
Constitution of Australian College of Nursing Ltd

Approved: Wednesday 17 July 2019 at 4.05pm.

A handwritten signature in black ink, appearing to read 'CDuffield', written in a cursive style.

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ACN President

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Corporations Act 2001
Company Limited by Guarantee
Constitution
of
Australian College of Nursing Ltd

1. Preliminary

1.1 Definitions

In this Constitution, unless the subject or context indicates a contrary intention, the following words and expressions shall have the meanings set out opposite them:

ACNC means the Australian Charities and Not-for-Profits Commission;

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

ACNC Regulation means whichever of the *Australian Charities and Not-for-profits Commission Amendment Regulation 2013* (Cth) or any amended version of that regulation, which is in force from time to time;

Alternate Director has the meaning given to it in section 201K of the Corporations Act;

Associate Member means any person admitted as an associate under clause 5.5 for the time being;

Board means all or some of the Directors acting as a board;

Charity means an entity that is registered with the ACNC;

Chief Executive Officer means a person appointed to the role of chief executive officer of the Company pursuant to clause 15.1 from time to time;

Company means Australian College of Nursing Ltd ABN 48 154 924 642;

Constitution means this constitution as amended from time to time;

Corporations Act means the *Corporations Act 2001* (Cth) as in force for the time being;

Director means a person who has been appointed or elected as a Director of the Company for the purposes of the Corporations Act from time to time;

Distinguished Life Fellow means any person admitted as a distinguished life fellow under clause 5.7 for the time being;

Elected Director means a Director who is elected pursuant to clause 14.6;

Fellow means any person admitted as a fellow under clause 5.2 for the time being;

General Member means any person admitted as a general member under clause 5.3 for the time being;

Honorary Fellow means any person admitted as an honorary fellow under clause 5.6 for the time being;

Independent Director means a person who is considered by the Board to be independent, having regard to clauses 14.7(b) and 14.7(c), and who holds the office of Director pursuant to clause 14.7;

Member means a person whose name is entered in the Register as a member of the Company for the time being;

Nominations and Selection Committee means the committee referred to in **clause 21.2**;

Nominations and Selection Committee Charter means the terms of reference for the Nominations and Selection Committee as approved by the Board from time to time;

Nominations and Selection Committee Criteria means the skills and experience matrix to be applied by the Nominations and Selection Committee in recommending nominations for Elected Directors, as approved by the Board from time to time;

Notice means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act;

Office Bearer means a person appointed as an office bearer under clause 16.3;

Proxy means a person duly appointed as a proxy of a Member from time to time under clause 11;

Proxy Form means an instrument for appointing a Proxy, which complies with this Constitution;

Register means the register of Members kept under the Corporations Act;

Registered Office means the registered office of the Company from time to time;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Retired Fellow means any person admitted as a retired fellow under **clause 5.2** for the time being;

Retired General Member means any person admitted as a retired general member under **clause 5.3** for the time being;

Seal means the common seal of the Company;

Secretary means any person(s) appointed to perform the duties of company secretary of the Company from time to time;

Special Resolution has the meaning given to it in the Corporations Act;

Student Member means any person admitted as a student member under clause 5.4 for the time being; and

Voting Member means a Member entitled, for the time being, to attend and vote at a general meeting under this Constitution, which, subject to clause 6.2, includes:

- (a) Fellows;
- (b) General Members; and
- (c) Distinguished Life Fellows.

1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

- (a) an expression importing a natural person includes any individual, company, partnership, joint venture, association, corporation, other body corporate or trust and any government agency;
- (b) words denoting any gender shall include all genders;
- (c) words importing the singular shall include the plural and vice versa;
- (d) all monetary amounts are in Australian currency;
- (e) references to any legislation or to any section or provision of any legislation shall include any statutory modification, replacement or re-enactment of it or any statutory provision substituted for it, any ordinances, by-laws, regulations and other statutory instruments issued under it and any determination, exemption or modification made pursuant to it;
- (f) a reference to time refers to time in the place of the Company's registration;
- (g) the word "month" means calendar month and the word "year" means (12) calendar months;
- (h) a reference to writing includes any communication sent by post, facsimile transmission or email;
- (i) a reference to a clause is a clause of this Constitution;
- (j) a reference to the words "include", "including", "for example" or "such as" when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning; and
- (l) the headings used in this Constitution shall not form part of, or affect the construction or interpretation of, this Constitution.

1.3 Exercise of Power

Subject to this Constitution, the Company may exercise any power which under the Corporations Act may be exercised by a company limited by guarantee if authorised by its constitution.

1.4 **Exclusion of Replaceable Rules**

Except as expressly provided by, or to the extent inconsistent with this Constitution, the replaceable rules contained in the Corporations Act will apply.

2. Formation

2.1 **Nature of Company**

The Company is a public company limited by guarantee incorporated in Australia.

2.2 **Objects**

The objects for which the Company is established are to cultivate and maintain the highest principles of nursing and healthcare by:

- (a) facilitating the education and continuing professional development of nurses and other healthcare professionals;
- (b) providing opportunity for and administering grants, trusts and awards to further nursing and health professional scholarship;
- (c) contributing to a professional framework which enhances the practice, leadership and progression of nursing and healthcare nationally and internationally;
- (d) initiating, encouraging and supporting research to seek solutions to issues and problems relevant to nursing and healthcare practice and the health of the community in general and taking action on such problems and issues;
- (e) fostering and maintaining links with other nursing and allied organisations or relevant groups through co-operation or affiliation for the furtherance of any or all of the objects of the Company;
- (f) acting in an advisory role and providing a consultative service on the process and outcomes of nursing and health policy development and research at National and State levels in order to improve the health care of the community; and
- (g) doing all such things as are incidental or conducive to the attainment of all or any objects of the Company set out in this clause 2.2.

2.3 **Powers**

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

- (a) carry out the objects of the Company; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 2.3(a).

2.4 **Restriction on use of assets and income**

- (a) The assets and income of the Company must:

- (i) only be used to pursue its objects as set out in clause 2.2 of this Constitution; and
 - (ii) not be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member.
- (b) For clarity, this clause 2.4 does not prevent the Company from using its assets and income in good faith to make a payment:
- (i) as remuneration for services (including professional or technical services) supplied to the Company in the ordinary course of business and on reasonably commercial terms;
 - (ii) for goods supplied to the Company in the ordinary course of business and on reasonably commercial terms;
 - (iii) of a commercial rate of interest on borrowed funds provided the terms of such borrowing and the amount borrowed has the prior approval of the Board;
 - (iv) of a commercial rent for property used by the Company provided the relevant rental arrangements have the prior approval of the Board; or
 - (v) out of pocket expenses incurred on official business of the Company in accordance with the expense policies of the Company (as determined by the Board from time to time),
- even if the recipient of the remuneration, payment or reimbursement is a Member.

2.5 Liability of Members

A Member has no liability as a Member except as set out in clauses 6 and 27.

3. Accounts and Records

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act or the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act or the ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act or ACNC Act, as the case may be; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

4. Membership

4.1 Membership

The number of Members of the Company is unlimited.

4.2 **Eligibility for Membership**

4.3 The Board shall have discretion to admit to Membership any person who:

- (a) supports the objects of the Company;
- (b) satisfies the relevant criteria;
- (c) lodges an application form in accordance with clause 4.4; and
- (d) pays the fees (if any) in accordance with clause 6.

