



**diabetes**  
queensland

# Diabetic Association of Queensland Limited

# Constitution

ABN 18 009 790 327

# Constitution of

## Diabetic Association of Queensland Limited

I \_\_\_\_\_ Craig Beyers \_\_\_\_\_, Director and  
and \_\_\_\_\_ Dr Maarten Kamp \_\_\_\_\_, Director hereby  
certify this is a true and correct copy of the Constitution of Diabetic  
Association of Queensland Limited ACN 009 790 327 adopted at the  
General Meeting of the Company on \_\_\_\_\_ 2015.

Dated this \_\_\_16th\_\_\_ day of \_\_\_November\_\_\_\_\_ 2015

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**Public Company Limited by Guarantee**  
**Constitution**  
of  
**Diabetic Association of Queensland Limited**  
**ACN 009 790 327**  
**ABN 18 009 790 327**

## Preliminary

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### 1 Definitions and Interpretation

#### 1.1 Definitions and Interpretation

- (a) In this Constitution unless the contrary intention appears:

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

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

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

**Appointed Director** means a Director appointed to the Board in accordance with clause 7.7;

**Auditor** means the Company's auditor;

**Board** means the Board of Directors;

**Charity** means an entity that is registered with the ACNC;

**Chief Executive Officer** includes a reference to any delegate from time to time of the Chief Executive Officer;

**Company** means Diabetic Association of Queensland Limited ACN 009 790 327;

**Company Secretary** means any person appointed by the Board to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries;

**Constitution** means this Constitution as amended from time to time;

**DGR** means a deductible gift recipient as defined by law;

**Diabetes** includes a reference to all the different types of diabetes capable of being diagnosed as per current medical agreement;

**Director** means any one or more of the Directors;

**Elected Directors** means Directors elected to the Board in accordance with clause 7.3;

**General Member** is a Member as defined in clause 4.3;

**Member** means a member of the Company and includes:

- (1) General Members;
- (2) Professional Members; and
- (3) Other Members;

**Membership Officer** is an employee or employees of the Company charged with the role of being the membership officer of the Company;

**Objects** means the objects of the Company as set out in clause 2;

**Office** means the Company's registered office;

**Other Member** is a Member as defined in clause 4.5;

**Patron** means any person or body corporate admitted as a Patron under clause 3;

**Professional Member** is a Member as defined in clause 4.4;

**Register** means the register of Members of the Company;

**Registered Address** means the last known address of a Member as noted in the Register;

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act;

**Representative** (in relation to the Members) means such person as shall be nominated by the Member concerned as being the representative of that Member in accordance with section 250D of the Corporations Act;

**Subscription** means the annual charge to be imposed on Members under clause 4.11.

(b) In this Constitution, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa and words importing a gender include other genders;
- (2) words importing natural persons include corporations;
- (3) words and expressions defined in a particular Act or Regulation have the same meaning in this Constitution;
- (4) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (5) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.

## 1.2 Application of the Corporations Act or ACNC Act

Unless a contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act or ACNC Act that deals with the same matter as the clause.

### **1.3 Replaceable Rules**

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

### **1.4 Exercise of Powers of the Company**

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 this clause.

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## **2 Objects**

### **2.1 Objects**

The Objects of the Company are to:

- (a) Benefit and serve:
  - (1) people with Diabetes; and
  - (2) families or carers of people with Diabetes and other persons interested in Diabetes.
- (b) To monitor and safeguard the interests of people with Diabetes.
- (c) To promote:
  - (1) the study of the cause, treatment and cure of Diabetes;
  - (2) the detection of persons with undiagnosed Diabetes; and
  - (3) Diabetes education for people with Diabetes and the community generally.
- (d) To raise community awareness of Diabetes, Diabetes related conditions and the impact of Diabetes on public health.
- (e) To seek out, promote and market goods and services for the benefit of people with Diabetes.
- (f) To act as a lobby group as and when required by Members and to lobby for and on behalf of Members.
- (g) To minimise the impact of Diabetes in the Australian community through:
  - (1) promoting research into all aspects of Diabetes including its cause/s, treatment, management and complications and the social impact of Diabetes;
  - (2) the promotion and support for research into a cure for Diabetes;
  - (3) encouraging and advancing the prevention and early detection of Diabetes;
  - (4) facilitating equitable access to appropriate and effective treatment and management for all people with Diabetes; and
  - (5) advocating for and on behalf of people with Diabetes.



- (h) To provide a voice on Diabetes on behalf of the Members and people with Diabetes, health professionals, and research organisations with an interest in Diabetes.
  - (i) To train or facilitate the training of health professionals, educators and other persons for the benefit of people with Diabetes.
  - (j) To seek the cooperation of and join with like associations, Governments, corporations, health professionals and/or other persons to further the principal Objects.
  - (k) To make known and further the Company's activities and principal Objects.
  - (l) To establish and own alone or with third entities to enter into business ventures to raise capital to use toward the principal Objects.
  - (m) To undertake all necessary activities to achieve the principal Objects of the Company.
- 

### **3 Patron**

#### **3.1 Appointment of Patron**

- (a) The Board may appoint one or more eminent persons or bodies corporate as its Patron or Patrons or remove a person or body corporate as its Patron.
  - (b) The Patrons are to have such recognition and dignities as may be agreed between the Patron and the Board.
  - (c) The Board may also remove any such appointed Patron or Patrons at any time within its unfettered discretion.
- 

### **4 Membership**

#### **4.1 Number of Members**

The number of Members of the Company proposed to be registered is unlimited.

