

# Constitution of Australian Disability Network Ltd

*ACN 605 683 369*

*ABN 92 456 457 335*

*A company limited by guarantee*

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# Constitution of Australian Disability Network Ltd

Date Constitution amended by Special Resolution on 9 November 2023

## **Preliminary**

### 1 Name of the Company

The name of the company is Australian Disability Network Ltd.

### 2 Type of Company

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

### 3 Limited liability of members

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

### 4 The guarantee

Each member must contribute an amount not more than \$10.00 to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for any:

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

### 5 Definitions

In this constitution, words and phrases have the meaning set out in clauses 77 and 79.

## **Charitable purposes and powers**

### 6 Object

The Company's charitable purpose is to lead the change into a positive employment environment for people with disability by changing perceptions of employers and encouraging their good corporate citizenship, including by:

- (a) advancing the equitable inclusion of people with disability in all aspects of business to create a disability confident Australia;
- (b) promoting employment of people with disability;
- (c) raising public awareness of the positive attributes of people with disability;
- (d) facilitating internships and mentoring programs to connect students with disability to employers;

- (e) raising awareness of the profile of people with disability as competent employees; and
- (f) conducting any other activities that further the Company's charitable purpose as determined by the directors from time to time.

## 7 Powers

Subject to clause 8, the Company has the following powers, which may only be used to carry out its purpose set out in clause 6:

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

## 8 Not-for-profit

8.1 The Company must not distribute any income or assets directly or indirectly to its members or directors, except as provided in clauses 8.2 and 75.

8.2 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:

- (a) paying reasonable and proper remuneration to a director in their capacity as director, or for the additional responsibilities of an office-bearer position such as the Elected Chair;
- (b) reimbursing a member or director for expenses properly incurred by the member or director in connection with the affairs of the Company (such expenses are to be pre-approved in the manner determined by the directors);
- (c) paying a member or director for goods or services they have provided or related expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company;
- (d) paying interest on money borrowed from a member or director at a rate not exceeding the Cash Rate Target;
- (e) paying rent that does not exceed that which is reasonable and proper for premises leased by any member or director to the Company; or
- (f) making a payment to a member or director in carrying out the Company's charitable purpose.

8.3 The directors may seek independent market remuneration advice to assist in determining appropriate director pay levels under clause 8.2 (a).

## 9 Amending the constitution

9.1 Subject to clause 9.2, the members may amend this constitution by passing a Special Resolution.

9.2 The members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

## Members

### 10 Membership and register of members

10.1 The members of the Company are:

- (a) the Initial Members; and
- (b) any other individual or incorporated body that is admitted to membership in accordance with this constitution.

10.2 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
  - (i) name;
  - (ii) residential or registered address;
  - (iii) any alternative address (including an electronic address) nominated by the member for the service of notices;
  - (iv) the date the member was entered on to the register;
  - (v) the relevant membership class and voting rights.
- (b) for each person who stopped being a member in the last seven years:
  - (i) name;
  - (ii) residential or registered address;
  - (iii) any alternative address (including an electronic address) nominated by the member for the service of notices;
  - (iv) the dates the membership started and ended; and
  - (v) the relevant membership class and voting rights.

10.3 Each member must notify the Company in writing of any change to their name, address or alternative address for service of notices within one month after the change.

10.4 The Company must give current members access to the register of members. Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

### 11 Who can be a member

Subject to any relevant by-laws enacted by the Company, any individual or incorporated body who supports the purposes of the Company is eligible to apply to be a member of the Company under clause 12.

### 12 How to apply to become a member

12.1 An individual or incorporated body may apply to become a member of the Company by writing in the form determined by the directors from time to time.

12.2 By applying to be a member, the applicant agrees to:



- (a) support the purpose of the Company; and
- (b) comply with the Company's constitution, including paying any applicable membership fee(s) and the guarantee under clause 4 if required.