4.4 **Admission process**

- (a) A person must comply with this clause 4.4 to be eligible to become a Member of the Company.
- (b) Each applicant to become a Member must deliver to the Company an application in the form which the Board determines from time to time and pay any initial fee which the Board determines.
- (c) The Board may determine in its absolute discretion whether to accept an applicant as a Member and into which class of membership an applicant fits.
- (d) If an application to become a Member is accepted, the Company must:
 - (i) give written notice of the acceptance to the applicant; and
 - (ii) enter the applicant's name in the Register.
- (e) If an application to become a Member is rejected, the Company need not provide any reason for its determination, but must:
 - (i) give written notice of the rejection to the applicant; and
 - (ii) refund in full the fee (if any) paid by the applicant.
- (f) A determination of an application to become a Member is not invalid if the Company does not comply with clause 4.4(d)(i) or 4.4(e)(i).

5. *Membership Categories*

5.1 **Classification of Membership**

- (a) The membership of the Company shall be divided into the following categories:
 - (i) General Member;
 - (ii) Student Member;
 - (iii) Associate Member;
 - (iv) Fellow;

- (v) Honorary Fellow;
 - (vi) Distinguished Life Fellow; and
 - (vii) Retired Fellows; and
 - (viii) Retired General Members.
- (b) The criteria attached to each of the membership categories referred to in clause 5.1(a) shall be set out in the Board Charter and on the Company's website, as amended from time to time.

5.2 **Fellows**

The Fellows of the Company shall be every person admitted by the Board as a 'fellow'. Each Fellow is entitled to one (1) vote in a general meeting.

5.3 **General Members**

The General Members of the Company shall be every person admitted by the Board as a 'general member'. Each General Member is entitled to one (1) vote in a general meeting.

5.4 **Student Members**

The Student Members of the Company shall be every person admitted by the Board as a 'student member'. Student Members shall have no voting rights in a general meeting.

5.5 **Associate Members**

The Associate Members of the Company shall be every person admitted by the Board as an 'associate member'. Associate Members shall have no voting rights in a general meeting.

5.6 **Honorary Fellows**

The Honorary Fellows of the Company shall be every person admitted by the Board as an 'honorary fellow'. Honorary Fellows shall have no voting rights in a general meeting.

5.7 **Distinguished Life Fellows**

The Distinguished Life Fellows of the Company shall be every person admitted by the Board as a 'distinguished life fellow'. Each Distinguished Life Fellow is entitled to one (1) vote in a general meeting. For the avoidance of doubt, upon appointment as a Distinguished Life Fellow, a person shall cease, for the purposes of this Constitution, to be considered a Fellow.

6. *Membership Fees*

6.1 **Obligation to pay membership fees**

- (a) The Board shall determine the membership fees and the time of payment of such fees, in respect of each membership category of the Company, from time to time.
- (b) The Board may charge different categories of membership different membership fees, and may charge different membership fees within the same category of membership.

- (c) The Board may in its discretion:
 - (i) determine that no membership fee is payable by a Member or Members (in whole or in part) in a given year; and
 - (ii) extend the time for payment of the membership fee by any Member.

6.2 Failure to pay membership fees

- (a) Any Member whose membership fees are in arrears for more than three (3) months from when such fees became payable:
 - (i) shall forfeit all rights against the Company; and
 - (ii) at the determination of the Board, shall cease to be a Member of the Company.
- (b) Any such person whose membership has been ended under clause 6.2(a)(ii) may be reinstated as a Member of the Company upon such terms and subject to such conditions as the Board may determine.

6.3 Pro-rata return of membership fees

If a Member is expelled in accordance with this Constitution before the term has expired for which the Member's membership fees have been paid, the Member is not entitled to any refund of the membership fees that have been paid or are owing. The Member shall continue to be liable for:

- (a) any monies due to the Company; and
- (b) any sum for which the Member is liable as a Member of the Company under clause 27.1.

7. Cessation of Membership

7.1 Cessation, Termination and Expulsion

A person ceases to be a Member of the Company if that Member:

- (a) dies;
- (b) resigns from such membership;
- (c) is expelled from the Company membership pursuant to this Constitution and/or the Corporations Act;
- (d) fails to renew membership of the Company as provided for herein;
- (e) no longer satisfies the criteria for his or her respective class of membership (unless transferred to another class of membership by the Board);
- (f) has been found guilty of an indictable offence; or
- (g) is bankrupt or insolvent.

7.2 **Membership not transferable**

A right, privilege or obligation which a person has by reason of being a Member:

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

8. *Reprimand, Suspension and Expulsion of Members*

8.1 **Initial resolution of Board**

Where a committee of the Board, established to consider disciplinary matters, is of the opinion that a Member of the Company:

- (a) has refused or neglected to comply with a provision of this Constitution (including having membership fees in arrears for more than three (3) months from when such fees became payable);
- (b) has acted in a manner prejudicial to the interests of the Company; or
- (c) has been guilty of conduct unbecoming a Member,

and the committee has communicated this opinion to the chairperson the Board, the Board may, by resolution of a two-thirds majority of the Directors present at the relevant meeting or two thirds majority of all Directors when acting by written resolution ("**Initial Resolution**"):

- (d) reprimand the Member;
- (e) suspend the Member from membership of the Company for a specified period; or
- (f) expel the Member from the Company.

8.2 **Suspended operation**

An Initial Resolution is of no effect unless the Board, at the next meeting of the Board after service on the Member of a notice under clause 8.3, confirms the Initial Resolution in accordance with the following paragraphs of this clause 8.

8.3 **Notice to Member**

The Secretary must, as soon as practicable following the passing of the Initial Resolution, cause a notice in writing to be served on the Member that:

- (a) sets out the Initial Resolution of the Board and the grounds on which it is based;
- (b) states that the Member may personally address the Board at a meeting of the Board to be held not earlier than fourteen (14) days and not later than sixty (60) days after service of the notice;
- (c) states the date, place and time of that meeting of the Board; and
- (d) informs the Member that the Member may do either or both of the following:

- (i) personally attend and speak at that meeting of the Board; and
- (ii) submit to the Board at or prior to the date of that meeting written representations relating to the Initial Resolution.

8.4 **Confirming resolution of Board**

At a meeting of the Board held as referred to in clause 8.3, the Board must:

- (a) give to the Member an opportunity to make personal oral representations;
- (b) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
- (c) by resolution (“**Confirming Resolution**”) confirm the Initial Resolution or, alternately, revoke the resolution.

8.5 **Notice to Member**

- (a) The Secretary must, within seven (7) days of the passing of the Confirming Resolution or revocation of the Initial Resolution, by notice in writing inform the Member of the fact under this Constitution.
- (b) The passing of a Confirming Resolution under clause 8.4 does not take effect:
 - (i) until the expiration of the period within which the Member is entitled to appeal against the Confirming Resolution where the Member does not exercise the right of appeal within that period; and
 - (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the Confirming Resolution pursuant to clause 8.6.