#### **4.2 Classes of Membership**

- (a) There are three (3) classes of membership which are as follows:
  - (1) General Membership;
  - (2) Professional Membership; and
  - (3) Other Membership.
- (b) The Board may adopt additional classes of membership from time to time, in its absolute discretion.

#### **4.3 General Membership**

Any person or body corporate is eligible to become a General Member if the person or body corporate:

- (a) has an interest in Diabetes; and
- (b) has been approved for General Membership in accordance with clause 4.6.

#### **4.4 Professional Membership**

Any person or body corporate is eligible to become a Professional Member if the person or body corporate:

- (a) has an interest in Diabetes; and
- (b) is a health care professional or a body corporate directly involved in the health care profession; and
- (c) has been approved for Professional Membership in accordance with clause 4.6.

#### **4.5 Other Membership**

- (a) The Company may in general meeting, by ordinary resolution and upon the recommendation of the Board, appoint as an Other Member (which includes body corporates and persons previously being Honorary or Honorary Life Members) a body corporate or a person who, in the opinion of the Company, has rendered eminent service:
  - (1) to the Company; or
  - (2) to the cause of overcoming Diabetes; or
  - (3) in supporting the interests of people with Diabetes.
- (b) An Other Member is:
  - (1) not liable to pay any annual Subscription;
  - (2) entitled to receive notice of the annual general meeting or general meeting of the Company and to attend thereat; and
  - (3) not entitled to speak except at the invitation of the chairperson or to vote at any such meeting.
- (c) An Other Member is eligible to serve as a Director.
- (d) The Company may in general meeting, by ordinary resolution and upon the recommendation of the Board, transfer the Membership of an Other Member to General Membership, so as to enable the Member to speak and vote at the annual general meeting or general meeting of the Company.

#### **4.6 Application for Membership**

- (a) With the exception of Other Members and subject to clause 4.5(d), persons or bodies corporate will be required to make a formal application for Membership.
- (b) The Board or a Membership Officer may decide from time to time on the form and contents of the application for Membership of any class.
- (c) If a Membership Officer is appointed, that officer must exercise the powers delegated to him or her in accordance with any directions of the Board.
- (d) Applications for Membership of the Company will be in writing and signed by or on behalf of the applicant.
- (e) If the application:
  - (1) is in the correct form as determined by the Board or Membership Officer; and

- (2) contains all the required information;

the Membership Officer or Board will consider the application and may accept or reject it in their absolute discretion. If the application is accepted, the acceptance will be subject to the payment of any fee required under clause 4.11. If the application is rejected, in no case shall the Membership Officer or Board be required to give reason for the rejection of the applicant.

- (f) If an application is accepted, the Membership Officer must send the applicant a written notice, signed by the Chief Executive Officer (or any alternative officer as the Board directs from time to time), and request payment of the applicant's entrance fee (if any) and first Subscription (if any).
- (g) An applicant will become a Member of the relevant class on payment of the amount due under clause 4.6(f), if paid within the time specified in the written notice requesting the payment. If payment is not made, within the specified period of time, the Company may, through the Membership Officer, withdraw the offer for Membership.

#### **4.7 Cessation of Membership**

- (a) the Subscription is not paid within 2 months of the date it is due. The Membership Officer may reinstate a lapsed Member on payment of their Subscription and any late fee prescribed by the Board or the Chief Executive Officer of the Company;
- (b) the Member resigns from Membership by notice in writing to the Membership Officer;
- (c) where the Member is an individual, the Member:
  - (1) dies;
  - (2) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
- (d) a Member becomes insolvent or makes any arrangement or composition with his or her creditors and the Board has resolved (within its unfettered discretion) that the particular Member's membership should cease;
- (e) where the Member is a body corporate, that Member is dissolved or otherwise ceases to exist; or
- (f) the Member is expelled from the Company under clause 4.8.

#### **4.8 Expulsion of Members**

- (a) The Board may:
    - (1) expel a Member from the Company; or
    - (2) suspend a Member from Membership of the Company for a specified period who:
      - (A) fails to comply with this Constitution; or
      - (B) has persistently or wilfully acted in a manner prejudicial to the interests of the Company;
- by giving notice in writing of the expulsion or suspension of the Member.

- (b) The notice referred to in clause 4.8(a) must:
  - (1) set out the decision of the Board and the grounds upon which it is based;
  - (2) state that the Member may address the Board at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice;
  - (3) stating the date, time and place of that meeting; and
  - (4) informing the Member that the Member may do either or both of the following:
    - (A) attend and speak at that meeting; and
    - (B) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.
- (c) At a meeting of the Board held in accordance with clause 4.8(b), the Board must:
  - (1) give the Member an opportunity to make oral representations;
  - (2) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
  - (3) resolve whether to confirm or to revoke the decision to expel or suspend the Member.

#### **4.9 Following cessation of Membership**

Any Member ceasing to be a Member:

- (a) will not be entitled to a refund of any part of a Subscription; and
- (b) will remain liable to the Company for all Subscriptions and moneys which were due at the date of ceasing to be a Member.

