



# Constitution of Advocacy Law Alliance Ltd

*ACN 670 040 712*

*ABN 93 984 383 421*

*A company limited by guarantee 1 July 2024*

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# Constitution of Advocacy Law Alliance

Date [1 July 2024]

## **Preliminary**

### 1 Name of the Company

The name of the company is Advocacy Law Alliance Ltd.

### 2 Type of Company

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

### 3 Limited liability of members

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

### 4 The guarantee

Each member must contribute an amount not more than \$2 to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for any:

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

### 5 Definitions

In this constitution, words and phrases have the meaning set out in clauses 78 and 80.

## **Charitable purposes and powers**

### 6 Object

6.1 The Company's primary object is to provide relief from disadvantage, discrimination, distress and suffering for people with disability and other disadvantaged people by providing independent social and legal advocacy to directly assist them to access the same rights and benefits reasonably expected by other citizens.

6.2 The Company may do anything incidental or necessary to fulfil the Company's primary object in clause 6.1.

### 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 members, except as provided in clauses 8.2 and 72.
- 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 member 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 member in carrying out the Company's charitable purpose(s).

## 9 Amending the constitution

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a Special Resolution.
- 9.2 The members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

## Members

### 10 Membership and register of members

- 10.1 The members of the Company are:
- (a) Initial Members; and
  - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 10.2 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
    - (i) name;
    - (ii) address;
    - (iii) any electronic address;
    - (iv) any alternative address (including an electronic address) nominated by the member for the service of notices; and
    - (v) the date the member was entered on to the register.
  - (b) for each person who stopped being a member in the last seven years:
    - (i) name;
    - (ii) address;
    - (iii) any electronic address;
    - (iv) any alternative address (including an electronic address) nominated by the member for the service of notices; and

(v) the dates the membership started and ended.

- 10.3 The register of members must be kept at the main premises of the Company or if the Company has no premises, at the Company's registered address.
- 10.4 The Company must give current members access to the register of members.
- 10.5 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

## 11 Who can be a member

- 11.1 A person who supports the purposes of the Company is eligible to apply to be a member of the Company under clause 12.
- 11.2 In this clause, "person" means an individual or incorporated body.

## 12 How to apply to become a member

- 12.1 A person (as defined in clause 11.2) may apply to become a member of the Company by writing to the secretary in a form determined by the directors stating that they:
- (a) want to become a member;
  - (b) agree to comply with the Company's constitution, including paying the guarantee under clause 4 if required; and
  - (c) support the purpose(s) of the Company.
- 12.2 An application for membership must be supported by a current member of the Company.

## 13 Directors decide whether to approve membership

- 13.1 The directors must consider an application for 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 member on the register of members;
  - (b) write to the nominee to tell them that their application was approved, and the date that their membership started (see clause 14); and
  - (c) request the applicant to pay (within the period of 28 days after receipt by the nominee of the notification) membership fees payable under this constitution (if any).
- 13.3 If the directors reject an application for membership, 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 for membership even if the applicant does not state the matters listed in clauses 12.1(a), 12.1(b) or 12.1(c). In that case, by applying to be a member, the nominee agrees to those three matters.



## 14 Membership fees

- 14.1 The directors may determine from time to time:
- (a) the application fee (if any) payable by an applicant for membership;
  - (b) the amount of the annual subscription fee (if any) payable by each member; and
  - (c) the payment method and due date for payment of each amount payable by a member.
- 14.2 Each member must pay to the Company the amounts determined under this clause in accordance with clause 14.1(c) above.

## 15 When a person becomes a member

Other than Initial Members, an applicant will become a member when they are entered on the register of members.

## 16 Renewal of membership

- 16.1 From the date of registration of the Company, all membership of the Company will be renewable annually on a date to be determined by the directors.
- 16.2 At the end of each annual period, the Company shall issue a membership renewal form to each current member at an address contained on the register of members. Each member may indicate their intention to remain a member of the Company.
- 16.3 The renewal process may vary from time to time in accordance with the process prescribed by the directors.

## 17 When a person stops being a member

A person immediately stops being a member if they:

- (a) die;
- (b) are wound up or otherwise dissolved or deregistered (in the case of an incorporated member);
- (c) resign, by writing to the secretary;
- (d) have not paid their application fee or annual subscription fee within three months of being requested to do so (if applicable);
- (e) are expelled under clause 21; or
- (f) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member or renew their membership.