8.6 **Right of Appeal of Disciplined Member**

- (a) The Board will establish a committee for the purpose of conducting disciplinary proceedings against a Member (**Disciplinary Committee**). The Disciplinary Committee will comprise of an independent panel of three experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a Confirming Resolution of the Board, which is confirmed under clause 8.4. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under clause 8.5.
- (c) Within thirty five (35) days after receipt of a notice of appeal from the Member pursuant to clause 8.6(b), the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under clause 8.6(c):
 - (i) the Member must be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and

- (ii) the Disciplinary Committee must vote by ballot on the question of whether the Confirming Resolution will be confirmed.
- (e) The Disciplinary Committee's decision, pursuant to clause 8.6(d)(ii), is final. The Member is not entitled to appeal the Disciplinary Committee's decision to any person or to any committee, court or tribunal.
- (f)
 - (i) The Member the subject of these disciplinary procedures is entitled to bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to this clause 8.
 - (ii) Any support person must not be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this clause 8, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

9. Resolution of Disputes Between Members

9.1 Resolution of Disputes Between Members

- (a) Disputes between Members (in their capacity as Members) shall be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the Australian Mediation Association, or a similar body (agreed upon by the parties or where no agreement is reached, as decided by the Board).
- (d) The costs of the mediator appointed pursuant to clauses 9.1(b) or 9.1(c) (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to clause 9.1(b) or clause 9.1(c) (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

10. Meetings of Members

10.1 Persons entitled to attend

- (a) The right to attend a general meeting of the Company is as follows:

- (i) each Member may attend, apart from any Member who under this Constitution or by the terms of issue of any membership is not entitled to attend;
 - (ii) each Director, Secretary and auditor may attend;
 - (iii) each person who is a Proxy of a Member may attend; and
 - (iv) other persons may attend only with leave of the meeting or its chairperson and then only while the leave is current and in accordance with the terms of the leave.
- (b) The right of a person to attend is subject to the powers of the chairperson of the meeting, both under the Corporations Act and this Constitution.

10.2 Annual general meeting

In the event that the Company is:

- (a) required to comply with the provisions of the Corporations Act pertaining to annual general meetings, the Company will do so in accordance with the requirements of those provisions; or
- (b) not required to comply with the provisions of the Corporations Act pertaining to annual general meetings, but the Board nevertheless desires to convene annual general meetings, the Company will convene and conduct annual general meetings in accordance with the provisions of the Corporations Act pertaining to annual general meetings notwithstanding section 111L of the Corporations Act.

10.3 Convening of meetings by Members

- (a) Any three (3) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) In the event that the Company is:
 - (i) required to comply with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting, the:
 - (A) Members may call a general meeting; and
 - (B) Company will do so;
 in accordance with the requirements of those provisions; or
 - (ii) not required to comply with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting, the:
 - (A) Members may call a general meeting; and
 - (B) Company will do so;
 in accordance with the requirements of those provisions notwithstanding section 111L of the Corporations Act.

- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

10.4 **Notice of meeting**

- (a) Subject to clause 10.4(c), twenty one (21) clear days' notice of a general meeting shall be given to those Members entitled to receive notice (and to the others listed in clause 10.5).
- (b) Every notice of a general meeting:
 - (i) must set out the place, day and time of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (ii) if it is intended to consider special business in the general meeting, state the general nature of that business;
 - (iii) specify a place, facsimile number and electronic address for the purposes of appointing a Proxy;
 - (iv) contain a statement of the right to appoint a Proxy, being to the effect that a Voting Member is entitled to appoint a Proxy to attend and vote in the place of the Voting Member; and
 - (v) any other information required by the Corporations Act (notwithstanding that section 111L of the Corporations Act may apply).
- (c) A general meeting may be called on shorter notice in accordance with section 249H(2) of the Corporations Act (notwithstanding the fact that section 111L of the Corporations Act may apply).

10.5 **Entitlement to notice**

Notice of a general meeting must be given to:

- (a) each Member, apart from any Member who under this Constitution or by the terms of issue of any membership is not entitled to the notice;
- (b) the auditor; and
- (c) each Director.

10.6 **Entitlement to Proxy Form**

A Proxy Form (in a form determined by the Board) must be given to each Member entitled to receive a notice of a general meeting.

10.7 **Omission to give notice**

The accidental omission to give notice of a general meeting (or Proxy Form) to, or the non-receipt of any such notice (or Proxy Form) by a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

10.8 Consent to short notice

With the consent in writing of all the Voting Members, any general meeting may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly.

10.9 Cancellation or postponement of meeting

(a) Subject to:

- (i) those provisions of Part 2G.2 of the Corporations Act pertaining to Members calling general meetings (notwithstanding that section 111L of the Corporations Act may apply); and
- (ii) this Constitution;

the Board may cancel a general meeting of the Company:

- (iii) convened by the Board; or
 - (iv) which has been convened by the Members pursuant to clause 10.3 upon receipt by the Company of a written notice withdrawing the requisition signed by those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
- (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

11. Representation at Meetings

11.1 Proxy eligibility

A Proxy need not be a Member of the Company.

11.2 Proxy recognition

- (a) A Proxy is recognised as having been duly appointed by a Member and entitled to act as a Proxy for that Member if, and only if, the Proxy Form complies with the requirements of this Constitution concerning form, execution and lodgement.
- (b) If a Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

11.3 Attendance of Member suspends the Proxy

If a Member is present at any general meeting in person, the Proxy of that Member may not exercise the voting rights of the Member while the Member is present.

11.4 Proxy Form

- (a) The Proxy Form must be in the form determined by the Board for the relevant general meeting of the Company, or as similar to it as the circumstances permit. The Board may at any time accept a Proxy Form which is not in the required form. Unless the Board specifically determines otherwise at any time, the Proxy Form:
- (i) is operative only for a single general meeting of the Company (and any adjournment of that meeting) and must specify the proposed date of that meeting;
 - (ii) may make provision for the chairperson of the general meeting of the Company to act as the Proxy either in the absence of any other appointment or if the Proxy primarily appointed fails to attend the general meeting of the Company; and
 - (iii) must enable the Voting Member to at least instruct the Proxy to vote for or against each notified resolution.
- (b) Unless otherwise provided for in the Proxy's appointment, the appointment of the Proxy will be taken to confer authority:
- (i) to vote on:
 - (A) any amendment moved to the proposed resolutions; and
 - (B) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting of the Company,

even though the appointment may specify the way the Proxy is to vote on a particular resolution; and
 - (ii) to vote on any motion before the general meeting of the Company whether or not the motion is referred to in the appointment.

11.5 Chairperson as fall-back Proxy

If a Proxy Form is otherwise effective except that it does not specify the Proxy, the Member is treated as validly appointing the chairperson of the general meeting of the Company as their Proxy.

11.6 Proxy execution

A Proxy Form must be executed by the:

- (a) Member; or
- (b) an attorney of the Member.

11.7 Proxy lodgement

- (a) To be valid, a completed Proxy Form must be received by the Company at least forty eight (48) hours (unless otherwise specified in the notice of general meeting of the Company to which the proxy relates) before:
 - (i) the time for holding the general meeting or adjourned general meeting of the Company at which the appointee proposes to vote; or
 - (ii) the taking of a poll on which the appointee proposed to vote.
- (b) The Company is deemed to receive the completed Proxy Form and any power of attorney or other authority under which it was executed when they are received at:
 - (i) the Registered Office (or at such other place as is specified for that purpose in the notice calling the general meeting); or
 - (ii) a facsimile number at the Registered Office; or
 - (iii) a place or electronic address specified for that purpose in the notice of general meeting.

