



AUSTRALIAN PATIENT ADVOCACY ALLIANCE

**CONSTITUTION
of
Australian Patient Advocacy
Alliance**

Australian Company Number (ACN) 650 360 946
Australian Business Number (ABN) 91 650 360 946

A company limited by guarantee

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Table of contents

Preliminary

- 1 Name of the company
- 2 Type of company
- 3 Limited liability of voting members
- 4 The guarantee
- 5 Definitions

Charitable purposes and powers

- 6 Object
- 7 Powers
- 8 Not-for-profit
- 9 Amending the constitution

Voting members

- 10 Membership and register of voting members
- 11 Who can be a voting member
- 12 How to apply to become a voting member
- 13 Directors decide whether to approve voting membership
- 14 When an entity becomes a voting member
- 15 When an entity stops being a voting member

Dispute resolution and disciplinary procedures

- 16 Dispute resolution
- 17 Disciplining voting members

General meetings of voting members

- 18 General meetings called by directors
- 19 General meetings called by voting members
- 20 Annual general meeting
- 21 Notice of general meetings
- 22 Quorum at general meetings
- 23 Auditor's right to attend meetings
- 24 Representatives of voting members
- 25 Using technology to hold meetings

- 26 Chairperson for general meetings
- 27 Role of the chairperson
- 28 Adjournment of meetings

Voting members' resolutions and statements

- 29 Voting members' resolutions and statements
- 30 Company must give notice of proposed resolution or distribute statement
- 31 Circular resolutions of voting members

Voting at general meetings

- 32 How many votes a voting member has
- 33 Challenge to voting member's right to vote
- 34 How voting is carried out
- 35 When and how a vote in writing must be held
- 36 Appointment of proxy
- 37 Voting by proxy

Directors

- 38 Number of directors
- 39 Election and appointment of directors
- 40 Election of chairperson
- 41 Term of office
- 42 When a director stops being a director

Powers of directors

- 43 Powers of directors
- 44 Delegation of directors' powers
- 45 Payments to directors
- 46 Execution of Documents

Duties of directors

- 47 Duties of directors
- 48 Conflicts of interest

Directors' meetings

- 49 When the directors meet

- 50 Calling directors' meetings
- 51 Chairperson for directors meetings
- 52 Quorum at directors' meetings
- 53 Using technology to hold directors' meetings
- 54 Passing directors' resolutions
- 55 Circular resolutions of directors

Secretary

- 56 Appointment and role of secretary

Minutes and records

- 57 Minutes and records
- 58 Financial and related records

By-laws

- 59 By-laws

Notice

- 60 What is notice
- 61 Notice to the company
- 62 Notice to voting members
- 63 When notice is taken to be given

Financial year

- 64 Company's financial year

Indemnity, insurance and access

- 65 Indemnity
- 66 Insurance
- 67 Directors' access to documents

Winding up

- 68 Surplus assets not to be distributed to voting members
- 69 Distribution of surplus assets

Definitions and interpretation

- 70 Definitions
- 71 Reading this constitution with the Corporations Act
- 72 Interpretation

Preliminary

1. Name of the company

The name of the **company** is
Australian Patient Advocacy Alliance Ltd (the **company**).

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 voting members

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

4. The guarantee

Each voting member must contribute an amount not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the voting member is a voting member, or within 12 months after they stop being a voting member, and this contribution is required to pay for the:

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

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 70 and 72.

Charitable purposes and powers

6. Object

The **company's** object is to pursue the following charitable purpose:

The Australian Patient Advocacy Alliance is established to be a charity with the purpose of advancing health in Australia, by:

- Working with key stakeholders including, but not limited to, all levels of government, community patient organisations and corporate entities to ensure that the interests of people living with complex and chronic disease are represented throughout the policy and public decision-making process, and
- Providing a forum for patient advocacy organisations engaged in health to discuss best practice, inform advocacy work of the company and enhance the future of the health sector.

7. Powers

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

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

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its voting members, except as provided in clauses 8.2 and 69.

- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a voting member, or their representative, for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
 - (b) making a payment to a voting member in carrying out the **company's** charitable purpose(s).

9. Amending the constitution

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

Voting Members

10. Voting Membership and register of voting members

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

11. Who can be a voting member

- 11.1 An entity that supports the purposes of the **company** is eligible to apply to be a voting member of the **company** under clause 12. This will ordinarily be a nationally focused consumer health not for profit entity with an interest in advocacy and/or support of people living with a complex or chronic health condition.

12. How to apply to become a voting member

An entity (as defined in clause 11) may apply to become a voting member of the **company** by writing to the secretary stating that they:

- (a) want to become a voting member
- (b) support the purpose(s) of the **company**, and
- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for voting membership within a reasonable time after the secretary receives the application.
- 13.2 If the directors approve an application, the secretary must as soon as possible:
 - (a) enter the new voting member on the register of voting members, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary 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.
- 13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a voting member, the applicant agrees to those three matters.

14. When an entity becomes a voting member

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

15. When an entity stops being a voting member

An entity immediately stops being a voting member if they:

- (a) are wound up or otherwise dissolved or deregistered (for an incorporated voting member); or
- (b) resign, by writing to the secretary; or
- (c) are expelled under clause 17, or
- (d) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a voting member.

Dispute resolution and disciplinary procedures

16. Dispute resolution

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a voting member or director and:
 - (a) one or more voting members
 - (b) one or more directors, or
 - (c) the **company**.
- 16.2 A voting member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, 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.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between voting members, a person chosen by the directors, or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 16.6 A mediator chosen by the directors under clause 16.5(b)(i):
- (a) may be a representative of a voting member or former voting member of the **company**
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 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.
- 17. Disciplining voting members**
- 17.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a voting member from the **company** if the directors consider that:
- (a) the voting member has breached this constitution, or
 - (b) the voting member's behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the voting member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the voting member
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the voting member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the voting member may provide an explanation to the directors, and details of how to do so.
- 17.3 Before the directors pass any resolution under clause 17.1, the voting 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.
- 17.4 After considering any explanation under clause 17.3, the directors may:
- (a) take no further action
 - (b) warn the voting member
 - (c) suspend the voting member's rights as a voting member for a period of no more than 12 months

- (d) expel the voting 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**.
- 17.5 The directors cannot fine a voting member.
- 17.6 The secretary must give written notice to the voting member of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the voting member as a result of any decision made in good faith under this clause.

General meetings of voting members

18. General meetings called by directors

- 18.1 The directors may call a **general meeting**.
- 18.2 If 3 or more voting members make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the voting members' request, give all voting members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the voting members' request.
- 18.3 The voting members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **company**.
- 18.4 Separate copies of a document setting out the request may be signed by voting members if the wording of the request is the same in each copy.

19. General meetings called by voting members

- 19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.2, a majority (more than 50%) of the voting members who made the request may call and arrange to hold a **general meeting**.
- 19.2 To call and hold a meeting under clause 19.1 the voting members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of voting members on the **company's** voting member register, which the **company** must provide to the voting members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 19.3 The **company** must pay the voting members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

20. Annual general meeting

- 20.1 A **general meeting**, called the **annual general meeting**, must 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.

- 20.2 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.
- 20.3 Before or at the **annual general meeting**, the directors must give information to the voting members on the **company's** activities and finances during the period since the last **annual general meeting**.
- 20.4 The chairperson of the **annual general meeting** must give voting members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

21. Notice of general meetings, including annual general meetings

- 21.1 Notice of a **general meeting** must be given to:
- (a) each voting member entitled to vote at the meeting
 - (b) each director, and
 - (c) the auditor (if any).
- 21.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the voting members entitled to attend and vote at the annual **general meeting** agree beforehand, or
 - (b) for any other **general meeting**, voting members with at least 80% of the votes that may be cast at the meeting agree beforehand.
- 21.4 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.
- 21.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - (d) a statement that voting members have the right to appoint proxies and that, if a voting member appoints a proxy:
 - i. the proxy does not need to be a voting member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 21.6 If a **general meeting** is adjourned (put off) for one month or more, the voting members must be given new notice of the resumed meeting.