## 13 Consideration of membership

- 13.1 The Company's chief executive officer must consider an application for membership within a reasonable time after the Company receives the application.
- 13.2 If the Company's chief executive officer approves an application, the Company must as soon as possible:
  - (a) notify the directors;
  - (b) enter the new member on the register of members; and
  - (c) write to the applicant to tell them that their application was approved, their applicable membership class and the date that their membership started (see clause 14).
- 13.3 If the Company's chief executive officer rejects an application, the Company must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

## 14 Membership fees

- 14.1 The directors may from time to time prescribe membership fees to be paid by members. Such fees may be different for each class of membership. For the avoidance of doubt, membership fees are separate to any sponsorship arrangement or any amount a member must pay to the Company in return for the Company's services.
- 14.2 A member of the Company must pay any membership fees owing to the Company by the due date specified by the Company.
- 14.3 Where a member fails to pay their membership fee within three months of it falling due for payment, their ongoing entitlement to membership shall be considered by the directors in which case the directors may, at their discretion, either suspend the membership pending payment of the unpaid fees, or expel the member from the Company.

## 15 Classes of membership

- 15.1 The directors must establish by-laws containing a list of the membership classes and the qualifications, rights and privileges attributable to each class. These by-laws must be made available to members and applicants to membership. The by-laws are to include the category of life member, to recognise individuals that have contributed significantly over time to the mission, vision and values of the Company and/or to the broader objective of disability inclusion nationally. Life members may be nominated and appointed by the Directors from time to time. The Directors can also revoke any life membership if deemed appropriate in their absolute discretion.

- 15.2 Joint membership is only permitted where a business being carried on as a partnership is accepted for membership, in which case the partners may be considered joint members. In all other cases, there must be no joint membership. Joint members are only entitled to the number of votes attributable the relevant class on membership and are not individually allocated voting rights.
- 15.3 Provided the Company has consulted with any affected members where material changes are to be made, the directors may at any time:
- (a) establish a new class of membership;
  - (b) remove an existing class of membership;
  - (c) determine or change the existing classes of membership including any entitlements except for voting rights;
  - (d) prescribe or change the qualifications, rights and privileges attributable to a membership class; or
  - (e) set and amend the membership fees for any class of membership.
- 15.4 The members are not entitled to amend or revoke a decision or determination of the directors made pursuant to clause 15.2.

## 16 When a person becomes a member

Other than a member that was a member at the time the Company was incorporated, an applicant will become a member when they are entered on the register of members.

## 17 When a person stops being a member

- 17.1 A member immediately stops being a member if they:
- (a) die (in the case of an individual);
  - (b) are wound up or otherwise dissolved or deregistered (in the case of an incorporated member);
  - (c) resign, by writing to the secretary;
  - (d) are expelled under clause 14.3 or 20; or
  - (e) have not responded within three months to a written request from the Company that they confirm in writing that they want to remain a member.
- 17.2 A former member continues to be liable for:
- (a) any membership fees due and unpaid at the date of cessation;
  - (b) all other moneys due by them to the Company; and
  - (c) the guarantee, subject to the provisions of clause 4.
- 17.3 Unless determined otherwise by the directors at their sole discretion, there is no refund to a former member of membership fees, or any proportion of membership fees, upon cessation of membership.

## 18 Representatives of members that are incorporated bodies

- 18.1 A member that is an incorporated body must appoint one individual to represent the member and exercise all rights that apply to the member.
- 18.2 The appointment of a representative by a member must:
- (a) be in writing;
  - (b) include the name of the representative;
  - (c) be signed on behalf of the member; and
  - (d) be given to the Company.
- 18.3 A representative has all the rights of the member that appointed them.
- 18.4 The appointment of a representative may be standing.

## Dispute resolution and disciplinary procedures

### 19 Dispute resolution

- 19.1 The dispute resolution procedure in this clause applies to disputes between a member or director and:
- (a) one or more members;
  - (b) one or more directors; or
  - (c) the Company.
- 19.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 20 until the disciplinary procedure is completed.
- 19.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 19.4 If those involved in the dispute do not resolve it under clause 19.3, they must within 10 days:
- (a) tell the directors about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 19.5 The mediator must be chosen:
- (a) by agreement of those involved; or
  - (b) by the following, where those involved do not agree:
    - (i) for disputes between members, the directors; or
    - (ii) for all other disputes, either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.