11.8 Proxy executed by attorney

If a Proxy Form is executed by the attorney of the Member, the relevant instrument of power of attorney (or a photocopy of it or a facsimile transmission of it) must also be lodged at the place, and by the deadline, required for the Proxy Form.

11.9 Validity of proxies

A vote exercised pursuant to a Proxy Form, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) the death or unsoundness of mind of the Member;
- (b) the bankruptcy of the Member;
- (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its office written notice of the death, unsoundness of mind, bankruptcy or revocation at least forty eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

11.10 Rights of Proxies and Attorneys

- (a) The Proxy Form will be taken to confer authority to demand or join in demanding a poll.
- (b) The chairperson of a general meeting may require any person acting as a Proxy to establish to the satisfaction of the chairperson that he is the person nominated as Proxy in the Proxy Form lodged under this Constitution. If the person is unable to establish his identity, he may be excluded from voting either upon a show of hands or upon a poll.

11.11 Revocation of Proxies

Any Proxy may be revoked at any time. The decision of the chairperson as to whether a Proxy has been revoked is final and conclusive.

11.12 Proxy must vote as directed

A recognised Proxy must vote or, where applicable, abstain on behalf of a Voting Member in the manner instructed by that Voting Member on the Proxy Form. If no instruction is given the Proxy may vote, or abstain, as the Proxy sees fit.

11.13 Proxy at postponed general meeting

Where by the terms of an instrument appointing a Proxy:

- (a) the appointed person is authorised to attend and vote at a general meeting to be held on or before a specified date; and
- (b) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or power of attorney unless the Member appointing the Proxy or attorney gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

12. Proceedings at Meetings of Members

12.1 Quorum

No business may be transacted at a general meeting unless a quorum of Members is present. Except as provided in clause 12.3, a quorum of Members is twenty (20) Voting Members.

12.2 Determining the quorum

- (a) In determining whether a quorum for a meeting of Members is present:
 - (i) where more than one Proxy or representative of a Voting Member is present, only one of those persons is counted;
 - (ii) where a person is present as a Voting Member and as a Proxy or representative of another Voting Member, that person is counted separately for each appointment provided that there is at least one other Voting Member present; and
 - (iii) where a person is present as a Proxy or representative for more than one Voting Member, that person is counted separately for each appointment provided that there is at least one other Voting Member present.
- (b) A quorum for a meeting of Members must be present at the commencement of the meeting. If a quorum is present at the commencement of a meeting of Members, it is taken to be present throughout the meeting unless the chairperson otherwise determines.

12.3 Failure of quorum

If a quorum is not present within fifteen (15) minutes from the time appointed for a general meeting:

- (a) where the meeting was called by, or in response to, the requisition of Members made under clause 10.3(b), the meeting is automatically dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the Board determines or, if no determination is made by the Board, to the same day in the second week following at the same time and place. If at the adjourned meeting a quorum is not present within fifteen (15) minutes from the time appointed for the meeting, the Voting Members present constitute a quorum or if no Voting Members are present, the meeting is dissolved.

12.4 Business of annual general meeting

The business of an annual general meeting is to receive the Company's financial statements, the Directors' statement and report, the auditor's report on the financial statements, to announce the Elected Directors who have been elected in the place of those who are retiring and to transact any other business which under this Constitution or the Corporations Act (notwithstanding section 111L of the Corporations Act) is to be transacted at an annual general meeting. All other business transacted at an annual general meeting, and all business transacted at other meetings of Members, is deemed special.

12.5 Special business

No special business may be transacted at any general meeting other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Corporations Act to be transacted at such meeting.

12.6 Chairperson of meeting

- (a) The President of the Company will be the chairperson for all general meetings.
- (b) Where a general meeting is held and the President is:
 - (i) unable or unwilling to act a chairperson;
 - (ii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting,

then the following person will be chair in lieu of the President in the order of availability set out below:

- (iii) Vice-President;
- (iv) another Director chosen by the Directors by two-thirds majority, or if their number is not three (3) or a multiple of three (3), then the nearest number to two-thirds; and
- (v) a Voting Member chosen by a majority of the Voting Members present.

12.7 **Passing the chairperson**

If the chairperson of a general meeting is unwilling or unable to be the chairperson for any part of the business of the meeting:

- (a) that chairperson may withdraw as chairperson for that part of the business and may nominate any person who would be entitled under clause 12.6 to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairperson and the prior chairperson is entitled to resume as the chairperson of the meeting.

12.8 **Responsibilities of chairperson**

The chairperson of a general meeting is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning the business transacted at it. For these purposes the chairperson of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings on all matters relating to the order of business, procedure and conduct of the meeting, and such decisions shall be final and no motion of dissent from such rulings or decisions shall be accepted;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

12.9 **Adjournment of meeting**

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 meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

12.10 **Business at adjourned meeting**

- (a) The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- (b) No notice need be given of an adjournment or of the business to be transacted at an adjourned general meeting, unless it is adjourned for twenty one (21) days or more, in which event notice of the adjourned general meeting must be given.
- (c) An adjourned general meeting may take place at a different venue to the initial general meeting.

13. Voting at Meetings of Members

13.1 Entitlement to vote

Voting Members shall have the rights to attend and vote at a general meeting of the Company.

13.2 Number of votes

Each Voting Member has:

- (a) on a show of hands (or on the voices) only one (1) vote, regardless of how many Voting Members the person may represent as Proxy; and
- (b) on a poll one (1) vote for the membership held by that person and one (1) vote for each membership held by Voting Members for whom the person is the recognised Proxy or attorney.

13.3 Voting restrictions

If:

- (a) the Corporations Act requires that particular persons do not cast a vote on a resolution; and
- (b) the notice of a general meeting specifies that in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company,

the Company must disregard any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution.

13.4 Method of voting

Every resolution put to a vote at a general meeting (except where there is an election of Elected Directors by ballot) must be determined by the voices or a show of hands (as determined by the chairperson of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

13.5 Declaring result of vote on show of hands

At any general meeting (unless a poll is so demanded) a declaration by the chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

13.6 Demand for poll

A demand for a poll may be made by:

- (a) the chairperson of the general meeting;
- (b) at least five (5) persons present in person or by proxy at the meeting having the right to vote at the general meeting; or

- (c) any person or persons present having the right to vote at the meeting who have at least five per cent (5%) of the total voting rights of all the Members having the right to vote at the general meeting.

13.7 **Conduct of poll**

- (a) The demand for a poll may be withdrawn.
- (b) If a poll is duly demanded (and the demand not withdrawn), it must be taken in such manner and at such time as the chairperson of the meeting directs.
- (c) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (d) A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment.
- (e) The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.
- (f) The result of a poll demanded on a resolution of a general meeting of Members is a resolution of that meeting.

13.8 **Disqualification**

No person other than:

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

shall be entitled to a vote at a general meeting.

13.9 **Circulating resolutions of Members**

- (a) Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all of the Voting Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Voting Members entitled to vote on the resolution if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is taken to be passed, as if it had been passed unanimously at a duly convened general meeting, at the time the Secretary has evidence that the last Voting Member entitled to vote on the resolution has signed it.

13.10 **Casting vote of chairperson**

If, on a show of hands or on a poll, the votes are equal, the chairperson of the meeting has a casting vote in addition to the deliberative vote, if any, of the chairperson.