#### **4.10 Membership not transferable**

The rights and privileges of every Member:

- (a) will be personal to each Member and are not transferable; and
- (b) terminate on cessation of the person's Membership.

#### **4.11 Subscriptions and Levy**

- (a) The Board may from time to time determine the entrance fee (if any), and Subscription payable by each class of Member, or subclass of Member, and may also determine whether a class or subclass of Member is exempt from paying the Subscription or any entrance fee.
- (b) Any Subscription or portion of a Subscription not paid within 2 months of the due date may be offset against any money owing by the Company to the Member, and the liability of the Company to the Member for such money is reduced by the amount of the unpaid instalment with effect from the due date for payment of the Subscription.
- (c) The Membership Officer, and/or the Chief Executive Officer of the Company, may in their discretion:
  - (1) determine that:
    - (A) no Subscription is payable; or

- (B) a discounted Subscription is payable;  
by a Member or Members in a given year; and
- (2) extend the time for payment of Subscriptions by any Member.

#### **4.12 Liability of Members**

The liability of Members is limited in accordance with clause 15.

#### **4.13 Resolution of Disputes between Members**

- (a) Disputes between Members (in their capacity as Members), and disputes between any Member or Members and the Company shall be referred to the Chief Executive Officer who must take steps to resolve the dispute.
- (b) If a dispute so referred is not solved 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 Queensland Law Society.
- (d) The costs of the mediator appointed pursuant to clause 4.13(b) or clause 4.13(c) (as the case may be) shall be shared equally between the parties to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to clause 4.13(b) or clause 4.13(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.

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## **5 Income and Property of Company**

### **5.1 Distribution of income**

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (b) No distribution, income or property, including dividends, will be paid or transferred directly or indirectly to any Member except for:
  - (1) payments in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (2) the payment of interest on money borrowed from any Member, at a rate not exceeding from time to time the Company's overdraft rates of interest paid for money borrowed from its bankers.

### **5.2 Payments to Directors**

- (a) The Directors may be paid the remuneration that the Board resolves from time to time by a majority vote of the Board. The level of remuneration is to be in accordance with the Queensland Government's *"Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities"* procedures or its equivalent.

- (b) The Board must approve all other payments that the Company makes to its Directors including, if relevant:
    - (1) reasonable out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company, including expenses properly incurred:
      - (A) in attending Directors' meetings or any meetings of committees of Directors;
      - (B) in attending any general meetings of the Company; and
      - (C) in connection with the Company's business;
    - (2) a payment for any service rendered to the Company by a Director in a professional or technical capacity (other than in the capacity as Director of the Company), where the provision of the service and the amount payable has the prior approval of the Board of the Company; and
    - (3) a payment relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.
- 

## **6 General Meeting**

### **6.1 Annual General Meetings**

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.

### **6.2 Convening the General Meeting**

- (a) Any three (3) Directors may, at any time, call a general meeting of the Company.
- (b) In the event that the Company is:
  - (1) 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 a call a general meeting; and
    - (B) Company will do so;in accordance with the requirements of those provisions; or
  - (2) 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 a 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.

### **6.3 Notice of General Meeting**

- (a) Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice (notwithstanding the fact that section 111L of the Corporations Act may apply), at least 21 days written notice of a general meeting (inclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to:
  - (1) every Member except for any Member who under the Constitution or by the terms of issue of their Membership is not entitled to receive notice;
  - (2) the Auditor; and
  - (3) the Company Secretary.No other person is entitled to receive a notice of a general meeting.
- (b) A notice calling a general meeting must:
  - (1) specify the place, date and time of the meeting and if the meeting is to be held in two or more places simultaneously, the technology that will be used to facilitate this;
  - (2) state the general nature of the business to be transacted at the meeting;
  - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
  - (4) contain a statement setting out the following in relation to proxy voting:
    - (A) that the Member has a right to appoint a proxy; and
    - (B) that a proxy does not need to be a Member.
- (c) The business of an annual general meeting may include any or all of the following matters even if they are not referred to in the notice to the general meeting:
  - (1) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (2) election of Directors; or
  - (3) the appointment and fixing of the remuneration of the Auditor.

### **6.4 Cancellation or Postponement of General Meetings of Members**

- (a) Subject to:
  - (1) 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

- (2) this Constitution;
- (b) the Board may cancel a general meeting of the Company:
  - (1) convened by the Board; or
  - (2) which has been convened by the Members pursuant to clause 6.3(b) upon receipt by the Company of a written notice withdrawing the requisition signed by those members.
- (c) 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 of the Members relating to the original meeting.
- (d) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
  - (1) 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;
 

a person may waive notice of any general meeting by notice in writing to the Company; and
  - (2) the non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this clause 6.4 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
    - (A) the non-receipt or failure occurred by accident or error; or
    - (B) before or after the meeting, the person:
      - (C) has waived or waives notice of that meeting under clause 6.4(d)(1); or
      - (D) has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by notice in writing to the Company.
- (e) A person's attendance at a general meeting waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting.