- 19.6 A mediator chosen by the directors under clause 19.5(b)(i):
- (a) may be a member or former member of the Company;
  - (b) must not have a personal interest in the dispute; and
  - (c) must be independent from the parties to the dispute.
- 19.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and
  - (d) not make a decision on the dispute.

## 20 Disciplining members

- 20.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:
- (a) the member has breached this constitution; or
  - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 20.2 At least 14 days before the directors' meeting at which a resolution under clause 20.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member;
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
  - (c) what the member is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 20.3 Before the directors pass any resolution under clause 20.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting; and/or
  - (b) speaking at the meeting.
- 20.4 After considering any explanation under clause 20.3, the directors may:
- (a) take no further action;
  - (b) warn the member;
  - (c) suspend the member's rights as a member for a period of no more than 12 months;

- (d) expel the member;
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause);  
or
  - (f) require the matter to be determined at a General Meeting.
- 20.5 The directors cannot fine a member.
- 20.6 The Company must give written notice to the member of the decision under clause 20.4 as soon as possible.
- 20.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 20.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **General Meetings of members**

### **21 General meetings called by directors**

- 21.1 The directors may call a General Meeting.
- 21.2 If members with at least 10% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the directors must:
- (a) within 21 days of the members' request, give members notice of a General Meeting; and
  - (b) hold the General Meeting within two months of the members' request.
- 21.3 The percentage of votes that members have (in clause 21.2) is to be calculated as at midnight before the members request the meeting.
- 21.4 The members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the Company.
- 21.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### **22 General meetings called by members**

- 22.1 If the directors do not call the meeting within 21 days of being requested under clause 21.2, 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- 22.2 To call and hold a meeting under clause 22.1 the members must:
- (a) as far as possible, follow the procedures for General Meetings set out in this constitution;

- (b) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost; and
  - (c) hold the General Meeting within three months after the request was given to the Company.
- 22.3 The Company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

## 23 Annual General Meeting

- 23.1 The Annual General Meeting may be held:
  - (a) within 18 months after registration of the Company; and
  - (b) after the first Annual General Meeting, at least once in every calendar year.
- 23.2 Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:
  - (a) a review of the Company's activities;
  - (b) a review of the Company's finances;
  - (c) any auditor's report;
  - (d) the election of directors; and
  - (e) the appointment and payment of auditors, if any.
- 23.3 Before or at the Annual General Meeting, the directors must give information to the members on the Company's activities and finances during the period since the last Annual General Meeting.
- 23.4 The chair of the Annual General Meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

## 24 Notice of General Meetings

- 24.1 Notice of a General Meeting must be given to:
  - (a) each member entitled to vote at the meeting;
  - (b) each director; and
  - (c) the auditor (if any).
- 24.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 24.3 Subject to clause 24.4, notice of a meeting may be provided less than 21 days before the meeting if:
  - (a) for an Annual General Meeting, all the members entitled to attend and vote at the Annual General Meeting agree beforehand; or

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

## 25 Quorum at General Meetings

- 25.1 For a General Meeting to be held, 5 members (a **quorum**) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 25.2 No business may be conducted at a General Meeting if a quorum is not present.
- 25.3 If there is no quorum present within 15 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chair specifies. If the chair does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
  - (b) if the time is not specified – the same time; and
  - (c) if the place is not specified – the same place.

- 25.4 If no quorum is present at the resumed meeting within 15 minutes after the starting time set for that meeting, the meeting is cancelled.

## 26 Auditor's right to attend meetings

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

## 27 Using technology to hold meetings

- 27.1 The Company may hold a General Meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 27.2 Anyone using this technology is taken to be present in person at the meeting.

