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# Constitution

of

**HEART SUPPORT- AUSTRALIA LTD**



A company limited by guarantee

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Prepared for Heart Support- Australia Ltd by:



*Corporate Governance Advisory and Facilitation Services*

In consultation with *On London Legal and Migration*

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# Preliminary

## Principal Purpose

Heart Support - Australia Ltd is a company limited by guarantee formed for the benefit of the public by the promotion of the stated purpose and objects of the company and through the coordination and sponsorship of activities, events, ventures and endeavours in the health and cardiac related education and psycho-social support sector in Australia in order to achieve the stated objects of Heart Support – Australia.

*NOTE: The wording which is in bold print italics at the end of certain paragraphs is explanatory only and does not form part of the Constitution. References to Sections relate to relevant provisions of the Corporations Act 2001 and the ACNC Act 2012.*

## 1. Definitions

In this Constitution:

**"the Act"** means the Corporations Act 2001 (Cth) and the other Acts and instruments referred to in that Act and as enacted and amended by the Commonwealth of Australia and the States and Territories of Australia from time to time as it applies to the Company for the time being;

*Application of the Corporations Act 2001 (Cth): In this Constitution unless the contrary intention appears an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act 2001 (Cth), the same meaning as in that provision of the Corporations Act 2001 (Cth); and "section" means a section of the Corporations Act 2001 (Cth). This Constitution shall comply with the subscribed matters specified in any relevant and applicable sections of the Corporations Act 2001 (Cth) and such matters that may be prescribed.*

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

**"ACNC Act"** means and the *Australian Charities and Not-for-profits Commission Act 2012* as enacted and amended by the Commonwealth of Australia and the States and Territories of Australia from time to time as it applies to the Company for the time being;

*Application of the ACNC Act applies if the Company is registered with the ACNC and while certain provisions of the Corporations Act apply to it, it is subject to the ACNC's governance standards.*

**"ACNC Regulation"** means and the *Australian Charities and Not-for-profits Commission Regulation 2013* as enacted and amended by the Commonwealth of Australia and the States and Territories of Australia from time to time as it applies to the Company for the time being;

*Application of the ACNC Regulation applies if the Company is registered with the ACNC and it will be subject to the ACNC's governance standards [Ref: ACNC Regulation 2013 Reg.45.25]*

**"AGM"** means the Annual General Meeting of the Company that shall be held at least once in each calendar year and within five (5) months after the end of the Company's financial year.

“ASIC” means the Australian Securities and Investment Commission.

“attendee” means a person or persons permitted, at the discretion of the Board, to attend any part of the Company’s Board meetings but with no status as a director under the meaning of such in this Constitution or the Act, and only in a non-voting capacity. Attendees permitted to attend Board meetings may speak with the consent of the Chair on agenda items to provide advice, counsel, guidance and information on matters or answer questions as requested by directors through the presiding Chair of the meeting. For the sake of legal clarity, attendees in this capacity, are recognised as having no role or authority in either making, or participating in making decisions that affect the whole, or a substantial part of the business of the Company; or are they understood to have the capacity to affect significantly the Company’s financial standing; or are they understood to be issuing directions, instructions or wishes in accordance which the directors of the Company are accustomed to act; or in any other way be deemed to be a director of the Company under the meaning of such in this Constitution or the Act. An attendee in this context includes a person or persons giving advice in the proper performance of functions attaching to their professional capacity or their business relationship with the Company.

“Attorney” is a person who exercises power under the terms of a **power of attorney** [A **power of attorney** is an authorisation to act on another person’s behalf and in their name in a legal or business matter. The person granting the power of attorney is known as the grantor and the person authorised to act is the agent or attorney-in-fact. The power granted may be very wide in scope and may include the power to sign documents on behalf of the grantor, deal with their financial affairs and property, vote in the capacity of a Member, etc. This is distinct from a proxy which commonly refers only to authorisation to vote on another’s behalf and is therefore more limited in scope than a power of attorney. For example, a Member entitled to attend and vote at a company meeting may appoint a proxy to attend and vote in their place noting that a **proxy** is also the person to whom authorisation is granted.]

“Board” means the governing body of directors of the Company in office for the time being however described or any number of directors assembled at a meeting of the Board transacting business in accordance with this *Constitution*, being not less than a quorum, and as set out in Article 58(j) of this Constitution and who may, for the internal purposes of the Company, be cited (collectively) as the “**Directors**” who shall be construed as referencing the Board unless the context requires otherwise.

“Branch” means an internal (non-corporate) “business unit” of the Company organised and existing within a specific geographical locality (within Board designated geographical boundaries of the locality) and where the Board deems there to be sufficient potential members to enable a Branch to be formed and maintained pursuant to Article 66.

“Branch Funds” means any money or other property of a Branch pursuant to Article 66(n) under the management and control of a Branch Management and which may be used in connection with any purpose pursuant to Article 66(o) that may be deemed

necessary or convenient to achieve the objects of the Company and that is aligned with the Company's overarching strategic direction priorities.

**"Branch Management Committee"** means the governing body of members of their respective Branch pursuant to Article 66(g) in office for the time being or any number of Branch Management Committee members assembled at a meeting of the Branch Management Committee transacting business in accordance with this *Constitution*.

**"Business Day"** means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered.

**"Chair"** means any person appointed to the office of Chair of the Company in accordance with Article 62 and who is to preside as Chair at each General Meeting and Board meeting of the Company pursuant to the authorities, powers and functions described in this Constitution and any policies, protocols, practices or processes determined by the Board from time to time that give effect to the authorities, powers and functions described in this Constitution.

**"Chief Executive Officer"** of the Company means the title given to any person so appointed by, and responsible to the Board as the Company's principal corporate executive to act within written Board-delegated authorities for the overall day-to-day operations of the Company; and who may for the internal purposes of the Company be cited as the "CEO" or any other title the Board may so determine from time to time; or as otherwise expressed pursuant to Article 64.

**"Committee"** means a committee constituted by and accountable to the Board pursuant to Article 55 and are governance advisory bodies for the purpose of assisting and advising the Board in areas fundamental to the Company's objects and otherwise providing the Board with recommendations relevant to select *governance* matters of the Company and consisting of one or more directors and/or other persons as the directors from time to time think fit.

**"Company"** means the *Heart Support - Australia Ltd*, being the company constituted by this document and shall be **the Company's name** for the purposes of section 148 of the Act.

**"Company Secretary"** means any person appointed in accordance with the Act and pursuant to Article 65 to the statutory office of company secretary to perform the specific duties set out on the Act and this Constitution of a company secretary and includes an assistant company secretary or any person appointed to act as the company secretary or assistant company secretary temporarily.