## **6.5 Quorum at General Meetings**

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum for a general meeting is 5 Members present (in person or by proxy or in conference in accordance with clause 6.2(c)) and entitled to vote.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (1) where the meeting was convened upon the requisition of Members, the meeting must be dissolved; or



- (2) in any other case:
  - (A) 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 next week at the same time and place; and
  - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting shall be dissolved.

## **6.6 Chairperson of General Meetings**

- (a) The chairperson of the Board must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
  - (1) there is no chairperson of the Board;
  - (2) the chairperson of the Board is not present within 15 minutes after the time appointed for the meeting; or
  - (3) the chairperson of the Board is present within that time but is not willing to act as chairperson of the meeting,the Members present must elect as chairperson of the meeting:
  - (4) another Director who is present and willing to act; or
  - (5) if no other Director willing to act is present at the meeting, a Member who is present and willing to act.

## **6.7 Conduct of General Meetings**

- (a) Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting, otherwise no notice is required.
- (d) Except as provided by clause 6.7(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (e) Where a meeting is adjourned, the Board may change the venue of, postpone or cancel the adjourned meeting.
- (f) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

## **6.8 Decisions at General Meetings**

- (a) Except in the case of any resolution, which as a matter of law requires a special majority, questions arising at a general meeting are to be decided

by a majority of votes cast by the Members present at the meeting and any such decision is for all purposes a decision of the Members and the Company.

- (b) In the case of an equality of votes upon any proposed resolution, the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before the vote is taken or before or immediately after the declaration of the result of the show of hands:
  - (1) by the chairperson of the meeting; or
  - (2) by at least 5 Members present and having the right to vote on the resolution.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the 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 the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.
- (i) Before a vote on a resolution is taken, the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

## **6.9 Voting Rights**

- (a) Subject to this Constitution and to any rights or restrictions attached to any class of Membership, at a general meeting every General Member or Professional Member present in person or by proxy, power of attorney or Representative has 1 vote, both on a show of hands and a poll.
- (b) A proxy, power of attorney or Representative is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member in his or her own right.
- (c) A Member is not entitled to vote at a general meeting unless all sums of money presently payable by that Member to the Company, including the Subscription, have been paid.
- (d) An objection to the qualification of a person to vote at a general meeting:
  - (1) must be raised before or at the meeting at which the vote objected to is given or tendered; and

- (2) must be referred to the chairperson of the meeting, whose decision is final.
- (e) A vote not disallowed by the chairperson of a meeting under clause 6.9(d) is valid for all purposes.

#### **6.10 Representation at General Meetings**

- (a) Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:
  - (1) in person or, where a Member is a body corporate, by its Representative;
  - (2) by proxy; or
  - (3) by power of attorney.
- (b) A proxy, power of attorney or Representative may, but need not, be a Member.
- (c) A proxy, power of attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy, power of attorney or Representative will be taken to confer authority:
  - (1) to vote on a show of hands and on a poll;
  - (2) to agree to a meeting being convened by shorter notice than is required by the Corporations Act (to the extent the Corporations Act applies) or by this Constitution;
  - (3) to speak to any proposed resolution on which the proxy, power of attorney or Representative may vote;
  - (4) to demand or join in demanding a poll on any resolution on which the proxy, power of attorney or Representative may vote;
  - (5) even though the instrument may refer to specific resolutions and may direct the proxy, power of attorney or Representative how to vote on those resolutions:
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions may be put or any similar motion;
    - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
    - (C) to act generally at the meeting; and
  - (6) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) An instrument appointing a proxy or power of attorney may direct the manner in which the proxy or power of attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or

power of attorney is not entitled to vote on the proposed resolution except as directed in the instrument.

- (f) An instrument appointing a proxy or power of attorney need not be in any particular form provided it is in writing, legally valid and signed by the appointer or the appointer's power of attorney and clearly identifies the appointer and the person nominated as proxy.
- (g) A proxy or power of attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or power of attorney, and the authority under which the instrument is signed or a certified copy of the authority, are received in the places and before the times specified for that purpose in the notice calling the meeting. If no times are specified in the notice the instrument appointing the proxy or power of attorney must be presented to the chairperson before the commencement of the meeting. If the notice so states, the proxy can be faxed or emailed to the place specified in the notice.
- (h)
  - (1) A vote given in accordance with the terms of an instrument appointing a proxy or power of attorney is valid despite the:
    - (A) death or unsoundness of mind of the Member;
    - (B) bankruptcy or liquidation of the Member;
    - (C) revocation of the instrument or of the authority under which the instrument was executed;unless the provisions of clause 6.10(h)(2) have been complied with.
  - (2) A Member (or the Member's attorney or Representative or legal personal representative) must notify the Company in writing of the death, unsoundness of mind, bankruptcy, liquidation or revocation of that Member by the time and at one of the places at which the instrument appointing the proxy or power of attorney is required to be received under clause 6.10(g).
- (i) The appointment of a proxy or power of attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy or power of attorney is not entitled to vote, and must not vote, as the appointer's proxy or power of attorney on the resolution.

## **6.11 Representatives**

For the purposes of this Constitution:

- (a) A signature by a Representative of a Member on behalf of that Member is taken to be the signature of that Member.
- (b) Any power or right of a Member as granted by this Constitution can be exercised by the Representative of that particular Member.
- (c) Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy.
- (d) Any notice served on a Representative will be deemed to be service on the Member which is represented by that particular Representative.