22. Quorum at general meetings

- 22.1 For a **general meeting** to be held, at least 3 of the voting 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 voting member).
- 22.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 22.3 If there is no quorum present within 30 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 chairperson specifies. If the chairperson 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.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

23. Auditor's right to attend meetings

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

24. Representatives of voting members

- 24.1 An incorporated voting member may appoint as a representative:
- (a) one individual to represent the voting member at meetings and to sign circular resolutions under clause 31, and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 24.2 The appointment of a representative by a voting member must:
- (a) be in writing
 - (b) include the name of the representative
 - (c) be signed on behalf of the voting member, and
 - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a voting member relevant to the purposes of the appointment as a representative.
- 24.4 The appointment may be standing (ongoing).

25. Using technology to hold general meetings

- 25.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the voting members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

26. Chairperson for general meetings

- 26.1 The **elected chairperson** is entitled to chair **general meetings**.

- 26.2 The voting members present and entitled to vote at a **general meeting** may choose a director or voting member to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**, or
 - (b) the **elected chairperson** is not present within 15 minutes after the starting time set for the meeting, or
 - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

27. Role of the chairperson

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

28. Adjournment of meetings

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

Voting members' resolutions and statements

29. Voting members' resolutions and statements

- 29.1 Voting members with at least 30% 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** (voting members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all of its voting members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (voting members' statement).
- 29.2 A notice of a voting members' resolution must set out the wording of the proposed resolution and be signed by the voting members proposing the resolution.
- 29.3 A request to distribute a voting members' statement must set out the statement to be distributed and be signed by the voting members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by voting members if the wording is the same in each copy.
- 29.5 The percentage of votes that voting members have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 29.6 If the **company** has been given notice of a voting members' resolution under clause 29.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 29.7 This clause does not limit any other right that a voting member has to propose a resolution at a **general meeting**.

30. Company must give notice of proposed resolution or distribute statement

- 30.1 If the **company** has been given a notice or request under clause 29:

- (a) in time to send the notice of proposed voting members' resolution or a copy of the voting members' statement to voting members with a notice of meeting, it must do so at the **company's** cost, or
 - (b) too late to send the notice of proposed voting members' resolution or a copy of the voting members' statement to voting members with a notice of meeting, then the voting members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving voting members notice of the proposed voting members' resolution or a copy of the voting members' statement. However, at a **general meeting**, the voting members may pass a resolution that the **company** will pay these expenses.
- 30.2 The **company** does not need to send the notice of proposed voting members' resolution or a copy of the voting members' statement to voting members if:
- (a) it is more than 1000 words long
 - (b) the directors consider it may be defamatory
 - (c) clause 30.1(b) applies, and the voting members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed voting members' resolution or a copy of the voting members' statement to voting members, or
 - (d) in the case of a proposed voting members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the voting members.

31. Circular resolutions of voting members

- 31.1 Subject to clause 31.3, the directors may put a resolution to the voting members to pass a resolution without a **general meeting** being held (a circular resolution).
- 31.2 Where applicable, the directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to voting members, and set out the wording of the resolution.
- 31.3 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.
- 31.4 A circular resolution is passed if all the voting members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.
- 31.5 Voting members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 The **company** may send a circular resolution by email to voting members and voting members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

32. How many votes a voting member has

Each voting member has one vote.