**"Constitution"** means this registered *Constitution* of the Company (and includes its schedules and annexure, if any), as amended from time to time pursuant to Article 69, which binds the Company and its Members to the same extent as if it were a contract between them under which they each agree to observe its provisions.

*Corporations Act 2001 s.136 "Constitution of a company"; s.140(1): "A company's constitution that applies to the company has effect as a contract between (a) the company and each member; and (b) the company and each director and company secretary; and (c) a member and each other member".*

**"corporate entity"** means an a body corporate (including incorporated associations, co-operatives, companies, chartered corporations, government-owned corporate entities or statutory corporations) and includes a "corporation" as defined in Section 57A of the Act and without limitation, any incorporated entity with the legal capacity and powers of an natural person or any government-controlled non-corporate entity that is legally and financially connected to, or part of a Commonwealth, State or Territory government 'body politic' whether by Act of Parliament or otherwise.

**"Corporate Member"** means a Corporation having objects similar to those of the Company, who may on application and pursuant to Articles 13(e) and 15 be admitted as a Corporate Member of the Company.

**"Corporate Member Representative"** means a natural person authorised, in accordance with this Constitution by a Corporate Member, to act as its representative at a General Meeting of the Company. Corporate Members are entitled to two Corporate Member Representatives (who may attend as observers, who shall not vote but may speak with the permission of the Chair of the meeting).

**"Corporations Act"** means the *Corporations Act 2001* (Cth) and the other Acts and instruments referred to in that Act and as enacted and amended by the Commonwealth of Australia and the States and Territories of Australia from time to time.

**"Corporations Regulations"** means the *Corporations Regulations 2001* (Cth).

**"Director"** means an eligible natural person pursuant to Articles 46(a) and 46(b), who is duly appointed or elected to the Board pursuant to Article 47; and who may for the internal purposes of the Company be cited (individually) as a "*member of the Board*" or a "*Board member*". For the avoidance of doubt a reference to a Director includes an Office Bearer, unless otherwise expressly stated.

*Note: An office bearer is first and foremost a director, who happens to also holds an additional delegated board position (with corresponding delegated authority) as well as their director role, e.g. the Chair. So at Article 62 & 63 - the "Office Bearers" are the Chair and the Vice-Chair but are also directors - so in the Constitution, a reference to a Director includes the Chair and the Vice-Chair (i.e. office bearers). A reference to an office bearer is to that position and that position ONLY. A reference to a director is to ALL directors (office bearers included).*

**"electronic address"** means a multi-part address typed in lower-case without any spaces separating the different parts where the first part (the user name) identifies a unique user. The '@' separates the user name from the host name which uniquely identifies the mail server. The three-letter suffix following a period (dot) identifies the kind of organization operating the mail server. Addresses outside the US use another (two-letter) suffix that identifies the country where the mail server is located.

**"electronic means"** means, in relation to the methods of giving or sending certain notices, documents produced, etc., the same as that in the Corporations Act s.600G and

includes telephone, fax, electronic mail and other forms of electronic transmission or technology consented to by all Directors.

**"Fee"** means a subscription, fee or levy referred to in Article 23(a).

**"Financial year"** means 1 July to 30 June.

**"General Meeting"** means any meeting of Members(including the AGM) duly called and held (and any adjourned holding of it) in accordance with this Constitution or as otherwise prescribed by any relevant or applicable sections of the Act at which all Members are entitled to attend and otherwise participate and vote at in accordance with this Constitution.

**"General Funds"** means any and all monies and contributions paid to the Company pursuant to Article 11 [other than money and property credited to a Gift Fund pursuant to Article 8 or Branch Funds pursuant to Article 66(n)(iii)-(vii)] and which may be used in connection with any purpose that the Board may deem necessary or convenient to achieve the objects of the Company.

**"Gift Fund"** means the bank account established, maintained and used in accordance with Articles 7-10.

**"Governance Charter"** means a Board established document pursuant to Article 53(f) that contains the Company's internal control framework of Board-determined governing policies, that give effect to the powers delegated to the Board pursuant to this Constitution and that relate to the effective and prudent internal control, administration and management of the Company that the Board deem necessary or expedient or convenient for the proper regulation of the competent business, governance, conduct and direction of the Company.

**"governing policies"** means all the Board established internal control "rules" that relate to the effective and prudent internal control, administration and management of the Company that give effect to the Constitution, the achievement of the objects of the Company and to regulate the business of the Company. Such governance policies will be those deemed necessary, expedient or convenient for the proper regulation of the competent governance, management, conduct, control and direction of the Company and shall define how those with delegated powers in the Company (Board, directors, office bearers, officers, employees, delegated persons, persons, committees and/or agents of the Company, Branch Management Committees, volunteers, etc.) are expected to act and behave in the exercise of their delegated powers and authorities, the performance of their assigned roles and functions and the discharge their obligatory duties.

**"Interested Person"** means a person approved by the Board as having interests compatible with the purpose and objects of the Company.

**"leave of absence"** means any form of leave of absence from service likely to exceed three (3) months in duration.

**"Legal Costs"** of a person means legal costs incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

**"Liability"** of a person means any liability (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an Officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a Director, Officer or employee of another body corporate.

**"Life Member"** means *a person, who in the opinion of the Board, has evidenced a sustained and active interest in the work of the Company and given outstanding proof of generous, exemplary and dedicated service to the Company* who meets the criteria for membership set out in Article 13(d)(i)(A)&(B) and who has been awarded for such membership and been determined by the Board to have met the criteria for membership of that category in accordance with Article 13(d).

**"Member"** means any person who:

- (i) meets the criteria for membership set out in Article 13; and
- (ii) has applied for membership and/or been determined by the Board to have met the criteria for membership of that category in accordance with Article 15; and
- (iii) whose name is entered in the Register as a Member of the Company.

**"not-for-profit"** means (as defined by the Australian Taxation Office) an *"...organisation which is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up. Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes and is not distributed to any of its members. The Australian Tax Office accepts an organisation as non-profit where its constituent or governing documents prevent it from distributing profits or assets for the benefit of particular people - both while it is operating and when it winds up. These documents should contain acceptable clauses showing the organisation's non-profit character. The organisation's actions must be consistent with this requirement"*.

**"Notice"** means a notice given pursuant to, or for the purposes of, this Constitution or any relevant and applicable sections of the Corporations Act.

**"Objects"** of the Company means the objects set out in Article 5 that define the *raison d'être* of the Company.

**“Office Bearers”** means directors who hold a Board appointed or delegated position (with corresponding delegated authority), pursuant to Articles 62 and 63, in addition to their director roles on the Board. **“Office Bearer”** means one of those persons.