- (e) The actions of a Representative bind the Member which is represented by that particular Representative.
  - (f) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.
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## **7 Directors**

### **7.1 Number of Directors**

- (a) Subject to clause 7.1(b), the number of Directors of the Company shall be a minimum of 5 and a maximum of 11, comprising:
  - (1) at least 5, and not more than, 7 Elected Directors; and
  - (2) up to 4 Appointed Directors.
- (b) The Company may, by ordinary resolution of its Members, increase or decrease the minimum or maximum number of Directors (provided that the minimum must not fall below 3 as required by the Corporations Act).

### **7.2 Eligibility for Election or Appointment as a Director**

A person is only eligible for election or appointment as a Director if the person:

- (a) is not disqualified by law or this Constitution from standing for election or appointment;
- (b) satisfies the conditions contained in subsection 45.20(3) of the ACNC Regulation.
- (c) is not an employee of the Company or of any related entity employing staff of the Company; and
- (d) is a Member of the Company.

### **7.3 Election of Directors**

- (a) Voting for the election of candidates as Elected Directors:
  - (1) is to be held at the annual general meeting; and
  - (2) requires a majority of Members who are present and entitled to vote for the successful election of a candidate as an Elected Director.
- (b)
  - (1) Any two Members of the Company may nominate any Member (other than a Member who is under the age of 18) to serve as an Elected Director.
  - (2) Not earlier than three (3) months and no later than forty two (42) days prior to each annual general meeting, the Company Secretary shall cause to be sent to the Members a written notice of the upcoming elections including:
    - (A) advising of the forthcoming election of Elected Directors;
    - (B) advising Members of their entitlement to nominate another Member (other than a Member who is under the age of 18) to stand for election in such capacity;

- (C) stating that each nomination must comply with clause 7.3(b)(3);
  - (D) notifying Members of any information required in relation to nominees, if any, including but not limited to qualifications and experience of the nominee; and
  - (E) advising the Members that a nomination form is available from the Company Secretary.
- (3) Any nomination of a candidate for the position of an Elected Director must be:
  - (A) in writing;
  - (B) in the form prescribed by the Board from time to time;
  - (C) signed by the nominated Member and the proposer and seconder; and
  - (D) lodged with the Company Secretary at least 28 days before the annual general meeting at which the election of Elected Directors takes place.
- (c) The notice of annual general meeting sent to Members in accordance with clause 6.3 shall include a list of all nominated Members standing for election as an Elected Director.
- (d) If the number of nominees for Elected Director positions does not exceed the maximum number of Elected Directors who can be elected at that annual general meeting as provided for in the Constitution, the resolution appointing the Elected Directors at the annual general meeting shall be put to a vote on a show of hands (unless a poll is demanded pursuant to clause 6.8(c)).
- (e) If the number of nominees for Elected Director positions exceeds the maximum number of Elected Directors who can be elected at that annual general meeting as provided for in the Constitution, the chairperson of the annual general meeting shall demand a poll in relation to the resolutions to elect Elected Directors.
- (f) In order to facilitate the poll referred to in clause 7.3(e), the Company Secretary shall on or before the day of the annual general meeting cause to be prepared numbered ballot papers for the conduct of the ballot for the election of the Elected Directors. The ballot papers shall be:
  - (1) authenticated by the Company Secretary initialling same;
  - (2) list each nominee in alphabetical order with an empty square box next to each nominee's name;
  - (3) accompanied by the profiles of each nominee provided under clause 7.3(f)(2), if any; and
  - (4) handed to Members while registering their attendance at the annual general meeting or during the annual general meeting. If a Member holds a proxy for another Member, that Member shall be entitled to a number of ballot papers to match the number of proxies then held by that Member.
- (g) Each Member shall be instructed by the chairperson that in order to vote:
  - (1) the Member may place an "x" in the box next to each nominee he or she wishes to appoint as an Elected Director;

- (2) the Member may insert an “x” against the same number of nominees as there are positions available for Elected Directors at the annual general meeting (marking a lesser number of nominees will be valid but marking a greater number of nominees will not be valid and that ballot paper will not be counted); and
  - (3) Members are not required to identify themselves on the ballot papers.
- (h) After allocating sufficient time at the annual general meeting for the Members to cast their vote on the ballot paper provided, which shall be in the chairperson’s discretion, each Member shall deliver the completed ballot paper into the ballot box provided by the Company Secretary.
- (i) The Company Secretary shall act as returning officer to count the ballots and determine results of the election of Elected Directors. Those nominees who have scored the highest number of ballot votes after the collection of ballots and counting of votes will have been successful in their election as an Elected Director.
- (j) In the event of a tied ballot, the outcome of the election, as between the tied nominees shall be determined by the chairperson’s casting vote.
- (k) The results of the election of Elected Directors shall be declared at the annual general meeting and the ballot forms shall be destroyed by the Company Secretary after the annual general meeting.