## 18 Membership entitlements not transferrable

- 18.1 A right, privilege or obligation which a person has by reason of being a member of the Company:
- (a) is not capable of being transferred or transmitted to another person, and
  - (b) terminates on cessation of the person's membership.

## 19 Representatives of members that are incorporated bodies

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

## Dispute resolution and disciplinary procedures

### 20 Dispute resolution

- 20.1 The dispute resolution procedure in this clause applies to disputes under this constitution between a member or director and:
- (a) one or more members;
  - (b) one or more directors; or
  - (c) the Company.
- 20.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 21 until the disciplinary procedure is completed.
- 20.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 20.4 If those involved in the dispute do not resolve it under clause 20.3, 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.
- 20.5 The mediator must be chosen:
- (a) by agreement of those involved; or
  - (b) by the following, where those involved do not agree:
    - (i) for disputes between members, the directors; or
    - (ii) for all other disputes, either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.

- 20.6 A mediator chosen by the directors under clause 20.5(b)(i):
- (a) may be a member or former member of the Company;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 20.7 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.

## 21 Disciplining members

- 21.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:
- (a) the member has breached this constitution; or
  - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 21.2 At least 14 days before the directors' meeting at which a resolution under clause 21.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member;
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
  - (c) what the member is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and
  - (e) that the member may provide an explanation to the directors, and details of how to do so, noting that such explanation shall be provided to the directors at least 72 hours prior to that directors' meeting.
- 21.3 Before the directors pass any resolution under clause 21.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the secretary a written explanation before that directors' meeting; and/or
  - (b) speaking at the meeting.
- 21.4 After considering any explanation under clause 21.3, the directors may:
- (a) take no further action;
  - (b) warn the member;
  - (c) suspend the member's rights as a member for a period of no more than 12 months;

- (d) expel the member;
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
  - (f) require the matter to be determined at a General Meeting.
- 21.5 The directors cannot fine a member.
- 21.6 The secretary must give written notice to the member of the decision under clause 21.4 as soon as possible.
- 21.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 21.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **General Meetings of members**

### **22 General meetings called by directors**

- 22.1 The directors may call a General Meeting.
- 22.2 If members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a General Meeting; and
  - (b) hold the General Meeting within two months of the members' request.
- 22.3 The percentage of votes that members have (in clause 22.2) is to be calculated as at midnight before the members request the meeting.
- 22.4 The members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the Company.
- 22.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### **23 General meetings called by members**

- 23.1 If the directors do not call the meeting within 21 days of being requested under clause 22.2, 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- 23.2 To call and hold a meeting under clause 23.1 the members must:
- (a) as far as possible, follow the procedures for General Meetings set out in this constitution;

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

## 24 Annual General Meeting

- 24.1 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.
- 24.2 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.
- 24.3 Before or at the Annual General Meeting, the directors must give information to the members on the Company's activities and finances during the period since the last Annual General Meeting.
- 24.4 The chairperson of the Annual General Meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

## 25 Notice of General Meetings

- 25.1 Notice of a General Meeting must be given to:
  - (a) each member entitled to vote at the meeting;
  - (b) each director; and
  - (c) the auditor (if any).
- 25.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 25.3 Subject to clause 25.4, notice of a meeting may be provided less than 21 days before the meeting if:
  - (a) for an Annual General Meeting, all the members entitled to attend and vote at the Annual General Meeting agree beforehand; or

- (b) for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 25.4 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.
- 25.5 Notice of a General Meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) the general nature of the meeting's business;
  - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - (i) the proxy does not need to be a member of the Company;
    - (ii) the proxy form must be delivered to the Company at its registered address or an alternative address (including an electronic address), which must be specified in the statement; and
    - (iii) the proxy form must be delivered to the Company at least 24 hours before the meeting.
- 25.6 If a General Meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

## 26 Quorum at General Meetings

- 26.1 For a General Meeting to be held, at least five members (a **quorum**) must be present (in person or by proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy of more than one member).
- 26.2 No business may be conducted at a General Meeting if a quorum is not present.
- 26.3 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.
- 26.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 27 Auditor's right to attend meetings

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

## 28 Using technology to hold meetings

- 28.1 The Company may hold a General Meeting:
- (a) at one or more physical venues; or
  - (b) at one or more physical venues and using Virtual Meeting Technology; or
  - (c) using Virtual Meeting Technology only.
- 28.2 A General Meeting held in accordance with a method set out in clause 28.1 must comply with any requirements set out in the Corporations Act and give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting.
- 28.3 A member who attends the meeting (whether at a physical venue or by using Virtual Meeting Technology) is taken for all purposes to be present in person at the meeting while so attending.