13.11 Objections

- (a) No objection may be made as to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid.
- (b) In recording votes, the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll.

13.12 Persons of Unsound Mind and Minors

- (a) A Voting Member:
 - (i) of unsound mind; or
 - (ii) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (iii) who is a minor;

may vote whether on a show of hands or on a poll by that Member's committee or by such other person as properly has the management or guardianship of that Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy.

- (b) Any person having the right of management or guardianship of the person or estate in respect of a Member as referred to in clause 13.12(a) must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

13.13 Ruling on votes

The chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairperson is final and conclusive.

14. Appointment and Removal of Directors

14.1 Number of Directors

- (a) Subject to **clause 14.1(b)**, the number of Directors must be no less than three (3) and not more than twelve (12).
- (b) The Company may, by Special Resolution in a general meeting, increase or reduce the number of Directors beyond the range referred to in **clause 14.1(a)**, and may also determine in what rotation the increased or reduced number is to submit themselves for re-election.

14.2 Board composition

- (a) The Board will always seek to attract Directors with the requisite skills and capabilities to achieve the best decision-making on behalf of the Company. Subject to **clause 14.1**, the Board shall consist of:

- (i) seven (7) Elected Directors, all of whom shall be Voting Members; and
- (ii) two (2) Independent Directors,

the number of Directors and composition to be determined by the Board, so long as the number of Directors is within the range referred to in **clause 14.1(a)**.

14.3 Eligibility of Director

- (a) To be eligible to be a Director, a person must satisfy the conditions contained in subsection 45.20(3) of the ACNC Regulation.
- (b) To be eligible to be an Elected Director, a Voting Member must:
 - (i) nominate for the position of Elected Director pursuant to **clause 14.5(d)**; and
 - (ii) be approved by the Nominations and Selection Committee by satisfying the Nominations and Selection Committee Criteria.

14.4 Term

- (a) Subject to clause 14.4(c):
 - (i) Independent Directors shall hold office for a term of four (4) years and shall then be eligible for re-appointment to the Board for a further term of four (4) years; and
 - (ii) all Elected Directors shall hold office for a term of four (4) years and shall then be eligible for re-election to the Board for a further term of four (4) years,

provided that a person who has held office as a Director for two (2) consecutive terms is not eligible for re-election or re-appointment for further terms, except where that person has not held office as a Director within the immediately preceding two (2) years.

- (b) Elected Directors shall commence their term from the beginning of the Board meeting next following:
 - (i) if there was no annual general meeting, the announcement of that Elected Director's election;
 - (ii) if there was an annual general meeting, the annual general meeting at which the Elected Director was elected;

until the beginning of the Board meeting next following the:

- (iii) if there was an annual general meeting, the annual general meeting; or
- (iv) if there was no annual general meeting, the date announcing the election of new Elected Directors;

held approximately four (4) years later.

- (c) In the case of Elected Directors and Independent Directors whose two (2) year term ends around the time of adoption of this Constitution in 2015, those Directors shall then be eligible for re-appointment or re-election to the Board for two (2) further terms of four (4) years each.

14.5 Procedure for Nominations for Elected Directors

- (a) No employee of the Company (whether employed permanently or on a part time basis) is eligible to stand as an Elected Director.
- (b) No previous employee of the Company (whether employed permanently or on a part time basis), having left the Company within two (2) years, is eligible to stand as an Elected Director.
- (c) Subject to clause 14.3 and clause 14.4, a retiring Elected Director is eligible to stand for re-election.
- (d) All other Voting Members who are eligible to hold office as an Elected Director and who wish to stand for election to the Board shall be nominated in the manner required by clause 14.5(f).
- (e) The Board shall, for each election of Elected Directors, determine the last day for lodgement of notices of candidature.
- (f) At least twenty one (21) days before the date determined by the Board in accordance with clause 14.5(e), the Secretary shall send to each Voting Member a notice specifying:
- (i)
 - (A) the date of the forthcoming annual general meeting at which the successfully elected Elected Directors will be announced; or
 - (B) where no annual general meeting is to occur, the date on which the successfully elected Elected Directors will be announced to the Voting Members in writing via email, or other such form of communication as determined by the Board from time to time; and
 - (ii) the names of the Elected Directors who are due to retire at that time; and
 - (iii) which of the retiring Elected Directors are eligible for re-election; and
 - (iv) a call for nominations to be provided to the Company by the date specified in the notice.
- (g) A nomination of a candidate for election must be made in accordance with the instructions on the nomination form.
- (h) As soon as practicable after receiving a nomination for an Elected Director, the Secretary must refer the nomination to the Nominations and Selection Committee which is to determine whether to approve or reject the nomination based on the Nominations and Selection Committee Criteria.
- (i) As soon as practicable after the Nominations and Selection Committee makes that determination, the Secretary must notify the nominee, in writing, that the Nominations and Selection Committee approved or rejected the nomination (whichever is applicable) and:

- (i) if the Nominations and Selection Committee approved the nomination, comply with the notice requirements in **clause 14.5(k)**.
 - (ii) if the Nominations and Selection Committee rejected the nomination, the Secretary must serve the nominee with a notice in writing setting out the determination of the Nominations and Selection Committee but need not provide any reason for its determination.
- (j) The determination of the Nominations and Selection Committee is final.
- (k) Notice of all approved nominations must be provided to all Voting Members eligible to vote at least twenty one (21) days prior to the:
- (i) annual general meeting at which the election is to take place; or
 - (ii) if there is to be no annual general meeting, the date upon which the announcement of the successfully elected Elected Directors is to occur pursuant to clause 14.5(f)(i)(B).
- (l) If the required number of candidates to fill the vacancies on the Board are not nominated, those candidates who have been nominated shall be declared duly elected and the additional number required may be proposed and seconded:
- (i) at the annual general meeting of the Company; or
 - (ii) if there is to be no annual general meeting, by the Company inviting further nominations in accordance with clause 14.5(f).
- (m) If the required number of candidates is nominated, they shall be declared duly elected:
- (i) at the annual general meeting of the Company; or
 - (ii) if there is no annual general meeting, upon the date of the announcement referred to in clause 14.5(f)(i)(B).
- (n) If there is more than the required number of candidates nominated, an election shall be held in accordance with clause 14.6.