#### **7.4 Term of Directors**

- (a) Each Director shall serve for a term of 3 years from the date of their appointment or election, but shall, subject to clause 7.4(b), be eligible for reappointment or re-election to the Board for an indefinite period.
- (b) Where a Director serves on the Board for a continuous period of at least 12 years, prior to the election or reappointment of that Director for a term which would result in continuous service of more than 12 years, the Board shall ensure that:
  - (1) in the case of an Elected Director, the Members are advised that the Director has already served on the Board for 12 years at the time of the relevant annual general meeting at which that Director is being considered for re-election; and
  - (2) in the case of an Appointed Director, the Board is advised that the Director has already served on the Board for 12 years at the time of the relevant Board meeting at which that Director is being considered for re-appointment.
- (c) For the avoidance of doubt, a person referred to in clause 7.4(b) who is standing for election or appointment is eligible to be re-elected or re-appointed to the Board, and their election or appointment shall not be voided, notwithstanding that it is subsequently discovered that the Board failed to comply with clause 7.4(b) provided that:
  - (1) the failure to advise the Members or the Board (as the case may be) as required was an inadvertent oversight by the Board; and
  - (2) the Board acts in good faith to notify the Members or the Board (as the case may be) of the oversight within three months, or such further period as may be reasonable, after becoming aware of the oversight.

## **7.5 Casual Vacancies**

- (a) A person may be appointed as a Director:
  - (1) to fill a casual vacancy caused by the early retirement or removal for any reason of an Elected Director; or
  - (2) to fill a casual vacancy because not all Elected Director positions were filled at an annual general meeting.
- (b) A Director appointed to fill a casual vacancy pursuant to clause 7.5(a) must retire at the next annual general meeting following their appointment but, if eligible and notwithstanding any other provision to the contrary, will then be eligible to re-stand for election at that same next annual general meeting.

## **7.6 Ongoing Term Rotation and Retirement of Elected Directors**

There shall be a rotational system of elections of Elected Directors so that at each annual general meeting, those Directors who have served approximately 3 years since they were elected, must retire from office.

## **7.7 Appointment of Appointed Directors**

- (a) Provided that the total number of Directors must not exceed 11, the Board may, in its discretion, and from time to time, appoint up to a maximum of 4 Appointed Directors to serve at any one time, on the basis that they are persons whose background, skills and/or experience may be thought prudent or necessary to enhance the ability of the Board to better discharge its role and the legal duties and responsibilities of the Directors.
- (b) Should the position of an Appointed Director become vacant:
  - (1) pursuant to clause 7.8 or 7.9; or
  - (2) otherwise in accordance with this Constitution;the Board may appoint a replacement Appointed Director, in accordance with clause 7.7(a) and that Appointed Director shall serve for a full term of three (3) years from the date of their appointment (and not merely hold office for the remainder of the term of the vacating Appointed Director).

## **7.8 Retirement and Removal From Office**

- (a) A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time of giving the notice to the Company or, if another time is specified in the notice, at that time (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The Company, at a general meeting, may in accordance with section 203D of the Corporations Act, remove a Director from office.

## **7.9 Vacation of Office**

Without limiting any other provision, the office of a Director becomes vacant if required by the Corporations Act or if the Director:

- (a) dies;
- (b) becomes an insolvent under administration;



- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) is absent without the consent of the Board from the meetings of the Board held during a continuous period of 6 months and the Board resolves that the office of that Director be vacated;
- (e) becomes prohibited from being a Director by reason of an order made under the Corporations Act;
- (f) 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; or
- (g) ceases to be a Member.

#### **7.10 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 from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

#### **7.11 Powers and Duties of the Board**

- (a) The Board is responsible for the control, management and conduct of the Company and may exercise all such powers of the Company that are not required by the Corporations Act, the ACNC Act or by this Constitution to be exercised in any other manner.
- (b) Without limiting the generality of clause 7.11(a), the Board may exercise all the powers of the Company to borrow or otherwise raise money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (c) The Board may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.
- (d) The Board may:
  - (1) appoint or employ any person to be an officer, agent or power of attorney of the Company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Board), for such period and upon such conditions as they think fit;
  - (2) authorise an officer, agent or power of attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or power of attorney; and
  - (3) subject to any contract between the Company and the relevant officer, agent or power of attorney, remove or dismiss any officer,

agent or power of attorney of the Company at any time, with or without cause.

- (e) A power of attorney may contain such provisions for the protection and convenience of the power of attorney or persons dealing with the power of attorney as the Board think fit.
- (f) The Board may make, amend or repeal by-laws and regulations not inconsistent with this Constitution for the general conduct and management of the affairs and activities of the Company and the business of the Board.

#### **7.12 Proceedings of Directors**

- (a) The Board may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors shall meet not less than 4 times in each calendar year.

#### **7.13 Notice of Meetings of Directors**

- (a) Subject to this Constitution, notice of a meeting of the Board must be given to each person who is at the time of giving the notice a Director, other than a Director on leave of absence approved by the Board, and to the Company Secretary.
- (b) A notice of a meeting of the Board:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given in person or by post, or by telephone, fax or other electronic means; and
  - (4) in case of an emergency, need not be in writing.
- (c) A meeting of the Board may be convened or held using any technology consented to by the Board. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a meeting of the Board.
- (d) All resolutions of the Board passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

#### **7.14 Quorum at Meetings of Directors**

- (a) No business may be transacted at a meeting of the Board unless a quorum of Directors is present at the time the business is dealt with.
- (b) A Director may be present at a meeting if present by telephone or by video link.
- (c) A quorum for each meeting of the Board consists of 3 Directors present at the meeting.
- (d) If there is a vacancy in the office of a Director then, subject to clause 7.14(e), the remaining Director or Directors may act.