**"Officer"** means

- (a) a director or company secretary of the Company; or
  - (b) a person:
    - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or
    - (ii) who has the capacity to affect significantly the Company’s financial standing; or
    - (iii) in accordance with whose instructions or wishes the directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the Company); or
  - (c) a receiver, or receiver and manager, of the property of the Company; or
  - (d) an administrator of the Company; or
  - (e) an administrator of a deed of company arrangement executed by the Company; or
  - (f) a liquidator of the Company; or
  - (g) a trustee or other person administering a compromise or arrangement made between the Company and someone else, as defined in the Dictionary of the Act.
- (Note: An officer does not include a patron or holder of another honorary office of the Company if the office does not give its incumbent a right to participate in the management of the Company’s affairs).

*Ref: CORPORATIONS ACT 2001 s.9 "Definition of "officer"*

**"Ordinary Member"** means a person who:

- (a) is a heart or cardiac related surgery patient or person contemplating or recovering from heart or cardiac related surgery or who suffers from medically diagnosed heart disease, heart conditions or heart defects;
  - (b) is the spouse, partner or carer of a person designated in (a) above;
- or:
- (c) if a person designated in (a) above is a child under the protection of parents, guardians or other responsible adults then those parents, guardians or other responsible adults are entitled to be ordinary members until such time as the protection ceases;

Or is an:

- (e) Interested Person;
- all of whom meet the criteria for membership set out in Article 13(c) and who have applied for membership and been determined by the Board to have met the criteria for membership of that category in accordance with Article 15.

**“Personal Representative”** means the legal personal representative, executor or administrator of the estate of a deceased person.

“**Poll**” is a form of casting votes by ballot in writing which includes votes cast on behalf of absent Members who have appointed proxies or attorneys.

“**public statement**” means an oral or written statement communicated in the public sphere, e.g. to the press, via social media or at a public event, etc. That is, any statement made otherwise than internally within the confines of the membership or company.

“**Register**” means the Register of Members required to be kept pursuant to the Corporations Act 2001 s.169 and may contain additional information related to the membership as the Board shall determine from time to time.

*Ref: Corporations Act 2001 s.169*

*(1) The register of members must contain the following information about each member:*

*(a) the member's name and address;*

*(b) the date on which the entry of the member's name in the register is made.*

“**Registered Office**” means the primary location and principal place of administration where the Company’s business is performed and where the Company’s books and records are kept, which may, for the internal purposes of the Company and this Constitution be cited as the National Office Secretariat.

“**Relevant Officer**” means a person who is, or has been, a Director or an Officer of the Company.

“**Resolution**” means a resolution where **more than 50%** of the total eligible votes cast on the resolution (i.e. those votes cast by persons eligible to vote who are present at the meeting in person or by proxy as the Constitution allows) are in favour of the resolution.

“**Resolutions and proceedings of meetings**” (in relation to minutes) means:

- *meeting validity matters* (time/place, attendance, apologies, quorum, etc.)
- *statutory item approvals* (previous minutes/correspondence/disclosures/use of seal, etc.)
- *formal decisions resolved by the required voting margin* (and may include at the valid meeting participant's discretion -*essential contextual information* that provides background to the decision, risk issues considered, etc.)
- items noted, matters delegated, reports and documents tabled, guest presentations, etc.
- (at the valid meeting participant's discretion) any relevant *summary of discussions* - options/alternatives/opportunities/risks canvassed.

“**Seal**” means the common seal of the Company (if applicable) and includes any official seal of the Company (noting that the Act allows the Company to “*make contracts and execute documents without using a seal*” in which case the Company must act in accordance with provisions in s.126 and s.127 of the Corporations Act (2001)).

“**Special Resolution**” means a resolution passed at a meeting where **75%** of the total eligible votes [pursuant to Article 14(c)(i)] cast on the resolution (i.e. those votes cast by

persons eligible to vote who are present at the meeting in person or by proxy as the Constitution allows) are in favour of the resolution, and of which notice has been given.

*Special resolutions are needed for important matters such as resolutions by members to wind up the company or change its name or provisions of its constitution. Unless at least 95% of the members agree the notice for a meeting to pass a special resolution must be given at least 21 days before the meeting and the resolution itself must be passed by at least 75% of the members who vote at that meeting.*

**"Standing Orders"** means the Board determined written code of guiding procedural devices that indicate the generally accepted practices and customs that may be used by the Chair for the orderly conduct of formal Company meetings, be they General, Board, Committee or other meetings.

**"Vice-Chair"** means any person appointed to the office of Vice-Chair of the Company in accordance with Article 63 pursuant to the authorities, powers and functions described in this Constitution and any policies, protocols, practices or processes determined by the Board from time to time that give effect to the authorities, powers and functions described in this Constitution.

## 2. Interpretation

**Headings** are for convenience only and do not affect interpretation.

Reference to an **Article** in this Constitution, refers to a section, phrase, paragraph, or segment that relates to a particular point.

Unless the context indicates a contrary intention, in this Constitution:

- (a) (amendments and statutes) all references to statutory provisions includes its delegated legislation and are construed as references to any statutory modification, consolidation, amendment, replacement or re-enactment for the time being in force;
- (b) (corresponding meaning) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) (currency) a reference to "\$" or "dollars" is a reference to Australian currency;
- (d) (exercise of a function) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty;
- (e) (from time to time) a power, an authority or a discretion reposed in a director, the directors, the Company in general meeting or a Member of the Company may be exercised at any time and from time to time;

- (f) (function) a reference to a function includes a reference to a power, authority or duty;
- (g) (gender) a word indicating a gender includes every other gender;
- (h) (inadvertent omissions of the Constitution) if some formality required by this *Constitution* is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission has directly and unfairly prejudiced any Member financially;
- (i) (inadvertent ambiguity, inconsistency or contradiction and interpretation of the Constitution) in any matter relating to the Company on which this *Constitution* is silent, ambiguous, vague, inconsistent or contradictory, the Board shall, pursuant to Article 53(h) and consistent with and in pursuance of this *Constitution*, have authority to interpret, in good faith and in the exercise of reasonable discretion and having regard to the best interests of the Company, the meaning of this *Constitution*. The decision of the Board is final and binding on all Members subject to any amendment of the Constitution made pursuant to Article 69;
- (j) (meaning not limited) a reference to the words "include", "including", "for example" or "such as", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) (person) words importing person includes a reference to:
- a natural person (i.e. an individual, aka a human being) and
  - an "artificial" person means an a body corporate (including incorporated associations, co-operatives, companies, chartered corporations and government-owned corporate entities or statutory corporations whether by Act of Parliament or otherwise) and includes a "corporation" as defined in Section 57A of the Act and without limitation, any incorporated entity with the legal capacity and powers of a natural person;
- (l) (regulations) a reference to a statute, ordinance, code or other law includes regulations and instruments made under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (m) (sending) references to the sending of a document includes the sending of that document via electronic means, including, but not limited to, electronic mail;
- (n) (signed) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied or authenticated by any other manner permitted by any relevant and applicable sections of the Corporations Act or any other law and in relation to an electronic communication of the document in any manner permitted by law or by any State or

Commonwealth law relating to electronic transmissions or in any other manner approved by the directors;

- (o) (singular includes plural) a word importing the singular includes the plural (and vice versa);
- (p) (writing) "in writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;

### **3. Application of Corporations Act and ACNC Act**

- (a) Unless the context indicates a contrary intention and except for the definitions and interpretations in the preceding Article, in this Constitution:
  - (i) a reference to the Corporations Act or ACNC Act is to any relevant and applicable sections of the Corporations Act or ACNC Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
  - (ii) a word, expression or phrase given a meaning in any relevant and applicable sections of the Corporations Act or ACNC Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act or ACNC Act, unless that word or phrase is otherwise defined in this Constitution.