14.6 Election of Elected Directors

- (a) The Board may make rules that are consistent with this Constitution for, or about, the conduct of the elections of Elected Directors that are required under this Constitution or that are otherwise necessary in relation to:
- (i) the manner of indicating the candidates eligible for election;
 - (ii) the form, content and distribution of the election material (including the description of candidates for an Elected Director role);
 - (iii) the approved methods of voting – which may include voting by electronic means;

- (iv) the deadline by which votes have to be submitted (which is before the annual general meeting, or in the event that no annual general meeting is to be held, another date as determined by the Board);
 - (v) validating and counting votes;
 - (vi) the returning officer's duties and functions; and
 - (vii) the means of identifying Voting Members.
- (b) If the chairperson decides that in the circumstances a ballot is unnecessary, then no ballot will be held.
- (c) An election of Elected Directors shall normally be held in every second year.
- (d) The election of Elected Directors remains valid even if any one or more of the following is the case:
- (i) a Voting Member does not receive any election material;
 - (ii) the returning officer omits to forward any election material to a Voting Member;
 - (iii) there are errors in the Register; or
 - (iv) a Voting Member or the returning officer does not comply strictly with any of the technicalities of this Constitution or the election rules required for the election of Directors.
- (e) The returning officer has a discretion to accept the election form of a Voting Member and count that Voting Member's vote as long as the returning officer is satisfied as to the identity of the relevant Voting Member even if that Voting Member has not strictly complied with the directions about any one or more of the following:
- (i) the manner of recording their vote;
 - (ii) the returning of the election form;
 - (iii) the recording of particulars to identify the eligible Voting Member; or
 - (iv) any other technicalities this Constitution or the election rules require for an election of Elected Directors.
- (f) As soon as practicable after the counting of the votes, the returning officer must give a written report to the Secretary setting out:
- (i) the number of votes received by each candidate; and
 - (ii) the person elected or taken to be elected as an Elected Director.
- (g) The Secretary must declare in writing the results of the election as set out in the returning officer's report. The persons declared elected will hold office from the beginning of the next Board meeting following the:

- (i) annual general meeting at which announcement of those newly elected Elected Directors was made; or
- (ii) if there is no annual general meeting, following the announcement of those newly Elected Directors pursuant to clause 14.5(f)(i)(B).

14.7 **Appointment of Independent Directors**

- (a) The Independent Directors shall be nominated and appointed by the Board from time to time.
- (b) Subject to the provisions of clause 14.7(c), a person will be eligible for appointment as an Independent Director if that person is:
 - (i) not a Member of the Company; and
 - (ii) free of any business or other relationship (including a relationship of employment) that could materially interfere with the exercise of their unfettered and independent judgment or could reasonably be perceived to do so.
- (c) A person who:
 - (i) is employed, or has previously been employed in an executive capacity by the Company and there has not been a period of least two (2) years between ceasing that employment and serving as a Director;
 - (ii) within the last two (2) years, has been a principal of a material professional adviser or material consultant to the Company, or an employee materially associated with the service provided;
 - (iii) is a material supplier or customer of the Company, or is an officer with a material supplier or customer; or
 - (iv) has a material contractual relationship with the Company (other than as a Director of the Company),

will not be eligible for appointment as an Independent Director, unless the Board is satisfied on reasonable grounds that the person is independent despite the existence of one or more of the circumstances.

14.8 **Casual appointment as an Elected Director**

The Board may at any time appoint any Voting Member who satisfies the criteria in the Nominations and Selection Committee Charter as an Elected Director to fill a casual vacancy caused by an Elected Director vacating the Board, and that person shall hold office for the remaining term of the original vacating Elected Director.

14.9 **Retirement of casual appointee**

A casual appointee as an Elected Director pursuant to clause 14.8 holds office only until the conclusion of the term of the original vacating Elected Director following his or her appointment by the Board and is then eligible for re-election. A casual appointee is not taken into account in determining the number of Elected Directors, if any, who are to retire by rotation at such meeting.

14.10 Vacation of Independent Director

In the event of an Independent Director vacating his or her office, the Board may appoint another person as a new Independent Director, who shall hold office for a full new term.

14.11 Resignation of Director

Any Director may retire from office by giving notice in writing to the Company of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date three (3) months from the giving of the notice, whichever is the earlier.

14.12 Vacation of office

In addition to the circumstances in which the office of Director becomes vacant by virtue of the Corporations Act or other provisions of this Constitution, the office of Director is vacated if the Director:

- (a) dies;
- (b) becomes mentally incapable or the Director's estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns office by notice in writing to the Company;
- (d) is removed by resolution of the Company;
- (e) is absent from meetings of the Board for a continuous period of three (3) months without leave of absence from the Board;
- (f) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (g) becomes prohibited from being a Director of, or managing, a company by reason of any order made under the Corporations Act; or
- (h) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation.

14.13 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the Board may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a general meeting; or
- (c) in emergencies.

14.14 **Alternate Directors**

Alternate Directors shall not be permitted.

15. Chief Executive Officer

15.1 **Appointment of Chief Executive Officer**

The Board may at any time:

- (a) appoint the Chief Executive Officer of the Company;
- (b) define, limit and restrict that person's powers;
- (c) fix that person's duties;
- (d) subject to the provisions of any contract between that person and the Company, vary any of the powers so conferred; and
- (e) subject to the provisions of any contract between that person and the Company, remove that person from that office and appoint another (or others) in that person's place or places.

15.2 **Restrictions on Chief Executive Officer**

The Chief Executive Officer must not be a Director of the Company.

15.3 **Acting Chief Executive Officer**

If the Chief Executive Officer becomes at any time in any way incapable of acting as such, the Board may appoint any other person to act temporarily as the chief executive officer.

15.4 **Remuneration of Chief Executive Officer**

- (a) Subject to the provisions of any agreement entered into between the Company and its Chief Executive Officer from time to time, the Company may pay its Chief Executive Officer a reasonable and proper remuneration on an arm's length basis as determined by the Board.
- (b) In determining the remuneration of the Chief Executive Officer, the Board shall have regard to the following criteria:
 - (i) the services the Chief Executive Officer is to provide to the Company; and
 - (ii) the current market levels of remuneration paid to chief executive officers of not for profit entities in Australia.

15.5 **Expenses of Chief Executive Officer**

The Chief Executive Officer is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with:

- (a) his or her attendance at meetings of the Board and meetings of Members; or

- (b) the business of the Company;

provided the incurrence and documentation of such expenses is in accordance with the expenses policy of the Company from time to time.

16. Office Bearers

16.1 Office Bearers of the Company

The Company shall have the following Officer Bearers:

- (a) President;
- (b) Vice-President; and
- (c) such further or other Office Bearers as the Board may appoint.

16.2 Conditions on appointment

The following conditions will apply to the appointment of the Office Bearers:

- (a) each Office Bearer must be an Elected Director;
- (b) the Directors must appoint each Office Bearer by resolution of the Board; and
- (c) subject to this Constitution, the term of an Office Bearer is two (2) years.

16.3 Appointment of Office Bearers

- (a) The Board must, if the term of an Office Bearer has expired and subject to the requirements of clause 16.2, elect and appoint a replacement Officer Bearer from among the Elected Directors at that time.
- (b) An Office Bearer whose term has expired may seek re-appointment.
- (c) If a vacancy arises throughout the financial year, the Board may appoint a replacement Office Bearer from among the Elected Directors. That replacement Office Bearer will hold office for the balance of the term of the vacating Office Bearer.

17. Remuneration of Directors

17.1 Directors' Fees

No payment shall be made to any Director (except any executive Director in this capacity as an employee of the Company) other than the payment:

- (a) of directors' fees to those Directors who have had to take leave without pay from their place of employment:
 - (i) in order to attend Board meetings or other events in their capacity as an officer of the Company;

- (ii) where the requirement to take leave without pay is substantiated; and
 - (iii) where the payment of such directors' fees has the prior approval of the Board, and the payment of the fees is equivalent to the Director's loss of earnings;
- (b) for any service rendered to the Company in a professional or technical capacity, where the provision of that service has the prior approval of the Board and is on reasonable commercial terms; and
 - (c) for any reasonable payment in respect of an indemnity, exemption, insurance premium or legal costs in respect of liability incurred in the Director's capacity as an officer of the Company.