- (e) If the number of Directors in office at any time is not sufficient to constitute a quorum at a meeting of the Board or is less than the minimum number of Directors fixed under this Constitution, the remaining Director or Directors must act as soon as possible:
  - (1) to increase the number of Directors to a number sufficient to constitute a quorum and to satisfy the minimum number of Directors required under this Constitution; or
  - (2) to convene a general meeting of the Company for that purpose, and, until that has happened, must only act if and to the extent that there is an emergency requiring them to act.

#### **7.15 Chairperson of Directors**

- (a) The Board may elect one of the Directors to the office of chairperson of Directors.
- (b) The chairperson of Directors will hold office for a period of 3 years (or until the chairperson is no longer a Director, whichever occurs first) and is eligible for re-election as chairperson.
- (c) The chairperson may also be titled "President".
- (d) The chairperson of Directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of the Board.
- (e) If at a meeting of the Board:
  - (1) there is no chairperson of the Board;
  - (2) the chairperson of the Board is not present within 10 minutes after the time appointed for the holding of the meeting; or
  - (3) the chairperson of the Board is present within that time but is not willing to act as chairperson of the meeting,the Directors present must elect one of themselves to be chairperson of the meeting.

#### **7.16 Decisions of Directors**

- (a) A meeting of the Board at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Board under this Constitution.
- (b) Unless stated otherwise in this Constitution or under the Corporations Act, questions arising at a meeting of the Board are to be decided by a majority of votes cast by the Directors present and any such decision is for all purposes a determination of the Board.
- (c) Each Director shall have one vote.
- (d) In the case of an equality of votes upon any proposed resolution the chairperson of the meeting in addition to his or her deliberative vote, has a casting vote.

#### **7.17 Written resolutions**

- (a) A resolution in writing signed by a majority of the Directors for the time being entitled to vote in relation to the resolution (not being less than a quorum) and stating that the signatories are in favour of the resolution will

be as valid and effectual from the time it is signed by the last Director as if it had been passed at a duly convened meeting of Directors provided each Director has received fourteen (14) days' notice of the resolution.

- (b) A resolution in writing may consist of several documents in like form each signed by one or more Directors.
- (c) Every such resolution shall be deemed to have been passed on the day and at the time at which the document was last signed by a Director.
- (d) 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 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.
- (e) An electronic transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the electronic transmission by the Company in legible form.

#### **7.18 Committees of Directors**

- (a) The Board may delegate any of their powers to a committee or committees consisting of such number of Directors as they think fit. A quorum for any such committee meeting is 2 Directors.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.
- (c) The provisions of this Constitution applying to meetings and resolutions of the Board apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of Directors.

#### **7.19 Delegation to Individual Directors**

- (a) The Board may delegate any of their powers to any one or more Director.
- (b) A Director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.

#### **7.20 Validity of acts**

An act done by a person acting as a Director or by a meeting of the Board or a committee of Directors attended by a person acting as a Director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the Board or committee (as the case may be) when the act was done.

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## Execution of Documents

### 8.1 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
  - (1) two Directors signing the same; or
  - (2) one Director and one Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

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## Interested Directors

### 9.1 Interested Directors

- (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 and arrangements.
- (b) 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 and arrangements.
- (c) Any interest of a Director must be dealt with in accordance with the relevant legislation, being either:
  - (1) the Corporations Act; or
  - (2) ACNC Regulation,Which will include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (d) Subject to clause 9.1(b), a Director who has a material personal interest in a matter that is being resolved at a meeting of the Board must declare that interest at the meeting and must not:
  - (1) be present while the matter is being considered at the meeting; or
  - (2) vote on the matter,unless permitted by the Corporations Act or the ACNC Regulation to do so, in which case the Director may:
  - (3) be counted in determining whether or not a quorum is present at any meeting of the Board considering that contract or arrangement or proposed contract or arrangement;
  - (4) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

- (5) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
  - (e) A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
  - (f) A Director is not disqualified merely because of being a Director from contracting with the Company in any respect including, without limitation:
    - (1) selling any property to, or purchasing any property from, the Company;
    - (2) lending any money to, or borrowing any money from, the Company with or without interest and with or without security;
    - (3) guaranteeing the repayment of any money borrowed by the Company for a commission or profit; or
    - (4) underwriting or guaranteeing the subscription for securities in the Company or in any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise, for a commission or profit.
  - (g) No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.
  - (h) The Board may make regulations and rules requiring the disclosure of interests that a Director, and any person deemed by the Board to be related to or associated with the Director, may have in any matter concerning the Company or a related body corporate and any regulations and rules made under this Constitution will bind all Directors.
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## **10 Minutes and Registers**

- (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:
  - (1) the names of the Directors present at all meetings of the Board and meetings of Directors' committees;
  - (2) all proceedings and resolutions of general meetings, meetings of the Board and meetings of Directors' committees;
  - (3) all resolutions passed by the Board;
  - (4) all appointments and resignations of officers;
  - (5) all orders made by the Board and Board committees;
  - (6) all disclosures of interests made under clause 9; and
  - (7) 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.