*This means the words used in this Constitution shall, unless the contrary intention appears, have the same meaning as they have in the Law.*

### **Replaceable Rules Inapplicable**

- (b) The replaceable rules in the Corporations Act now and hereafter contained in the Corporations Act do not apply to the Heart Support – Australia Ltd unless repeated in this Constitution or specifically made applicable to the Heart Support - Australia by a provision of this Constitution noting that the operation of each of the sub-sections of any relevant and applicable sections of the Corporations Act which are defined as replaceable rules are displaced by this Constitution and do not apply to the Company.

### **4. Enforcement**

- (a) Each Member submits to the non-exclusive jurisdiction of the courts of Australian Capital Territory, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.

- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that does not affect or impair:
- (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.
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## Objects and Powers

### 5. Objects and Powers of the Company

- (a) The **OBJECTS** of the Company are to:
- (i) minimise the psycho-social impact of heart related diagnosis for surgery patients or persons contemplating or recovering from heart related surgery or those who suffer from medically diagnosed heart disease, conditions or defects so they (and their carers and/or families) can be involved with the self-management of their health to deliver quality of life and achieve their maximum potential and reduce the incidence of secondary heart events;
  - (ii) **pursue a range of activities, programs and means** through which to achieve its objects which naturally may need to change as circumstances change. These outputs include (but are not necessarily limited to):
    - providing support, information, education and encouragement
    - disseminating information, studies and education
    - publishing works and providing ancillary services
    - assisting with the provision of local and national rehabilitation programs
    - supporting constructive programs
    - participate in surveys, scientific studies and research
    - making available funds
    - making representations
    - supporting and promoting of such activities as lectures, discussion groups, recreational and group activities, advisory services, competitions, collections, publications and other related activities

that may be considered desirable for the promotion of, or deemed necessary or convenient for the purpose of and with a view to carrying out and furthering the objects of the Company;

- (iii) maintain a **Public Benevolent Institution** which will be a non-profit entity organised for the direct relief of suffering among heart or cardiac related surgery patients or persons contemplating or recovering from heart or cardiac related

surgery or who suffer from medically diagnosed heart disease, heart conditions or heart defects which the Company serves and that, as a not-for-profit entity, all its funds and revenue are directed at achieving the objects of the Company.

**BUT AT ALL TIMES** recognising that the Company may be constrained to pursue only some of those objects and outputs to exclusion of others from time to time or pursue some objects and outputs with differing priorities.

(b) The **POWERS** of the Company are:

In addition to the **powers** conferred on the Company by any relevant or applicable sections of the Act or Regulations, this Constitution and consistent with the assigned authorities in Article 53, the Company has all such powers as are necessary or convenient to carry out its objects and, in particular, shall have the following powers solely for and consistent with the purpose of carrying out and the furtherance of the aforesaid objects and not otherwise to:

- (i) **Employ, appoint and/or engage** and at its discretion **remove, dismiss or suspend** any employees, officers, staff, servants, agents, contractors, and tradespersons or professional **persons**;
- (ii) Determine **wages, salaries and gratuities** of officers, employees and other appointed contractors, agents, service providers where appropriate;
- (iii) Establish and support, or aid in the establishment and support, of services, institutions, funds, trusts, schemes and conveniences calculated to benefit employees or past employees of the Company and their dependants, and the granting of pensions, allowances or other **benefits to employees or past employees of the Company** and their dependants, and the making of payments towards insurance or superannuation in relation to any of those purposes;
- (iv) Print and publish by any technological means newsletters, periodicals, books, leaflets or other **documents**;
- (v) Receive or make **gifts, grants, devises, bequests, subscriptions or donations** from or to any person, fund, authority, organisation or institution and accept any gift whether subject to special trust or not and to act as trustee of money or other property vested in the Company on trust;
- (vi) Take any measures from time to time as the Company may deem expedient or appropriate for the purpose of facilitating **the raising of revenue and the procuring of contributions to the funds of the Company**, whether through charity fundraising or other events or by way of donations, subscriptions, grants or otherwise;

- (vii) Draw, make, accept, endorse, discount and issue cheques, draft bills of exchange, promissory notes and other **negotiable instruments**;
- (viii) Borrow or raise **money** and other funds in such manner and on such terms as the Company may think fit;
- (ix) Secure the repayment of money raised or borrowed or the payment of a **debt or liability of the Company** by giving mortgages, charges or securities upon or over all or any of the real or personal property of the Company;
- (x) **Invest** in authorised trustee investments of any monies of the Company not immediately required for any of its objects or purposes in any manner in which trustees are authorised by law to administer money held on trust;
- (xi) Enter into **contracts**;
- (xii) Establish and support or aid in the establishment or support of, any **other service** formed for any of the objects, consistent with any of the aforesaid objects of the Company;
- (xiii) Establish, maintain and manage any **building or works** and arrange for the construction maintenance and alteration of buildings or works and expend money and do any other thing necessary, convenient or advisable in relation to any building or works to achieve the objects of the Company;
- (xiv) Purchase, take on lease or in exchange and the hiring or otherwise acquiring of any **real or personal property** that may be deemed necessary or convenient to achieve the objects of the Company;
- (xv) Buy, sell and supply of and deal in, **goods or services** of any kind to achieve the objects of the Company;
- (xvi) **Do any other lawful act** as may be necessary, incidental or conducive to the achievement of the aforesaid objects of the Company **including to co-operate** with any person or organisation on matters relating to the objects of the Company;
- (xvii) Form a solely owned **incorporated entity** or participate in the formation of an incorporated entity with any other persons or bodies whose objects are similar to those of the Company;
- (xviii) Subscribe to, become a member of, form or participate in the formation of or enter into a **partnership or joint venture** with or co-operate with or amalgamate with any other persons or bodies whose objects are similar to those of the Company;

In relation to (xvii) and (xviii), *provided* that the Company shall not subscribe to or participate or support with its funds or amalgamate with any corporate entity which allows the distribution of its income and property among its individual Members as provided for this Company in Article 6 of this *Constitution*;