17.2 **Expenses of Directors**

Each Director is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with:

- (a) his or her attendance at meetings of the Board and meetings of Members; or
- (b) the business of the Company;

provided the incurrence and documentation of such expenses is in accordance with the expenses policy of the Company from time to time.

18. Proceedings of the Board

18.1 **Board meetings**

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as the Board sees fit. Meetings will be scheduled at a time and place that will optimise attendance of the Board Directors.

18.2 **Mode of meetings**

A meeting of the Board may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

18.3 **Quorum**

- (a) A quorum for a meeting of the Board is more than fifty (50) per cent of the Directors.
- (b) A quorum must be present at all times during the meeting.
- (c) A Director who is disqualified from voting on a matter pursuant to clause 19 shall be counted in the quorum despite that disqualification.

18.4 **Chairperson calling a meeting**

The President, or in that person's absence the Vice-President, may at any time call a meeting of the Board to be held at such time and place as that person chooses.

18.5 Secretary calling a meeting

A Director may at any time, and the Secretary must upon the request of a Director, call a meeting of the Board (as soon as is practicable) to be held at such time and place as is convenient to the Board.

18.6 Notice of meeting

The person calling a Board meeting must ensure that notice of the Board meeting is given to each Director at least three (3) days before the meeting, or at another time determined by Board resolution, except that:

- (a) the Directors may waive in writing the required period of notice for a particular meeting; and
- (b) it is not necessary to give notice of a meeting of the Board to a Director who is outside Australia or who has been given a leave of absence by the Board.

18.7 Appointment of chairperson

- (a) The President shall, if present, preside as chairperson of every meeting of the Board.
- (b) If a meeting of Board is held and the President is:

- (i) unable or unwilling to act as chair; or
- (ii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting,

then the Vice-President will be chairperson in lieu of the President. If the Vice-President is:

- (iii) unable or unwilling to act as chairperson; or
- (iv) not present within fifteen (15) minutes after the time appointed for the holding of the meeting,

the other Elected Directors present may choose another Elected Director as chairperson of the meeting by two-thirds majority, or if their number is not three (3) or a multiple of three, then the nearest number to two-thirds.

18.8 Votes at Board meetings

- (a) Questions arising at any meeting of the Board must be decided by a majority of votes cast and each Director has one (1) vote.
- (b) If there is an equality of votes, the chairperson has a second or casting vote.

18.9 Circular resolution of the Board

- (a) If a majority in number of the eligible Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Board held on the day on which the document was signed.

- (b) If the Directors sign the documents on different days, a resolution in those terms is treated as having been passed on the day on which the document was last signed by a Director thereby constituting a majority in number of the eligible Directors (unless the document, by its terms, is said to take effect from an earlier date).
- (c) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause 18.9 be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- (d) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this clause 18.9 be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.

18.10 **Signing of circular resolution**

For the purposes of clause 18.9:

- (a) the “eligible Directors” are all Directors for the time being, excluding:
 - (i) first, those who, at a meeting of the Board, would not be entitled to vote on the resolution; and
 - (ii) second, those Directors then outside Australia;
- (b) each Director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid; and
- (d) two (2) or more separate documents containing statements in identical terms each of which is signed by one (1) or more Directors are together treated as constituting one (1) document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

18.11 **Deemed minute**

The document or documents referred to clauses 18.9 and 18.10 are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

18.12 **Validity of acts of Directors**

All acts done at a meeting of the Board or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in the office of a person as Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in an office and was qualified and entitled to vote.

19. Director's Contracts with Company

19.1 Director's contracts and conflicts of interest

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the relevant legislation, being either:
 - (i) the Corporations Act; or
 - (ii) subsection 45.25(2)(e) of the ACNC Regulation;which shall include disclosing an interest as soon as practicable after the relevant facts have come to that Director's knowledge and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to clause 19.1(b), a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may still, with the consent of the majority of the Board:
 - (i) be present while the matter is being considered at a meeting;
 - (ii) vote on the matter;
 - (iii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this clause 19.1 does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

19.2 Office in another company

- (a) A Director of the Company may be, or may become, an executive member or other officer of, or otherwise interested in, any body corporate promoted by the Company or in which the Company may be interested, or which holds any membership in the Company.

- (b) No such Director is accountable to the Company for any remuneration or other benefits received by him or her as an executive member or officer of, or from his or her interest in, such body corporate.
- (c) The Board may exercise the voting power conferred by the shares or owned by the Company, or exercisable by them as executive members of such other body corporate in such manner as they think fit. This includes the exercise of that voting power in favour of any resolution appointing themselves, or any of them as executive members or other officers of such body corporate.
- (d) Any Director may vote in favour of the exercise of such voting power in that manner despite the fact that he or she may be, or be about to be, appointed an executive member or other officer of such corporation and as such is, or may become, interested in the exercise of such voting power in that manner.

20. Powers and Duties of the Board

20.1 Duties of Directors

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

20.2 Powers generally

- (a) Subject to the Corporations Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Board. The Board may exercise all such powers of the Company and do all such acts or things as are not by this Constitution or by the Corporations Act expressly required to be exercised or done by a general meeting.
- (b) No provision adopted by resolution passed by a general meeting invalidates any prior act of the Board which would have been valid if that provision or resolution had not been adopted or passed.

20.3 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Board at any time determine.

20.4 Appointment of attorney

- (a) The Board may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and

discretions (not exceeding those vested in or exercisable by the Board under this Constitution) and for such period and subject to such conditions as they may think fit.

- (b) Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

20.5 Delegation

- (a) The Board may at any time confer upon any Director (or such other person as the Board may select) such of the powers exercisable under this Constitution by the Board as the Board may think fit, for such time and to be exercised for such objects and purposes and upon such terms and with such restrictions as the Board thinks expedient.
- (b) The Board may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Board in that respect.
- (c) The Board may at any time revoke, withdraw, alter or vary all or any of such powers.

20.6 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done:

- (a) has been inadvertently omitted; or
- (b) has not been carried out;

such omission does not invalidate any resolution, act, matter or thing which, but for such omission, would have been valid. This is unless it is proved to the satisfaction of the Board that such omission has directly prejudiced any Member financially. The decision of the Board is conclusive and final and binds all Members.

21. Committees

21.1 Delegation to committee

The Board may:

- (a) delegate any of its powers to committees consisting of such one or more persons, whether committee members or not, as the Board thinks fit; and
- (b) establish advisory committees (or other committees not having delegated power of committee members) consisting of such person or persons as the Board thinks fit.

21.2 Nominations and Selection Committee

- (a) Pursuant to **clause 21.1**, the Board shall establish the Nominations and Selection Committee comprising up to five (5) Directors (one of whom must be an Independent Director) who will not

be nominating for the position of Elected Director, to vote on whether to recommend approving Elected Director nominations pursuant to **clause 14.5(h)**.

- (b) The Nominations and Selection Committee chair must be an Independent Director who is a member of the Nominations and Selection Committee.

21.3 **Committee powers**

Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Board (including, without limitation, any restriction on the expenditure of a committee).