## 29 Chairperson for General Meetings

- 29.1 The Elected Chairperson will chair General Meetings, subject to clause 29.2.
- 29.2 The Members Present and entitled to vote at a General Meeting may choose another director or member to be the chairperson for that meeting if:
- (a) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or
  - (b) the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

## 30 Role of the chairperson

- 30.1 The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 30.2 In the case of an equality of votes on a question at a general meeting, the chairperson is entitled to have a second or casting vote.

## 31 Adjournment of meetings

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

## Members' resolutions and statements

### 32 Members' resolutions and statements

- 32.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a General Meeting (**Members' Resolution**); and/or
  - (b) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (**Members' Statement**).
- 32.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 32.3 A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the members making the request.
- 32.4 Separate copies of a document setting out a notice or a request may be signed by members if the wording is the same in each copy.
- 32.5 The percentage of votes that members have (as described in clause 32.1) is to be calculated as at midnight before the request or notice is given to the Company.
- 32.6 If the Company has been given notice of a Members' Resolution under clause 32.1(a), the resolution must be considered at the next General Meeting held no more than two months after the notice is given.
- 32.7 This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

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

- 33.1 If the Company has been given a notice or request under clause 32:
- (a) in time to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, it must do so at the Company's cost; or
  - (b) too late to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, then the members that proposed the Members' Resolution or made the Members' Statement must pay the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement. However, the members may subsequently pass a resolution at a General Meeting for the Company to pay these expenses.
- 33.2 The Company does not need to send the notice of Members' Resolution or a copy of the Members' Statement to members if:
- (a) it is more than 1,000 words long;
  - (b) the directors consider it may be defamatory;



- (c) clause 33.1(b) applies, and the members that proposed the Members' Resolution or made the Members' Statement have not paid the Company enough money to cover the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement; or
- (d) in the case of a Members' Resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the members.

## 34 Circular Resolutions of members

- 34.1 Subject to clause 34.3, the directors may put a resolution to the members to pass a Circular Resolution.
- 34.2 The directors must notify the auditor (if any) as soon as possible that a Circular Resolution has or will be put to members, and set out the wording of the resolution.
- 34.3 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.
- 34.4 A Circular Resolution is passed if all the members entitled to vote on the resolution sign or agree to the Circular Resolution, in the manner set out in clause 34.5 or clause 34.6.
- 34.5 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.
- 34.6 The Company may send a Circular Resolution by email to members and members may agree by sending a reply email to that effect.

## Voting at General Meetings

### 35 How many votes a member has

Each member has one vote.

### 36 Challenge to member's right to vote

- 36.1 A member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 36.2 If a challenge is made under clause 36.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

## 37 How voting is carried out

- 37.1 Voting must be conducted and decided:
- (a) on the voices;
  - (b) by a show of hands;
  - (c) by a vote in writing; or
  - (d) by another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 37.2 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.
- 37.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 37.4 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.

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

- 38.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five Members present;
  - (b) Members Present with at least 5% of the votes that may be passed on the resolution on the vote in writing (calculated as at the midnight before the vote in writing is demanded); or
  - (c) the chairperson.
- 38.2 A vote in writing must be taken when and how the chairperson directs, unless clause 38.3 applies.
- 38.3 A vote in writing must be held immediately if it is:
- (a) for the election of a chairperson under clause 29.2; or
  - (b) to decide whether to adjourn the meeting.
- 38.4 A demand for a vote in writing may be withdrawn.

## 39 Appointment of proxy

- 39.1 A member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 39.2 A proxy does not need to be a member.
- 39.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) vote (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 38.1.

- 39.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
  - (b) the Company's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.
- 39.5 A proxy appointment may be standing.
- 39.6 Proxy forms must be received by the Company at the Company's registered address or an alternative address (as stated in the notice of General Meeting in accordance with clause 25.5(d)(ii)) at least 24 hours before a meeting.
- 39.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 39.8 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of an agent who appointed the proxy.
- 39.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## 40 Voting by proxy

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

## Directors

### 41 Number of directors

- 41.1 The Company must have at least three and no more than seven directors.