- (xix) establish and support, or aid in the establishment and support of such internal **units** of the Company that function as logical elements or segments of the Company representing a specific internal organisational function such as **branches** or similar associated constituent bodies including but not limited to divisions, departments, societies, colleges interest groups, panels, chapters or other practical body or by whichever other name is deemed suitable;
- (xx) undertake **exhibitions, seminars and consultative forums or similar** in Australia and overseas deemed necessary or convenient to achieve the objects of the Company;
- (xxi) prepare and make **submissions or representations** to State and Federal governmental departments and agencies deemed necessary or convenient to achieve the objects of the Company;
- (xxii) **PROVIDED ALWAYS THAT** the Company shall **not** support with its funds any object, or endeavour to impose on or procure to be observed by its Members or others any regulation or condition which being an object of the Company would **make it a trade union.**

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## Income and Property

### 6. Application of income and property

- (a) Subject to Articles 6(b) and 6(c), the Company must apply the profits (if any) or other income and property of the Company solely towards the promotion and furtherance of the objects of the Company set out in Article 5(a) and no portion of it may be paid or transferred, directly or indirectly whether by way of dividend, bonus or otherwise to any Member of the Company.
- (b) Nothing in Article 6(a) prevents **the Company making any payment to any Member** in good faith of:
  - (i) reasonable and proper remuneration for **any services actually rendered or goods supplied** to the Company in the ordinary and usual course of business of the Company;
  - (ii) the payment or reimbursement of **out-of-pocket expenses** incurred on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board;

- (iii) reasonable and proper **rent or fees** for premises leased or licensed by any Member to the Company;
  - (iv) money to any Member, being a person engaged in any business or trade profession, for all usual **professional or other charges** for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (v) **interest** at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member.
- (c) The Company must not pay fees to or on behalf of Directors except that **the Company may make payments to a Director** in good faith for:
- (i) the payment or reimbursement of **out-of-pocket expenses** reasonably incurred by a Director in the performance of any duty as a Director of the Company where that payment or reimbursement has been approved by the Board;
  - (ii) the payment of a reasonable and proper amount in compensation for **services actually rendered** by a Director in travelling to or attending Board meetings and other events for or on behalf of the Company, where the payment has been approved by the Board;
  - (iii) the payment of a reasonable and proper amount in **remuneration** for attending upon the functions and duties of a director or office bearer on reasonable commercial terms commensurate with similar not for profit entities and which remuneration has been approved by the Board and does not exceed the total amount (if any) approved by the Members in General Meeting as the remuneration payable to all directors and office bearers for undertaking such functions and duties;
  - (iv) money to any Director, being a person engaged in any business or trade profession, for all usual **professional or other charges** for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (v) any **salary or wage** due to the Company Secretary as an employee of the Company where the terms of employment have been approved by the Board;

- (vi) an **insurance premium** in respect of a contract insuring a Director or Officer for a liability incurred as an Officer of the Company where the Board has approved the payment of the premium; or
- (vii) any payment in relation to **indemnity or insurance** under Article 68(a), 68(c) or 68(d) or a payment under any agreement or deed referred to in Article 68(e).

## Gift and other Funds

### 7. Establishment of a Gift Fund

- (a) If the purposes of the Company are held on application to the Commissioner of Taxation to constitute a charitable purpose, permitting the Company to be an entity to which tax deductible gifts can be made, then the Company shall set up, establish and maintain for the purpose a separate Gift Fund:
  - (i) into which all gifts of money or property gifted for charitable purpose for the objects of the Company are to be made; and
  - (ii) into which any money received by the Company by reason of such gifts is to be credited; and
  - (iii) that does not receive any other money or property other than the property or the money gifted to the Company for charitable purpose.
- (b) For the purpose of establishing the Gift Fund, the Company must establish a separate bank account in the name of the Gift Fund.
- (c) The name of the Gift Fund is the Heart Support – Australia Gift Fund.

### 8. Money and property credited to Gift Fund

- (a) Any and all monies and contributions paid to the Company as **tax deductible gifts** (other than money and property credited to a General Funds pursuant to Article 11 or Branch Funds pursuant to Article 66(n)(iii)-(vii)) shall be under the control of the Board and shall be deposited in a Gift Fund account with an accredited bank in the name of the Company pursuant to Article 7.

For the avoidance of doubt, money or property received by the Company in respect of:

- (i) fundraising (e.g. sponsorships, raffles, charity auctions, dinners, etc.) and commercial activities pursuant to the powers in Article 5(b); or
- (ii) membership fees and levies,

must not be made or credited to the Gift Fund.

- (b) If money or property is incorrectly made or credited to the Gift Fund, the money or property must be removed from the Gift Fund as soon as practicable.

#### **9. Use and records of gifts made to Gift Fund**

- (a) The Company must use the following only in the furtherance of the Company's objects:
  - (i) gifts made to the Gift Fund; and
  - (ii) any money received because of such gifts. This includes the proceeds of sale of gifted property and investment returns (including interest and rents) from gifted money and property.
- (b) Details of the Gift Fund (including all uses referred to in Article 9(a)) must be properly recorded in records maintained by the Company.
- (c) Gifts of property to the Gift Fund must be specifically identified as gifts to the Gift Fund.
- (d) The Company may use the Gift Fund to pay for reasonable costs and expenses expressly relating to the administration of the Gift Fund.
- (e) The Company must issue a receipt to the donor of gifts to the Gift Fund. A receipt must state:
  - (i) the name of the Gift Fund, the name of the Company and the donor and the amount gifted;
  - (ii) the ABN of the Company; and
  - (iii) the fact that the receipt is for a gift.

#### **10. Winding up of Gift Fund**

- (a) At the earlier of either:
  - (i) the winding up of the Gift Fund; or
  - (ii) the revocation of the Company's endorsement as a Deductible Gift Recipient;

any surplus assets of the Gift Fund remaining after payment of liabilities attributable to it shall be transferred to a fund, authority or institution whose objects are similar to

those in Article 5(a) and to which income tax deductible gifts can be made as selected by Ordinary and Life Members by resolution in General Meeting.

- (b) If the Company is wound up, Article 78 will apply.

#### 11. Establishment of a General Funds

- (a) The Company may **establish and maintain separate funds (“General Funds”)** for any money or other property of the Company which is not eligible for inclusion in the Gift Fund. The Company shall apply the whole of the income of the General Fund in accordance with Articles 5 and 6.