## 28 Chair for General Meetings

- 28.1 The Elected Chair will chair General Meetings, subject to clause 28.2.
- 28.2 The Members Present and entitled to vote at a General Meeting may choose another director to be the chair for that meeting if:
- (a) the Elected Chair is not present within 15 minutes after the starting time set for the meeting; or
  - (b) the Elected Chair is present but says they do not wish to act as chair of the meeting.
- 28.3 If no other director is present at the meeting or if each of the directors present are unwilling to act as chair of the meeting, a member may be chosen by the Members Present to chair the meeting.

## 29 Role of the chair

- 29.1 The chair is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 29.2 Where the votes on a proposed members' resolution are equal:
- (a) the chair of the meeting has a casting vote in addition to any vote he or she may have as a member in relation to the proposed resolution; and
  - (b) the chair of the meeting may decide whether to use their casting vote for a particular resolution, and the way in which it is used.

## 30 Adjournment of meetings

- 30.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chair to adjourn it.
- 30.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.



## Members' resolutions and statements

### 31 Members' resolutions and statements

- 31.1 Members with at least 10% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a General Meeting (**Members' Resolution**); and/or
  - (b) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (**Members' Statement**).
- 31.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 31.3 A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the members making the request.
- 31.4 Separate copies of a document setting out a notice or a request may be signed by members if the wording is the same in each copy.
- 31.5 The percentage of votes that members have (as described in clause 31.1) is to be calculated as at midnight before the request or notice is given to the Company.
- 31.6 If the Company has been given notice of a Members' Resolution under clause 31.1(a), the resolution must be considered at the next General Meeting held no more than two months after the notice is given.
- 31.7 This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

### 32 Company to distribute Members' Resolution or Members' Statement

- 32.1 If the Company has been given a notice or request under clause 31:
- (a) in time to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, it must do so at the Company's cost; or
  - (b) too late to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, then the members that proposed the Members' Resolution or made the Members' Statement must pay the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement. However, the members may subsequently pass a resolution at a General Meeting for the Company to pay these expenses.
- 32.2 The Company does not need to send the notice of Members' Resolution or a copy of the Members' Statement to members if:

- (a) it is more than 1,000 words long;
- (b) the directors consider it may be defamatory;
- (c) clause 32.1(b) applies, and the members that proposed the Members' Resolution or made the Members' Statement have not paid the Company enough money to cover the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement; or
- (d) in the case of a Members' Resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the members.

### 33 Circular Resolutions of members

- 33.1 Subject to clause 33.3, the directors may put a resolution to the members to pass a Circular Resolution.
- 33.2 The directors must notify the auditor (if any) as soon as possible that a Circular Resolution has or will be put to members, and set out the wording of the resolution.
- 33.3 Circular Resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director;
  - (b) for passing a Special Resolution; or
  - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 33.4 A Circular Resolution is passed if all the members entitled to vote on the resolution sign or agree to the Circular Resolution, in the manner set out in clause 33.5 or clause 33.6.
- 33.5 Members may sign (including electronically sign):
- (a) a single document setting out the Circular Resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 33.6 The Company may send a Circular Resolution by email to members and members may agree by sending a reply email to that effect.

## Voting at General Meetings

### 34 How many votes a member has

The voting rights attributable to each membership class are prescribed in the by-laws made by the directors.

## 35 Challenge to member's right to vote

- 35.1 A member or the chair may only challenge a person's right to vote at a General Meeting at that meeting.
- 35.2 If a challenge is made under clause 35.1, the chair must decide whether or not the person may vote. The chair's decision is final.

## 36 How voting is carried out

- 36.1 Voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the chair that is fair and reasonable in the circumstances.
- 36.2 Before a vote is taken, the chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 36.3 On a show of hands, the chair's decision is conclusive evidence of the result of the vote.
- 36.4 The chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

## 37 When and how a vote in writing must be held

- 37.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five Members present;
  - (b) Members Present with at least 5% of the votes that may be passed on the resolution on the vote in writing (calculated as at the midnight before the vote in writing is demanded); or
  - (c) the chair.
- 37.2 A vote in writing must be taken when and how the chair directs, unless clause 37.3 applies.
- 37.3 A vote in writing must be held immediately if it is:
- (a) for the election of a chair under clause 28.2; or
  - (b) to decide whether to adjourn the meeting.
- 37.4 A demand for a vote in writing may be withdrawn.