- (b) Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting at which they are physically present of the relevant body.

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## **11 Company Secretary**

- (a) There must be at least one Company Secretary of the Company appointed by the Board for a term and at remuneration and on conditions determined by them.
- (b) The Board may, subject to the terms of the Company Secretary's contract, suspend, remove or dismiss the Company Secretary.

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## **12 Inspection of Records**

- (a) Except as otherwise required by the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- (b) Subject to the provisions of the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.

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## **13 Service of Notices**

### **13.1 Notices by Company to Members**

- (a) A notice may be given by the Company to a Member:
  - (1) by serving it personally at, or by sending it by post in a prepaid envelope to, the Member's Registered Address, or by sending it to the fax number or electronic address, or such other address the Member has supplied to the Company for the giving of notices; or
  - (2) if the Member does not have a Registered Address and has not supplied another address to the Company for the giving of notices, by exhibiting it at the Office.
- (b) The fact that a person has supplied a fax number or electronic address for the giving of notices does not require the Company to give any notice to that person by fax or electronic means.
- (c) A signature to any notice given by the Company to a Member under this clause 13 may be in writing or a facsimile printed or affixed by some mechanical or other means.
- (d) A certificate signed by a Director or the Company Secretary of the Company to the effect that a notice has been given in accordance with this Constitution is conclusive evidence of that fact.

### **13.2 Notices by Company to Directors**

Subject to this Constitution, a notice may be given by the Company to any Director either by serving it personally at, or by sending it by post in a prepaid envelope to, the Director's residential or business address, or by sending it to the fax number or electronic address, or such other address as the Director has supplied to the Company for the giving of notices.

### **13.3 Notices by Members and Directors to the Company**

Subject to this Constitution, a notice may be given by a Member or Director to the Company by serving it on the Company at, or by sending it by post in a prepaid envelope to, the Office or by sending it to the principal fax number or principal electronic address of the Company at its Office.

### **13.4 Notices Posted to Addresses Outside Australia**

A notice sent by post to an address outside Australia must be sent by airmail.

### **13.5 Time of Service**

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (1) in the case of a notice of a general meeting, on the day after the date of its posting; or
  - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax or electronic means service of the notice is to be taken to be effected on the day after the date it is sent.
- (c) Where the Company gives a notice under clause 13.1(a)(2) by exhibiting it at the Office, service of the notice is to be taken to be effected when the notice was first so exhibited.

### **13.6 Other Communications and Documents**

Clauses 13.1 to 13.5 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

### **13.7 Notices in Writing**

A reference in this Constitution to a notice in writing includes a notice given by fax or electronic means.

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## **14 Audit and Accounts**

- (a) The Board must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of 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, the Board must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act or the ACNC Act (as the case may be).



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## 15 Winding Up

### 15.1 Winding Up

- (a) If the Company is wound up:
  - (1) each Member; and
  - (2) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
    - (A) payment of debts and liabilities of the Company (in relation to a person who has ceased to be a Member, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
    - (B) adjustment of the rights of the contributories amongst themselves, such amount as may be required;not exceeding \$2.00.
- (b) 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 organisation which:
  - (1) has objects which are similar to the Objects;
  - (2) has a constitution which requires its income and property to be applied in promotion of 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 5.1(b); and
  - (4) is endorsed as DGR.
- (c) In the event of the Company being wound up, any surplus assets remaining after the payment of the Company's liabilities shall be transferred to another organisation in Australia which has DGR status.
- (d) The identity of the organisation is to be determined by the Members at or before the time of dissolution and, failing such determination being made, by application to the Supreme Court of Queensland for determination.

### 15.2 Revocation of DGR Endorsement

In the event that the Company 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 Queensland for determination.

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## 16 Indemnity

### 16.1 Indemnity

- (a) To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against all costs, expenses and

liabilities incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment). However, no such officer shall be indemnified out of the funds of the Company under this clause 16.1(a) unless:

- (1) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
  - (2) it is in respect of a liability for costs and expenses incurred:
    - (A) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the officer (or former officer) or in which the officer (or former officer) is acquitted; or
    - (B) in connection with an application, in relation to such proceedings, in which the court grants relief to the officer (or former officer) under the Corporations Act.
- (b) Each Member will indemnify and keep indemnified to the fullest extent permitted by law and hold harmless each other Member and each of its directors, employees and agents from all claims, demands, actions, suits, proceedings, judgments, fines, penalties, harm, loss (including consequential loss), damage, charges, costs or expenses of any nature in connection with and arising out of any breach of this Constitution by that Member. This indemnity survives the winding up of the Company or the cessation of that Member as a Member of this Company.

## **16.2 Payment of Indemnity Policy Premium**

- (a) To the extent permitted by law the Company may at the discretion of the Directors enter into and/or pay a premium in respect of a policy of insurance insuring an officer (or former officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
  - (1) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
  - (2) a contravention of sections 182 or 183 of the Corporations Act (to the extent they apply to the Company).
- (b) The Directors shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an officer (or former officer) 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 officer under clause 16.1(a) except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

## **16.3 Indemnity to Continue**

The indemnity granted by the Company contained in clause 16.1(a) 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.