- (b) The **General Fund** shall

- (i) be **controlled** by the Board;
- (ii) shall be **deposited in** a General Fund account with an accredited bank in the name of the Company;
- (iii) **consist of** any and all monies and contributions paid to the Company [other than money and property credited to a Gift Fund pursuant to Article 8 or Branch Funds pursuant to Article 66(n)(iii)-(vii)] and may include (but not be limited to):
  - A. any **real or personal property** of which the Board by the Constitution or by any established practice not inconsistent with the Constitution, has, or in the absence of any limited term lease, bailment or arrangement, would have the right of custody, control or management,
  - B. the **membership fees, levies and subscriptions** imposed by the Board,
  - C. **contributions and payments** to the Company from any other source,
  - D. any **interest, rents, dividends** or other income derived from investment or use of the General Fund,
  - E. any **superannuation or long service leave or other fund** operated or controlled in accordance with rules relating to the Company as a whole for the benefit of members, their employees, officers and employees of the Company,
  - F. any **sick pay fund, accident pay fund, funeral fund, or like fund** operated in accordance with rules relating to the Company as a whole for the benefit of its members,
  - G. any **property acquired** wholly or mainly by expenditure of the monies of the General Fund or derived from other assets of the General Fund,

- H. the **proceeds of any disposal** of parts of the General Fund,
  - I. any **funds from any other source** due to or generated by the Company, its Branches or Interest Groups.
- (c) The Board may, determine from time to time the proportion of **General Funds to be allocated to the National Office Secretariat, the Branches or Interest Groups** that are deemed necessary or convenient to achieve the objects of the Company.

## Liability of Members

### 12. Extent of liability guarantee

**The liability of the members is limited to** the extent that each Member undertakes to contribute an amount not exceeding **\$10.00** to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that person ceased to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before that person ceased to be a Member; and
  - (b) payment of the costs, charges and expenses of winding up the Company.
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## Membership

### 13. Membership categories and qualifications

- (a) The Members of the Company are:
  - (i) the current Ordinary, Life and Corporate Members of the Company as at the date of the adoption of this Constitution; and
  - (ii) such other persons the Board admit to membership in accordance with this Constitution from time to time.
- (b) Membership of the Company consists of the following categories:
  - (i) Ordinary Members;
  - (ii) Life Members;
  - (iii) Corporate Members.

(c) **Ordinary Membership**

- (i) A natural person is **eligible** to apply for membership as an Ordinary Member of the Company if they:
- A. are a heart or cardiac related surgery patient or contemplating or recovering from heart or cardiac related surgery or who suffers from medically diagnosed heart disease, heart conditions or heart defects;
  - B. are the spouse, partner or carer of a person designated in Article 13(c)(i)(A) above;
- or:
- C. if a person designated in Article 13(c)(i)(A) above is a child under the protection of parents, guardians or other responsible adults then those parents, guardians or other responsible adults are entitled to be ordinary members until such time as the protection ceases;
- Or are an:
- D. Interested Person; and
  - E. by resolution of the Board, have been admitted as an Ordinary Member of the Company pursuant to Article 15(d).
- (v) A natural person eligible to apply for membership as an Ordinary Member must make an **application for membership** in the form approved by the Board from time to time, provided that each such application contains:
- A. relevant particulars of the applicant's Member eligibility qualifications;
  - B. a signed undertaking on the part of the applicant to be bound by the Constitution;
  - C. relevant particulars pursuant to Article 15(a).

(d) **Life Membership**

- (i) An Ordinary Member is **eligible** to be awarded membership as a Life Member of the Company if, in the opinion of the Board, they have:
- A. evidenced a sustained and active interest in the work of the Company and given outstanding proof of generous, exemplary and dedicated service to the Company;

- B. have given at least five (5) years continuous service to the Company;
  - C. have been nominated in writing by at least two(2) Ordinary or Life Members or Directors, accompanied by a written statement evidencing the criteria for eligibility as set out at Article 13(d)(i)(A)&(B); and
  - D. by resolution of the Board, been awarded life membership.
- (ii) Life memberships may, after applying the criteria for eligibility as set out at Article 13(d)(i)(A)&(B), be awarded by resolution of the Board in its absolute discretion at any time who shall then instruct the Company Secretary to give written notice of the proposed awarded membership to the person who, if they accept, are to be formally awarded and acknowledged at the next Annual General Meeting.
- (iii) A Life Member has all the rights of an Ordinary Member except they are not obligated to pay membership subscriptions, fees or levies pursuant to Articles 23-27.

(e) **Corporate Membership**

- (i) A corporate entity is **eligible** to apply for membership as a Corporate Member of the Company if, in the opinion of the Board, they:
- A. have been established with or have similar objects to those of the Company and,
  - B. the interests the applicant corporate entity do not conflict with the objects of the Company as set out in the Constitution and,
  - C. by resolution of the Board, have been admitted as a Corporate Member of the Company pursuant to Article 15(d) on such terms and conditions as to payment of levy, the extent of provision and exchange of publications as may be agreed upon between the Corporation and the Company from time to time.
- (ii) A corporate entity eligible to apply for membership as a Corporate Member must make an **application for membership** in the form approved by the Board from time to time, provided that each such application contains:
- A. relevant particulars of the applicant's Member eligibility qualifications;
  - B. an signed undertaking on the part of the applicant to be bound by the Constitution;
  - C. relevant particulars pursuant to Article 15(a).

- (iii) A corporate entity admitted as a Corporate Member must provide the name of the **two (2) nominated Corporate Member Representatives** (being natural persons) **who will represent the Corporate Member at the Company's General Meetings** all the rights pursuant to Article 14(c)(i)&(ii), and is entitled to:
  - A. **receive notices** of all General Meetings of the Company;
  - B. **send two (2) nominated Corporate Member Representatives to attend as observers** to the Company's General Meetings, who are **not entitled to vote** but **may speak with the permission of the Chair** of the meeting.

#### 14. Membership rights

In addition to those rights and powers that are permitted by this Constitution to benefit or otherwise be performed by Members of the Company:

- (a) **All Members** may attend the Company's General and Annual General Meetings.
- (b) **All Members** may enjoy reduced fees for has product and service offerings as determined from time to time by the Board.
- (c) **Ordinary and Life Members**, subject to this Constitution:
  - (i) have **full voting rights** as Members of the Company;
  - (ii) have **speaking rights** at a General Meeting;
  - (iii) **may nominate proxies** for the Company's General Meetings pursuant to article 40; and
  - (iii) **may nominate persons to stand for election as a Director** of the Company.
- (d) **Corporate Members**, subject to this Constitution:
  - (i) are entitled to **send two (2) nominated Member Representatives to attend as observers** to (but not entitled to appoint proxies for) the Company's General Meetings;
  - (ii) have **speaking rights only with the consent of the Chair** on agenda items to provide advice, counsel and information on matters or answer questions if so requested but only by permission of and through the presiding Chair of the meeting;
  - (iii) have **no voting rights** at the Company's General Meetings; and
  - (iv) may **not** nominate persons to stand for election as a Director.