## 38 Appointment of proxy

- 38.1 A member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 38.2 A proxy does not need to be a member.
- 38.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

- (a) speak at the meeting;
  - (b) vote (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 37.1.
- 38.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
  - (b) the Company's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.
- 38.5 A proxy appointment may be standing.
- 38.6 Proxy forms must be received by the Company at the Company's registered address or an alternative address (as stated in the notice of General Meeting in accordance with clause 24.5(d)(ii)) at least 48 hours before a meeting.
- 38.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 38.8 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 38.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## 39 Voting by proxy

- 39.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 39.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## Directors

### 40 Number and composition of directors

- 40.1 Subject to clause 40.2, the Company must have at least three and no more than ten directors, comprised of:
- (a) at least three and no more than nine Member Directors; and
  - (b) at least one Independent Director.
- 40.2 The directors in office, and any individuals who are appointed as directors, at the 2023 Annual General Meeting of the Company may continue in office until their term expires, to allow for a transitional period which will result in a composition of directors that meets the requirements specified in clause 40.1.

### 41 Election of Member Directors

- 41.1 The Voting Members are responsible for electing the Member Directors.
- 41.2 From time to time the directors may seek nominations of suitable candidates from the Voting Members. Such call for nominations must specify the:
- (a) number of nominations each Voting Member may make;
  - (b) the date the term of any newly elected Member Director will commence; and
  - (c) the range of skills and experience which the directors expect candidates to have (**Qualification Requirements**).
- 41.3 The period for nominations (**Nomination Period**) must remain open for such reasonable period as the directors determine.
- 41.4 Any Voting Member may nominate any person to serve as a Member Director and such nominations must include:
- (a) an explanation of how the nominee's skills, qualifications and experience meet the Qualification Requirements;
  - (b) the candidate's signed consent to act as a director of the Company if so elected; and
  - (c) confirmation that the candidate is not ineligible to be a director under the Corporations Act or the ACNC Act.
- 41.5 As soon as possible after the close of the Nomination Period, the directors must meet to review the nominations and produce a list of those nominees who, in their reasonable opinion, meet the Qualification Requirements (**Qualifying Nominees**). The directors must advise non-Qualifying Nominee that they do not qualify, but do not have to provide reasons.
- 41.6 If the number of Qualifying Nominees is less than or equal to the number of Member Director vacancies to be filled, then each Qualifying Nominee will be deemed to be elected as a Member Director.
- 41.7 If there is a greater number of Qualifying Nominees than Member Director vacancies, then the appointment of Member Directors will be determined by

ballot of the Voting Members, with the nominee(s) receiving the greatest number of votes being elected. The ballot may be conducted in any usual and proper manner as the directors may from time to time determine, including by postal ballot.

## 42 Appointment of Independent Directors

The directors may appoint Independent Directors in the manner determined by the directors from time to time. Such Independent Directors must be considered by the directors to have the necessary skills, qualifications and/or experience to assist the Company to achieve its purposes.

## 43 Casual vacancies

43.1 The directors may appoint a person as a director to fill a casual vacancy if that person:

- (a) has the necessary skills, qualifications and/or experience to assist the Company to achieve its purposes;
- (b) gives the Company their signed consent to act as a director of the Company;
- (c) is not ineligible to be a director under the Corporations Act or the ACNC Act; and
- (d) in the case of a casual vacancy arising in a Member Director position, is reasonably considered by the directors to represent one or more of the Voting Members.

43.2 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

43.3 All acts done at any meeting of directors or by any person acting as a director will be valid as if every such person has been duly appointed and every director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or that any director was disqualified or not entitled to vote.