21.4 **Committee meetings**

- (a) The meetings and proceedings of any committee consisting of two (2) or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the Board so far as they are:
 - (i) capable of application; and
 - (ii) not affected by any resolution or regulation made by the committee members under clause 21.2.
- (b) A minute of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by:
 - (i) section 251A of the Corporations Act (notwithstanding the potential application of section 111L of the Corporations Act); and
 - (ii) this Constitution;

to be made entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

21.5 **Committee members as officers**

Each person appointed to a committee under clause 21.1(a), if not otherwise an officer of the Company is, when exercising the powers so delegated or functions entrusted, an officer of the Company.

22. *Secretary*

The Board must appoint a Secretary to the Company on such terms as the Board considers expedient.

23. *Minutes as Evidence*

- (a) The Board must cause minutes to be kept in such a manner as is required by section 251A of the Corporations Act (notwithstanding the potential application of section 111L of the Corporations Act) for the purposes of recording:

- (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of committees; and
 - (iii) such matters as are required by the Corporations Act (notwithstanding the potential application of section 111L of the Corporations Act) or the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including, without limitation, all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the chairperson of the meeting, or the chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

24. Notices

24.1 Notice to Members

(a) The Company may give Notice to a Member:

- (i) in person;
 - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member;
 - (iii) by sending it to the fax number (if any) nominated by that Member;
 - (iv) by sending it to the e-mail address (if any) nominated by that Member;
 - (v) if permitted by the Corporations Act, by sending it by other electronic means (if any) nominated by that Member; or
 - (vi) by any other means permitted by the Corporations Act.
- (b) If the address of a Member in the Register is not within Australia, the Company must send all documents to that Member by air-mail, air courier, fax or by e-mail.
- (c) Subject to the Corporations Act, a Notice to a Member is sufficient, even if:
- (i) that Member has died; or
 - (ii) that Member has become bankrupt;
- and regardless of whether or not the Company has notice of that event.

- (d) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

24.2 Notice to Directors

The Company may give Notice to a Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number (if any) nominated by that person;
- (d) by sending it to the e-mail address (if any) nominated by that person; or
- (e) by any other means agreed between the Company and that person.

24.3 Notice to the Company

A person may give Notice to the Company:

- (a) by leaving it at the Registered Office of the Company;
- (b) by sending it by post to the Registered Office of the Company;
- (c) by sending it to the fax number at the Registered Office of the Company nominated by the Company for that purpose;
- (d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) by any other means permitted by the Corporations Act.

24.4 Time of service

- (a) A notice sent by post to an address within Australia is taken to be given:
 - (i) in the case of a notice of meeting, three (3) business day after it is posted; or
 - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (b) A notice sent by post or air-mail to an address outside Australia is taken to be given:
 - (i) in the case of a notice of meeting, seven (7) business days after it is posted; or
 - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (c) A notice sent by air courier to a place outside Australia is taken to be given, three (3) business days after delivery to the air courier.

- (d) A notice sent by fax is taken to be given on the business day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct fax number.
- (e) A notice sent by e-mail is taken to be given on the business day it is sent, provided that the sender's delivery receipt shows that the whole notice was sent to the correct e-mail address.
- (f) If the Corporations Act permits a notice of meeting to be given to a Member by notifying the Member (using the nominated notification means of that Member):
 - (i) that the notice of meeting is available; and
 - (ii) how the Member may use the nominated access means of that Member to access the notice of meeting,

the notice of meeting is taken to be given on the business day after the day on which the Member is notified that the notice of meeting is available.
- (g) The giving of a notice by post, air-mail or air courier is sufficiently proved by evidence that the notice:
 - (i) was addressed to the correct address of the recipient; and
 - (ii) was placed in the post or delivered to the air courier.
- (h) A certificate by a Director or Secretary of a matter referred to in clause 24.4(f) is sufficient evidence of the matter, unless it is proved to the contrary.

24.5 Signatures

The Board may decide, generally or in a particular case, that a notice given by the Company be signed by electronic, mechanical or other means of reproduction.

25. *By-Laws*

- (a) 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 and property and to amend and repeal those by-laws from time to time.
- (b) A by-law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a by-law is binding on all Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of Members all by-laws, amendments and repeals.

26. *Company Seal*

The Company may execute documents, including through use of the Seal, in accordance with section 127 of the Corporations Act.

27. Winding Up

27.1 Contribution on Winding Up and Dissolution of the Company

- (a) If the Company is wound up:
- (i) each Member of the Company; and
 - (ii) each person who has ceased to be a Member in the preceding year,
undertakes to contribute to the property of the Company for the:
 - (iii) payment of the debts and liabilities of the Company (in relation to clause 27.1(a)(ii), to the extent such debts and liabilities were contracted before the person ceased to be a Member);
 - (iv) the costs, charges and expenses of winding up; and
 - (v) adjustments of the rights of the contributories among themselves,
 such amount as may be required, not exceeding \$20 per Member.

27.2 Surplus Assets or Property

- (a) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which:
- (i) in the event that the Company is endorsed as a deductible gift recipient (**DGR**):
 - (A) in the case of all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions:
 - (1) has objects which are similar to the objects of the Company;
 - (2) has a constitution which requires its income and property to be applied in promoting its objects;
 - (3) has 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 2.4; and
 - (4) that institution or corporation is also endorsed as a DGR;
 - (B) in the case of any surplus remaining after any distribution in accordance with clause 27.2(a)(i)(A):
 - (1) has objects which are similar to the objects of the Company;
 - (2) has a constitution which requires its income and property to be applied in promoting its objects; and

- (3) has 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 2.4;
- (ii) in the event that the Company is not endorsed as a DGR:
 - (A) has objects which are similar to the objects of the Company;
 - (B) has a constitution which requires its income and property to be applied in promoting its objects;
 - (C) has 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 2.4.
- (b) The identity of the corporation or institution is to be determined by the Members in writing at or before the time of dissolution, and failing such determination being made, by application to the Supreme Court of the Australian Capital Territory for determination.
- (c) In the event that the Company is endorsed as a DGR and ever has its endorsement as a DGR revoked, the Company must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another DGR, such DGR to be determined by the Members, and failing such determination being made, by application to the Supreme Court of the Australian Capital Territory for determination.

28. Indemnity

28.1 Indemnity for officers

To the extent permitted by law, the Company will indemnify any current or former Director, Secretary or (executive) officer of the Company, or of a Related Body Corporate of the Company, out of the property of the Company against all costs, expenses and liabilities incurred by such persons unless:

- (a) it is in respect of a liability to another person (other than the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person seeking indemnification, or in which the person seeking indemnification is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the person seeking indemnification under the Corporations Act.

28.2 Insurance

- (a) The Company may pay, or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is, or has been, a Director, Secretary or (executive) officer of the Company, or of a Related Body Corporate of the Company, against any liability incurred by the person in that capacity, including a liability for legal costs:

- (i) unless the Company is forbidden by law to pay, or agree to pay, the premium;
 - (ii) unless the contract would, if the Company paid the premium, be made void by law; or
 - (iii) except for a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (iv) except for a contravention of the duties set out in subsection 45.25(2)(c) and (d) of the ACNC Regulation (or sections 182 or 183 of the Corporations Act, as the case may be).
- (b) Any such premium paid by the Company in relation to a Director will not be regarded as remuneration paid or payable to that Director.
- (c) Where a person referred to in clause 28.2(a) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions, then the Company shall not be required to indemnify the person under clause 28.1 except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.
- (d) The indemnity granted by the Company contained in clauses 28.1 and 28.2 shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.