## 42 Election and appointment of directors

- 42.1 The initial directors are the people who have consented to act as directors and who are named as directors in the application for registration of the Company.
- 42.2 Apart from the initial directors and directors appointed under clause 42.5, the members are responsible for electing a director by a resolution passed in a General Meeting.
- 42.3 Each director must be appointed by a separate resolution, unless:
- (a) the Members Present have first passed a resolution that the appointments may be voted on together; and
  - (b) no votes were cast against that resolution.
- 42.4 A person is eligible for election as a director of the Company if they:
- (a) are a member of the Company;
  - (b) are nominated by two 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);
  - (c) give the Company their signed consent to act as a director of the Company; and
  - (d) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 42.5 The nomination of a person for election as a director of the Company must be delivered to the secretary of the Company at least seven days before the date fixed for the holding of the General Meeting at which the election is to take place.
- 42.6 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the Company;
  - (b) gives the Company their signed consent to act as a director of the Company; and
  - (c) is not ineligible to be a director under the Corporations Act or the ACNC Act.
- 42.7 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.
- 42.8 All acts done at any meeting of directors or by any person acting as a director will be valid as if every such person has been duly appointed and every director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or that any director was disqualified or not entitled to vote.

## 43 Election of chairperson

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

## 44 Term of office

44.1 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) at least one-third of the remaining directors must retire.

44.2 The directors who must retire at each Annual General Meeting under clause 44.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

44.3 Other than a director appointed under clause 42.5, 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.

44.4 Each director must retire at least once every three years.

44.5 A director who retires under clause 44.1 may nominate for election or re-election.

44.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by special resolution.

## 45 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;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the Company;
- (e) are absent for three consecutive directors' meetings without approval from the directors; or
- (f) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act.

## **Powers of directors**

### 46 Powers of directors

46.1 The directors are responsible for managing and directing the activities of the Company to achieve the purpose(s) set out in clause 6.

46.2 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 members.

46.3 The directors must decide on the responsible financial management of the Company including:

- (a) any suitable written delegations of power under clause 47; and

- (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

46.4 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any two directors or employees, being members or employees authorised to do so by the directors.

46.5 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a Members' Resolution at a General Meeting.

## 47 Delegation of directors' powers

47.1 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.

47.2 The delegation must be recorded in the Company's minute book.

## 48 Payments to directors

48.1 The Company must not pay fees to a director for acting as a director.

48.2 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.

48.3 Any payment made under clause 48.2 must be approved by the directors.

48.4 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

## 49 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

### 50 Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 6;

- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 51;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

## 51 Conflicts of interest

- 51.1 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 members at the next General Meeting, or at an earlier time if reasonable to do so.
- 51.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 51.3 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 clause 51.4:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 51.4 A director may still be present and vote if:
- (a) their interest arises because they are a 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 69);
  - (c) their interest relates to a payment by the Company under clause 68, or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
  - (e) the directors who do not have a 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

### 52 When the directors meet

The directors must meet at least five times in each period of 12 months at such place and time as the directors may determine.

### 53 Calling directors' meetings

53.1 A director may call a directors' meeting by giving at least 48 hours' notice before the time appointed for the holding of the meeting to all of the other directors.

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

### 54 Chairperson for directors' meetings

54.1 The Elected Chairperson will chair directors' meetings, subject to clause 54.2.

54.2 The directors at a directors' meeting may choose another director to be the chairperson for that meeting if the Elected Chairperson is:

- (a) not present within 30 minutes after the starting time set for the meeting; or
- (b) present but does not want to act as chairperson of the meeting.

### 55 Quorum at directors' meetings

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

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

### 56 Using technology to hold directors' meetings

56.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

56.2 The directors' agreement may be a standing one.

56.3 A director may only withdraw their consent within a reasonable period before a meeting.

### 57 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.

### 58 Circular Resolutions of directors

58.1 The directors may pass a Circular Resolution.

58.2 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 58.3 or clause 58.4.

58.3 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.
- 58.4 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.
- 58.5 A Circular Resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 58.3 or clause 58.4.

## **Secretary**

### **59 Appointment and role of secretary**

- 59.1 The Company must have at least one secretary, who may also be a director.
- 59.2 The secretary of the Company must, as soon as practicable after being appointed as secretary, lodge notice with the Company of his or her address.
- 59.3 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.
- 59.4 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 59.5 The role of the secretary includes (but is not limited to):
  - (a) maintaining a register of the Company's members; and
  - (b) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and Circular Resolutions.

## **Minutes and records**

### **60 Minutes and records**

- 60.1 The Company must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of General Meetings;
  - (b) minutes of Circular Resolutions of members;
  - (c) a copy of a notice of each General Meeting; and
  - (d) a copy of a Members' Statement distributed to members under clause 33.
- 60.2 The Company must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (b) Circular Resolutions of directors.
- 60.3 To allow members to inspect the Company's records:
  - (a) the Company must give a member access to the records set out in clause 60.1; and
  - (b) the directors may authorise a member to inspect other records of the Company, including records referred to in clause 60.2 and clause 61.1.

