Division 30 of the Tax Act,

such corporation or body to be determined by the Members and in default, by application to the Supreme Court of New South Wales for determination.

INDEMNITY AND INSURANCE

63 INDEMNITY

63.1 To the extent permitted by law and subject to the restrictions in section 199A² of the Corporations Act, the Company indemnifies every person who is or has been an officer (for the purposes of the Corporations Act) of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); or
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

63.2 The amount of any indemnity payable under clauses 63.1(a) or 63.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

63.3 For the purposes of this clause and **clause 64, officer** means:

- (a) a Director;
- (b) the company secretary;
- (c) Divisional Councillors; or
- (d) the Chief Executive Officer.

64 INSURANCE

The Company may pay a premium in respect of a contract insuring a person who is or has been an officer (for the purposes of the Corporations Act) against liability incurred by the person as an officer (for the purposes of the Corporations Act), except in circumstances prohibited by the Corporations Act.

INTERNAL DISPUTES

65 RESOLUTION OF INTERNAL DISPUTES

65.1 Disputes between Members (in their capacity as Members), and disputes between Members and the Company that the parties have not been able to themselves resolve (after following any internal dispute procedures the Directors may specify or adopt) are to be referred for mediation to Community Justice Centres New South Wales or such other mediator as the Directors may, subject to applicable law, determine.

² As at the date of adoption of this document as the constitution of the Company, section 199A of the Corporations Act provided, among other things, that (in respect of liabilities other than for legal costs) a company or a related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company: (a) a liability owed to the company or a related body corporate; (b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 961M, 1317H, 1317HA or 1317HB; (c) a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.

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- 65.2 At least seven days before such a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.
- 65.3 Any internal dispute procedures the Directors may specify or adopt include, without limitation:
- (a) the appointment of an independent person to arbitrate on the dispute;
 - (b) processes to bring the parties together to help resolve the dispute at an early stage, and should allow all parties a full and fair opportunity of presenting their case.

COMPLAINTS

66 COMPLAINTS

If, and to the extent, required by any applicable law, the Directors shall ensure that a mechanism is established that will properly and effectively deal with complaints made by members of the public and grievances from employees.

EXECUTION OF DOCUMENTS

67 EXECUTION OF DOCUMENTS

The Company may execute a document:

- (a) in accordance with section 127(1) of the Corporations Act; or
- (b) in any other way approved by the Directors and permitted by law.

END OF RULES



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