## 44 Eligibility of directors

44.1 All directors must be at least 18 years old.

44.2 The Company's auditor is ineligible to be elected or appointed as a director.

44.3 An employee of the Company is ineligible to be elected or appointed as a director.

44.4 A former chief executive officer of the Company is ineligible for election or appointment as a director for three years following the conclusion of their engagement as chief executive officer.

## 45 Election of chair

45.1 The directors must elect a director as the Company's Elected Chair.

- 45.2 The Elected Chair will be appointed for a three year term but will cease to hold office on the earlier of:
- (a) their written resignation as the Elected Chair to the secretary;
  - (b) their removal as the Elected Chair by resolution of the directors; or
  - (c) them ceasing to be a director of the Company.
- 45.3 It is preferable, but not necessary, for the Elected Chair to be an Independent Director.

## 46 Term of office

- 46.1 Directors are to be elected or appointed for a term of three consecutive years. For the purpose of this clause 46, the term of any director that was in office when the Company's constitution was revised in 2015, is for the purposes of this Constitution deemed to have started from December 2018, notwithstanding any time served by them as director, prior to December 2018.
- 46.2 The appointment of directors is to be staggered so that no more than approximately one-third of directors' terms expire at the same time.
- 46.3 Subject to clauses 46.4 and 46.5 at the conclusion of their term a director may seek re-election or re-appointment.
- 46.4 A Member Director who has held office for a continuous period of nine years or more may only be re-elected by a Special Resolution.
- 46.5 An Independent Director who has held office for a continuous period of nine years or more may only be re-appointed by a resolution of directors where at least 75% of votes cast are in favour of the resolution.

## 47 When a director stops being a director

- 47.1 A director stops being a director if they:
- (a) become an employee of the Company;
  - (b) give written notice of resignation as a director to the Company;
  - (c) die;
  - (d) are removed as a director by a resolution of the members;
  - (e) have been nominated to the position of Member Director by a Voting Member and that Voting Member ceases to be a Voting Member of the Company;
  - (f) have been nominated to the position of Member Director by a Voting Member and that Voting Member notifies the Company that the person is no longer representative of the Voting Members;
  - (g) are absent for three consecutive directors' meetings without approval from the directors; or
  - (h) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act.

- 47.2 Where a members' resolution is proposed to remove a director, that director must be given a reasonable opportunity to present their case (orally or in writing) to the members (and the directors) as to why they should not be removed.

## **Powers of directors**

### **48 Powers of directors**

- 48.1 The directors are responsible for managing and directing the activities of the Company to achieve the purpose set out in clause 6.
- 48.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act as it applies to registered charities or this constitution, may only be used by members.
- 48.3 The directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under clause 49; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 48.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a General Meeting.

### **49 Delegation of directors' powers**

- 49.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.
- 49.2 The delegation must be recorded in the Company's minute book.

### **50 Execution of documents**

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

- (a) two directors of the Company; or
- (b) a director and the secretary.

## **Duties of directors**

### **51 Duties of directors**

- 51.1 The directors must comply with their duties as directors under legislation and common law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;



- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 52;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

51.2 The directors must also comply with the Company's Code of Conduct (as amended from time to time).

## 52 Conflicts of interest

52.1 A director must disclose the nature and extent of any actual, potential or perceived conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a Circular Resolution):

- (a) to the other directors; or
- (b) if all of the directors have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if reasonable to do so.

52.2 For the purpose of this clause 52:

- (a) an actual conflict of interest exists where a director is being influenced by a personal interest of theirs, that has the capacity to influence their vote;
- (b) a potential conflict exists where a director could be influenced by a personal interest of theirs, that has the capacity to influence their vote; and
- (c) a perceived conflict exists where a director could appear to be influenced by a personal interest of theirs, that has the capacity to influence their vote.

52.3 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

52.4 Each director who has a conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a Circular Resolution) must not, except as provided under clause 52.5:

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

52.5 A director may still be present and vote if:

- (a) their personal interest arises because they are a member of the Company, and the other members have the same interest;

- (b) their personal interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 70);
- (c) their personal interest relates to a payment by the Company under clause 69, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company; and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

52.6 The Company must comply with the related party transactions provisions under the Corporations Act and any requirements prescribed by the ACNC in relation to related party transactions.