- (f) Subject to any relevant and applicable sections of the Corporations Act and the rights of particular categories of Members, the Company may vary or cancel rights of Members in that category:
  - (i) by a special resolution passed at the Company's General Meetings; or
  - (ii) with the written consent of Members who are entitled to at least 75% of the votes that may be cast by Members at the Company's General Meetings.

#### 15. Application and acceptance of Members

- (a) An **application** from a natural person or a corporate entity for either an Ordinary or Corporate membership of the Company must:
  - A. be in a form determined by the Board from time to time ("**Membership Application Form**") and be accompanied by:
    - (i) the relevant fee (if any and where applicable);
    - (ii) the postal address and/or electronic mail address of the applicant being the nominated address for the receipt of Company notices;
    - (iii) a declaration as to the eligibility for membership and the signature (or where applicable, the seal or equivalent) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time; and
  - B. be lodged with the Company Secretary at the Company's principal place of business.
- (b) The Company Secretary must **refer** any Ordinary or Corporate Membership Application Forms to:
  - (i) the Board; or
  - (ii) if there is a Branch existing within a specific geographical locality (within Board designated geographical boundaries of the locality) that correlates with the applicants postal address postcode, the relevant Branch Management Committee.
- (c) The Board or relevant Branch Management Committee shall, after **considering the application**, and applying the criteria for eligibility as set out for the relevant category of Member in Article 13, determine by resolution in its absolute discretion whether an applicant may become a Member. The Board or relevant Branch Management Committee may require an applicant to give such further information as it desires before approving or refusing the admission of an applicant for Membership.

- (d) If an application as a Member is **accepted** by the Board or relevant Branch Management Committee, the notice of acceptance and the fee paid by the applicant is, within fourteen (14) days of the meeting at which acceptance was granted, to be forwarded to the Company Secretary who must, without reasonable delay, give written notice of the acceptance to the applicant and enter the applicant's details pursuant to Article 16(b) in the Register and deposit the fee in a General Fund.
- (e) If an application as a Member is **rejected** by the Board or relevant Branch Management Committee, the notice of rejection is, within fourteen (14) days of the meeting at which acceptance was granted, to be forwarded to the Company Secretary who must, without reasonable delay, give written notice of the rejection to the applicant and refund in full any fee paid by the applicant. The Board or relevant Branch Management Committee or Company Secretary is not required to give any reason for the rejection of any application to become a Member.
- (f) Failure by the Company to comply with any notice requirement in this Article does **not invalidate** the decision by the Board regarding an application.

#### **16. Register of members**

- (a) The Company Secretary must establish and maintain a Register of the Members of the Company which accurately reflects who is a Member.
- (b) The Register must contain the following information about each **Ordinary and Life Member**:
  - (i) the Member's name and postal and electronic mail address;
  - (ii) the category of membership; and
  - (iii) the date on which the Member's details was entered in the Register;and any additional information relevant to the membership as the Board shall determine from time to time.
- (c) Where a corporate entity is a **Corporate Member**, an Officer of the corporate entity shall be registered as the Member. The Register must contain:
  - (i) the corporate entity's name and postal and electronic mail address; and
  - (ii) the name and address of the Officer of the corporate entity;
  - (iii) the date on which the Member's details was entered in the Register;and any additional information related to the membership as the Board shall determine from time to time.

- (d) The Register must be kept at the Company's principal place of business.
- (e) The Company Secretary must ensure that only those particulars required by any relevant and applicable sections of the Corporations Act relating to a Member are:
  - (i) available for inspection in accordance with any relevant and applicable sections of the Corporations Act; and
  - (ii) given only to a person with the right to have such information in accordance with any relevant and applicable sections of the Corporations Act.
- (f) A Member shall within a reasonable time by notice in writing lodged with the Company Secretary inform the Company of any change in the Member's name, address or circumstances relating to their eligibility as a Member. The Company may require reasonable verification of the change.
- (g) The Company must ensure that it has at least one (1) Member at all times.

#### 17. No transfers

The rights, privileges or obligations of being a Member are not transferable whether by operation of law or otherwise. All rights and privileges of membership of the Company cease on termination of membership.

## Cessation of membership

#### 18. Expiry of membership

- (a) Each membership will, subject to earlier termination in accordance with this Constitution, be recognised as from July 1st to June 30th and will expire on 30th June (or by any extension of that date resolved by the Board) each year.
- (b) On or before 1<sup>st</sup> May each year (or by any extension of that date resolved by the Board) the Company must send to each Member a notice of renewal in a form prescribed by the Board ("**Membership Renewal Form**") setting out:
  - (i) the prescribed fee for the following year as determined in accordance with Article 23; and
  - (ii) the method of renewal.
- (c) Membership is renewed by a Member:
  - (i) complying with the method of renewal set out on the Membership Renewal Form; and

- (ii) providing the fee prescribed by the Membership Renewal Form in cleared funds in accordance with the method of payment and by the date set out on the Membership Renewal Form.
- (d) A person ceases to be a Member of the Company and to any of the rights or privileges of Membership if that person has not affected renewal of their membership in accordance with this Article 18 before 30th June of each year (or by any extension of that date resolved by the Board).

#### 19. Resignation of a Member

- (a) A Member may at any time **resign** as a Member of the Company by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.
- (b) If a Member resigns, the Company must remove the Member's name from the Register.

#### 20. Expulsion of a Member

- (a) Subject to Article 20(b), if:
  - (i) a Member is in **breach of, or has refused or wilfully neglected to comply with a provision of this Constitution** or a provision of any governing policies, guidelines, procedures, protocols, practices or processes prescribed by the Board from time to time (pursuant to their powers under Article 53); or
  - (ii) any act or omission of a Member is, in the opinion of the Board, unbecoming of a Member, **prejudicial or detrimental to the interests or reputation of the Company** or is not consistent with the objects of the Company; or
  - (iii) a Member, acting as a volunteer on behalf of the Company, **mismanages and/or negligently and/or recklessly conducts the affairs of the Company**; or
  - (iv) a person who at the time of application was not eligible for membership but who was **accepted as a member on the faith of a false statement**; or
  - (v) a Member is, or any step is taken for that Member to become, either an **insolvent** under administration or an externally administered body corporate; or
  - (vi) the succession by another body corporate or entity to the assets and liabilities of the Member occurs such that they **no longer satisfy any criteria for admission to membership** of the Company which may be established from time to time,

the Company may expel the Member by a resolution of the Board and remove the Member's name from the Register. The term of the expulsion, before the person is eligible to re-apply for membership, shall be determined by the Board and stated in the resolution of expulsion.