60.4 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.

60.5 The signature of the chairperson may be transmitted by electronic means for the purposes of clause 60.4.

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

## 61 Financial and related records

61.1 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.

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

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

## By-laws

### 62 By-laws

62.1 The directors may pass a resolution to make by-laws to give effect to this constitution.

62.2 Members and directors must comply with by-laws as if they were part of this constitution.

## Notice

### 63 What is notice

63.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 64 to 66, unless specified otherwise.

63.2 Clauses 64 to 66 do not apply to a proxy form under clause 39.6.

### 64 Notice to the Company

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

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

## 65 Notice to members

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

## 66 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 65.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

### 67 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

### 68 Indemnity

- 68.1 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.
- 68.2 In this clause, "officer" means a director or secretary and includes a director or secretary after they have ceased to hold that office.

- 68.3 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).
- 68.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

## 69 Insurance

- 69.1 The Company may effect and maintain insurance.
- 69.2 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.

## 70 Directors’ access to documents

- 70.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 70.2 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

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

If the Company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in clause 72.1.

### 72 Distribution of Surplus Assets

- 72.1 Subject to the Corporations Act, any other applicable legislation and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6;
  - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company; and
  - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth) or other applicable law.
- 72.2 If the Company is not a deductible gift recipient when it is wound up, the Company does not need to comply with clause 72.1(c).

- 72.3 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## **Revocation of deductible gift recipient endorsement**

### **73 Revocation of the Company's deductible gift recipient endorsement**

- 73.1 If the Company's endorsement of the Company as a deductible gift recipient is revoked (whether or not the Company is to be wound up or dissolved) any surplus of the following assets must be transferred to one or more charities that meet the requirements of clauses 72.1(a) to 72.1(c) as decided by the directors:
- (a) gifts of money or property for the principal purposes of the Company;
  - (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
  - (c) money received by the Company because of such gifts and contributions which are unspent.

## **Confidentiality**

### **74 Maintain confidentiality**

All directors and members must maintain the confidentiality of Company Information and must not disclose any Company Information to any person unless approved in writing by the chairperson, chief executive officer or by resolution of the directors.

### **75 Media authorisation and conduct**

- 75.1 No individual director of the Company or any individual member of the Company may make media comment, issue media releases, participate in media interviews, or correspond with the media on behalf of the Company without the authorisation of the directors. This clause does not apply to the chairperson or the chief executive officer.
- 75.2 Without approval, an individual director, or individual member of the Company, may not hold out his or her views to be reflective of the views of the Company.
- 75.3 The directors may issue by-laws or policies and procedures in relation to media authorisation and conduct.

## **Funds**

### **76 Source**

- 76.1 The funds of the Company are to be derived from donations, government grants and such other sources as the directors determine.
- 76.2 All money received by the Company must be deposited as soon as practicable and without deduction to the credit of the Company's bank or other authorised deposit-taking institution account.

76.3 The Company must, as soon as practicable after receiving any money, issue an appropriate receipt.

## 77 Management

77.1 Subject to any resolution passed by the Company in General Meeting, the funds of the Company are to be used in pursuance of the objects of the Company in such manner as the directors determine.

## Definitions and interpretation

### 78 Definitions

In this constitution:

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

**Annual General Meeting** means the General Meeting held annually pursuant to clause 24.1.

**Circular Resolution** means a resolution of members or directors passed without a meeting being held in the manner outlined in clause 34 (for members' resolutions) or clause 58 (for directors' resolutions).

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

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

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

**Elected Chairperson** means a person elected by the directors to be the Company's chairperson under clause 43.

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

**Initial Member** means a person who is named in the application for registration of the Company, with their consent, as a proposed member of the Company.

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

**Members' Resolution** has the meaning given to that term in clause 32.1(a).

**Members' Statement** has the meaning given to that term in clause 32.1(b).

**Special Resolution** means a resolution:

- (a) of which notice has been given under clause 25.5(c); and
- (b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution.

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

**Virtual Meeting Technology** means a form of virtual technology that is reasonable and allows Members who are entitled to attend and do attend general meetings, as a whole, to vote and to exercise orally and in writing any rights of those members to ask questions and make comments.

## 79 Reading this constitution with the Corporations Act

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

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

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

79.4 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.

## 80 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).