## **Directors' meetings**

### **53 When the directors meet**

The directors may decide how often, where and when they meet.

### **54 Calling directors' meetings**

54.1 A director may call a directors' meeting by giving reasonable notice to all the other directors.

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

### **55 Chair for directors' meetings**

55.1 The Elected Chair will chair directors' meetings, subject to clause 55.2.

55.2 The directors at a directors' meeting may choose another director to be the chair for that meeting if the Elected Chair is:

- (a) not present within 15 minutes after the starting time set for the meeting; or
- (b) present but does not want to act as chair of the meeting.

### **56 Quorum at directors' meetings**

56.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.

56.2 A quorum must be present for the whole directors' meeting.

## 57 Using technology to hold directors' meetings

- 57.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all the directors.
- 57.2 The directors' agreement may be a standing one.
- 57.3 A director may only withdraw their consent within a reasonable period before a meeting.

## 58 Passing directors' resolutions

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

## 59 Circular Resolutions of directors

- 59.1 The directors may pass a Circular Resolution.
- 59.2 A Circular Resolution is passed if the majority (more than 50%) of directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 59.3 or clause 59.4.
- 59.3 Each director may sign (including electronically sign):
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 59.4 The Company may send a Circular Resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect.
- 59.5 A Circular Resolution is passed when a majority (more than 50%) of directors have signed or otherwise agreed to the resolution in the manner set out in clause 59.3 or clause 59.4.

## **Secretary**

### 60 Appointment and role of secretary

- 60.1 The Company must have at least one secretary, who may also be a director.
- 60.2 A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the directors.
- 60.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 60.4 The role of the secretary includes (but is not limited to):
  - (a) maintaining a register of the Company's members; and
  - (b) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and Circular Resolutions.

## **Minutes and records**

### **61 Minutes and records**

61.1 The Company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of General Meetings;
- (b) minutes of Circular Resolutions of members;
- (c) a copy of a notice of each General Meeting; and
- (d) a copy of a Members' Statement distributed to members under clause 32.

61.2 The Company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
- (b) Circular Resolutions of directors.

61.3 To allow members to inspect the Company's records:

- (a) the Company must give a member access to the records set out in clause 61.1; and
- (b) the directors may authorise a member to inspect other records of the Company, including records referred to in clause 61.2 and clause 62.1.

61.4 The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

61.5 The directors must ensure that a record of a Circular Resolution is signed by a director within a reasonable time after the resolution is passed.

### **62 Financial and related records**

62.1 The Company must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

62.2 The Company must retain its financial records for at least seven years after completion of the transaction to which the record relates.

62.3 The Company must also keep written records that correctly record its operations.

## **By-laws**

### 63 By-laws

- 63.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 63.2 Members and directors must comply with by-laws as if they were part of this constitution.

## **Notice**

### 64 What is notice

- 64.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 65 to 67, unless specified otherwise.
- 64.2 Clauses 65 to 67 do not apply to a proxy form under clause 38.6.

### 65 Notice to the Company

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

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office or to an alternative address notified by the Company to the members as the Company's alternative address; or
- (c) sending it to an electronic address notified by the Company to the members as the Company's electronic address.

### 66 Notice to members

- 66.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - (c) sending it to an electronic address nominated by the member as an alternative address for service of notices (if any); or
  - (d) if agreed to by the member, by notifying the member at an electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 66.2 If the Company does not have an address for the member, the Company is not required to give notice in person.

## 67 When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 66.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

### 68 Company's financial year

The Company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### 69 Indemnity

- 69.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 69.2 In this clause, "officer" means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 69.3 In this clause, "to the relevant extent" means:
- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 69.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

### 70 Insurance

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

## 71 Directors' access to documents

- 71.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 71.2 If the directors agree, the Company must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors; and
  - (b) any other documents referred to in those documents.