33. Challenge to voting member's right to vote

- 33.1 A voting member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

34. How voting is carried out

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

35. When and how a vote in writing must be held

- 35.1 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 three **voting members present**
 - (b) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
- (a) for the election of a chairperson under clause 26.2, or
 - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

36. Appointment of proxy

- 36.1 A voting member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy does not need to be a voting member.
- 36.3 A proxy appointed to attend and vote for a voting member has the same rights as the voting member to:
- (a) speak at the meeting
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the voting member appointing the proxy and must contain:
- (a) the voting member's name and address

- (b) the **company's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 21.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a voting member at a meeting while the voting member is at the meeting.
- 36.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing voting member:
- (a) revokes the proxy's appointment, or
 - (b) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

37. Voting by proxy

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a voting member appointed as a proxy from voting as a voting member on a show of hands).
- 37.2 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 voting member or holds more than one proxy, may cast the votes held in different ways.

Directors

38. Constitution of the Board

- a) The Company may from time to time by resolution passed at a General Meeting increase or reduce the number of Directors.
- b) The Board shall consist of the following persons:
 - i. Ordinary Directors: a minimum of two (2) and maximum of five (5) persons appointed by the Voting members in accordance with clause 39.2, such persons being 'Ordinary Directors'; and
 - ii. Special Skills Directors: a minimum of one (1) and maximum of two (2) persons appointed by the Board in accordance with clause 39.3, such persons being 'Special Skills Directors'
- c) The continuing Directors may act notwithstanding any vacancy in the Board, but if and for so long as 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 Meeting, but for no other purpose.

39. Election and appointment of directors

- 39.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.
- 39.2 Ordinary Directors
- (a) Apart from the initial directors and directors appointed under clause 39.3, the voting members may elect an Ordinary Director by a resolution passed in a **general meeting**.
 - (b) Each of the Ordinary Directors must be appointed by a separate resolution, unless:
 - i. the voting members present have first passed a resolution that the appointments may be voted on together, and
 - ii. no votes were cast against that resolution.
 - (c) A person is eligible for election as an Ordinary Director of the **company** if they fulfill the following four requirements:
 - i. are a representative of a voting member of the **company** (appointed under clause 24)
 - ii. are self-nominated or nominated by two representatives of voting members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),
 - iii. give the **company** their signed consent to act as a director of the **company**, and
 - iv. are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
 - (d) The directors may appoint a person as an Ordinary Director to fill a casual vacancy or as an additional director if that person:
 - i. is a representative of a voting member of the **company** (appointed under clause 24)
 - ii. gives the **company** their signed consent to act as a director of the **company**, and
 - iii. is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 39.3 Special Skills Directors
- (a) Special Skills Directors shall be appointed by the Board from time to time.
 - (b) A Special Skills Director shall be appointed for a term of two (2) years and on expiration of their term shall be eligible for re-appointment provided that no person may serve more than four (4) years in total as a Director.
- 39.4 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.

40. Election of chairperson

The directors must elect one director as the **company's chairperson** and may, at its discretion, elect a further director as the **company's co-chair**.

41. Term of office

- 41.1 At each annual **general meeting**:
- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and
 - (b) any directors who have reached the end of their elected term must retire.
- 41.2 Other than a director appointed under clause 39.2 (d), a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 41.3 Each director must retire at least once every two years.
- 41.4 A director who retires under clause 41.1 may nominate for election or re-election, subject to clause 41.5.
- 41.5 A director who has held office for a continuous period of four years or more may only be re-appointed or re-elected by a **special resolution**

42. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**; or
- (b) die; or
- (c) are removed as a director by a resolution of the voting members; or
- (d) are a representative of a voting member, and that voting member stops being a voting member; or
- (e) are a representative of a voting member, and the voting member notifies the **company** that the representative is no longer a representative; or
- (f) are absent for two (2) consecutive directors' meetings or a span of 6 months, whichever is greater, without explanation or approval from the directors, or
- (g) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

43. Powers of directors

- 43.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 43.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by voting members.
- 43.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 44, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 43.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a voting members' resolution at a **general meeting**.

44. Delegation of directors' powers

- 44.1 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.
- 44.2 The delegation must be recorded in the **company's** minute book.

45. Payments to directors

- 45.1 The **company** must not pay fees to a director for acting as a director.
- 45.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 45.3 Any payment made under clause 45.2 must be approved by the directors.
- 45.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

46. 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

47. Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48
- (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.