## 72 Confidentiality

All directors and members must maintain the confidentiality of Company Information and must not disclose any Company Information to any person except:

- (a) with the prior written consent of the directors or the chief executive officer;
- (b) to the directors, the Company's employees and the professional advisors of the Company; and
- (c) if applicable, as required by law, after first consulting the directors about the form and content of the disclosure.

## 73 Media authorisation and conduct

- 73.1 A director of the Company must not make media comment, issue media releases, participate in media interviews or correspond with the media on behalf of the Company without the authorisation of the directors. This clause does not apply to the Elected Chair or the chief executive officer.
- 73.2 Without approval, as specified in clause 73.1 of this constitution, a director or member of the Company may not hold out their views to be reflective of the views of the Company.
- 73.3 The directors may issue directions, regulations, rules or codes in relation to media authorisation and conduct.

## Winding up

### 74 Surplus Assets not to be distributed to members

If the Company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in clause 75.1.

### 75 Distribution of Surplus Assets

- 75.1 Subject to the Corporations Act, any other applicable legislation and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the Company's purpose in clause 6;
  - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company; and
  - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth) or other applicable law.
- 75.2 If the Company is not a deductible gift recipient when it is wound up, the Company does not need to comply with clause 75.1(c).
- 75.3 The decision as to the charity or charities to be given the Surplus Assets must be made by resolution of directors at or before the time of winding up. If the directors do not make this decision, the Company may apply to the Supreme Court to make this decision.

## Revocation of deductible gift recipient endorsement

### 76 Revocation of the Company's deductible gift recipient endorsement

If the Company's endorsement of the Company as a deductible gift recipient is revoked (whether or not the Company is to be wound up or dissolved) any surplus of the following assets must be transferred to one or more charities that meet the requirements of clauses 75.1(a) to 75.1(c) as decided by the directors:

- (a) gifts of money or property for the principal purposes of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (c) money received by the Company because of such gifts and contributions which are unspent.

## Definitions and interpretation

### 77 Definitions

In this constitution:

**ACNC** means the Australian Charities and Not-for-profits Commission.

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

**Annual General Meeting** means the General Meeting held annually pursuant to clause 23.1.

**Cash Rate Target** means the interest rate used by the Reserve Bank of Australia as the cash rate target also known as the interbank overnight interest rate.

**Circular Resolution** means a resolution of members or directors passed without a meeting being held in the manner outlined in clause 33 (for members' resolutions) or clause 59 (for directors' resolutions).



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

**Company Information** means all communications, correspondence, reports, minutes and other papers and documents relating to any of the affairs or business of the Company.

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

**Elected Chair** means a person elected by the directors to be the Company's chair under clause 44.

**General Meeting** means a meeting of members.

**Independent Director** means a director that is appointed by the directors in accordance with clause 42 and who does not represent any one of the Voting Members.

**Initial Member** means an individual or incorporated body that was a member of the Company at the time this constitution came into force.

**Member Director** means a person that is representative of, and nominated by, a Voting Member, and is elected by the Voting Members in accordance with clause 41 (unless there is a casual vacancy in the position in which case clause 43.1 applies).

**Members Present** means, in connection with a General Meeting, each member present in person, by representative or by proxy at the venue or venues for the meeting.

**Members' Resolution** has the meaning given to that term in clause 31.1(a).

**Members' Statement** has the meaning given to that term in clause 31.1(b).

**Special Resolution** means a resolution:

- (a) of which notice has been given under clause 24.5(c); and
- (b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution.

**Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

**Voting Members** means the members of the Company with rights to vote as prescribed in the by-laws created by the directors for this purpose.

## 78 Reading this constitution with the Corporations Act

78.1 The replaceable rules set out in the Corporations Act do not apply to the Company.

78.2 While the Company is registered as a charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.

78.3 If the Company is not registered as a charity, the Corporations Act overrides any clause in this constitution which is inconsistent with the Corporations Act.

78.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 79 Interpretation

In this constitution:

- (a) the words “including”, “for example”, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).