48. Conflicts of interest

- 48.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of 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 voting members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 48.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 48.3 Each director who has a material personal 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 clauses 48.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 48.4 A director may still be present and vote if:
- (a) their interest arises because they are a representative of a voting member of the **company**, and the other members have the same interest
 - (b) their 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 66)
 - (c) their interest relates to a payment by the **company** under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - (e) the directors who do not have a material 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.

Directors' meetings

49. When the directors meet

The directors may decide how often, where and when they meet. This will ordinarily be a minimum of four (4) meetings per year usually conducted by videoconference.

50. Calling directors' meetings

- 50.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 50.2 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.

51. Chairperson for directors' meetings

- 51.1 The **elected chairperson** is entitled to chair directors' meetings.
- 51.2 The directors at a directors' meeting may choose a director, ordinarily the co-chairperson (if any), to be the chairperson for that meeting if the **elected chairperson** 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 chairperson of the meeting.

52. Quorum at directors' meetings

- 52.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 52.2 A quorum must be present for the whole directors' meeting.

53. Using technology to hold directors' meetings

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

54. 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.

55. Circular resolutions of directors

- 55.1 The directors may pass a circular resolution without a directors' meeting being held.
- 55.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.
- 55.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 55.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.

Secretary

56. Appointment and role of secretary

- 56.1 The **company** must have at least one secretary, who will ordinarily be the Executive Officer but may also be a director.
- 56.2 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.
- 56.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 56.4 The role of the secretary includes:
 - (a) maintaining a register of the **company's** voting members, and

- (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

57. Minutes and records

- 57.1 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 voting members
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a voting members' statement distributed to voting members under clause 30.
- 57.2 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) minutes of circular resolutions of directors.
- 57.3 To allow voting members to inspect the **company's** records:
 - (a) the **company** must give a voting member access to the records set out in clause 57.1, and
 - (b) the directors may authorise a voting member to inspect other records of the **company**, including records referred to in clause 57.2 and clause 58.1.
- 57.4 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 chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 57.5 The directors must ensure that minutes of the passing of a circular resolution (of voting members or directors) are signed by a director within a reasonable time after the resolution is passed.

58. Financial and related records

- 58.1 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.
- 58.2 The **company** must also keep written records that correctly record its operations.
- 58.3 The **company** must retain its records for at least 7 years.
- 58.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

59. By-laws

- 59.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 59.2 Voting members and directors must comply with by-laws as if they were part of this constitution.

Notice

60. What is notice

- 60.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 60.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 36.6.

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

62. Notice to voting members

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

63. 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, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 62.1(e) is taken to be given on the business day after the notification that the notice is sent.

Financial year

64. 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

65. Indemnity

- 65.1 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**.
- 65.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 65.3 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).
- 65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

66. 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**.

67. Directors' access to documents

- 67.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 67.2 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.

Winding up

68. Surplus assets not to be distributed to voting members

If the **company** is wound up, any **surplus assets** must not be distributed to a voting member or a former voting member of the **company**, unless that voting member or former voting member is a charity described in clause 69.1.

69. Distribution of surplus assets

- 69.1 Subject to the **Corporations Act** and any other applicable Act, 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 purpose(s) in clause 6, and
 - (b) which also prohibit the distribution of any **surplus assets** to its voting members to at least the same extent as the **company**.
- 69.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of voting members at or before the time of winding up. If the voting members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

Definitions and interpretation

70. Definitions

In this constitution:

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

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

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

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 40

general meeting means a meeting of voting members and includes the annual **general meeting**, under clause 20.1

initial voting member means a person, or entity, named in the application for registration of the **company**, with their consent, as a proposed voting member of the **company**

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

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

special resolution means a resolution:

- i. of which notice has been given under clause 21.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **voting members present** and entitled to vote on the resolution, and

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.

71. Reading this constitution with the Corporations Act

- 71.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 71.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 71.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 71.4 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.

72. 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).