- (b) The Company must not expel a Member under Article 20(a) unless:
  - (i) at least 21 days notice has been given to the Member stating the date, time and place at which the question of expulsion of that Member is to be considered by the Board (or their delegated and authorised Committee), and the nature of alleged event giving rise to the expulsion; and
  - (ii) the affected Member is given the opportunity of explaining to the Board (or their delegated and authorised Committee), orally (in person or by representation) or in writing, why the Member should not be expelled.

## 21. Other Member cessation events

If a Member:

- (a) being a natural person, dies or becomes bankrupt, becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health; or
- (b) being a corporate entity, becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation to a successor corporate entity with substantially the same objectives and purposes as the original corporate entity) or is otherwise deregistered under the laws of the jurisdiction in which it is incorporated; or
- (c) ceases to satisfy any criteria for admission to membership of the Company which may be established from time to time;

the Member ceases to be a Member of the Company and the Company must remove the Member's name from the Register.

## 22. Effect of cessation

- (a) The termination of a membership for any reason does not in any way prejudice, lessen or otherwise affect the **liabilities and obligations** of a Member (whether they arise under this Constitution or otherwise) existing at the date of termination or which arise or crystallises after that date out of, or by reason of, facts or circumstances occurring or in existence at or before that date.
- (b) Without limiting the previous clause, termination of membership does not relieve a Member from:

- (i) any obligation to pay any **fees** payable (pursuant to Articles 23-27) on or before the date of termination and does not entitle the Member to any refund of any such fees in part or in whole; and
  - A a Member remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the person to the Company as a Member; and
  - B a Member must pay to the Company interest at the rate the Board resolves on those amounts from the date of cessation until and including the date of payment of those amounts.
- (ii) any obligation to pay the **Member's guarantee** amount specified in Article 12 if that amount becomes payable within one (1) year of cessation of the Member's membership.

The Company may by resolution of the Board waive any or all of its rights under this Article 22(a) and 22(b)(i).

## Fees and other Payments

### 23. Setting of Fees

- (a) The Company may by resolution of the Board from time to time require the payment of fees or levies by Members in the amount, on any terms and at any times as the Board resolves, including payment by instalments.
- (b) The Company may when admitting Members make fees payable for one or more category of Members for different amounts and at different times as the Board from time to time resolves.
- (c) The Company may by resolution of the Board from time to time revoke or postpone a fee or extend the time for payment of a fee, at any time prior to the date payment of that fee is due.

### 24. Notice of Fees

- (a) The Company must give notice of fees to the Members who are required to pay the fees at least 10 Business Days before the due date for payment. The notice must specify the time or times and place and manner of payment and any other information as the Board from time to time resolves.
- (b) The non-receipt of a notice of a fee by, or the accidental omission to give notice of a fee to, any Member does not invalidate the fee.

**25. Payment of Fees**

- (a) Each Member must pay to the Company the amount of each fee payable by the Member in the manner, at the time and at the place specified in the notice of the fee.
- (b) In a proceeding to recover a fee, or an amount payable due to the failure to pay or late payment of a fee, proof that:
  - (i) the name of the person is entered in the Register as a Member;
  - (ii) the person is in the category of Members liable to pay the fee;
  - (iii) there is a record in the minute books of the Company of the resolution of the Board determining the fee or the terms of membership of a category of Members requiring the payment of the fee pursuant to Article 23; and
  - (iv) notice of the fee was given or taken to be given to the person in accordance with this Constitution,

is conclusive evidence of the obligation of that person to pay the fee.

**26. Interest payable**

- (a) If an amount payable to the Company as a fee is not paid before or on the time for payment, the person who owes the amount must pay to the Company:
  - (i) interest on the unpaid part of the amount from the date payment is due to the date of payment at the rate the Board from time to time resolves; and
  - (ii) all costs and expenses the Company incurs due to the failure to pay or the late payment.
- (b) Interest under Article 26(a) accrues daily and may be capitalised at any interval that the Board from time to time resolves.
- (c) The Company may by resolution of the Board from time to time waive payment of some or all of the interest, costs or expenses payable under Article 26(a).

**27. Company payments**

- (a) A Member or the Personal Representative of a deceased Member must pay to the Company on written demand an amount equal to all payments the Company makes to a government or taxation authority in respect of the Member or the death of the Member, where the Company is either:
  - (i) obliged by law to make the relevant payment; or

- (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxation authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to notify a Member in advance of its intention to make a payment under Article 27(a).
- (c) An amount payable by a Member to the Company under Article 27(a) is treated under this Constitution as if it is a fee properly made by the Board of which notice has been given on the date on which the written demand is given by the Company to the Member or the Personal Representative of a deceased Member.
- (d) Nothing in this Article affects any right or remedy which any law confers on the Company.

## Proceedings of General Meetings

### 28. Calling General Meetings

- (a) The Company may by resolution of the **Board** call a General Meeting to be held at the time and place (including 2 or more locations using technology which gives eligible attending Members as a whole a reasonable opportunity to participate) and in the manner the Board from time to time may resolve.
- (b) No **Member** may call or arrange to hold a General Meeting except where permitted as follows:
  - (i) A General Meeting shall be convened by the Board on such **requisition by Members** by at least 5% of the votes that may be cast at the general meeting of those Members of the Company eligible pursuant to Article 13(c)&(d) and 14(c). [For the sake of clarity, if the combined Membership pursuant to Article 13(c)&(d) is 100, a minimum of 50 members may requisition the Board to convene a general meeting.] The Board must call the meeting within 21 days after the request is given them and the meeting is to be held not later than 2 months after the request is received;
  - (ii) Members with at least 5% of the votes that may be cast at the general meeting of those Members of the Company eligible pursuant to Article 13(c)&(d) and 14(c) who make a requisition under Article 28(b)(i) may call and arrange to hold a General Meeting if the Board do not do so within 21 days after the request is given to the Board;
  - (iii) Any Member classified pursuant to Article 13(c)&(d) and 14(c) seeking to convene a General Meeting pursuant to Article 28(b)(ii) must pay the Company's the expenses of convening the General Meeting subject to Articles 28(b)(iv) & (v);

- (iv) The Company must pay the reasonable expenses the Members incurred in convening a meeting under Article 28(b)(iii) because the Board failed to call and arrange to hold the meeting pursuant to Article 28(b)(i);
  - (v) The Company may recover the amount of the expenses incurred pursuant to Article 28(b)(iv) from the Directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with Article 28(b)(i). The Directors who are liable are jointly and individually liable for the amount.
- (c) The Company must hold an **Annual General Meeting** at least once in each calendar year and within five (5) months after the end of its financial year.

## 29. Notice of General Meetings

- (a) Where the Company has called a General Meeting, at least 21 days **notice** of the meeting must be given to the Members and Directors, unless 75% of Members agree to a shorter period.
- (b) A person may waive notice of any General Meeting by written notice to the Company.
- (c) Subject to any relevant or applicable sections of the Act, anything done (including the passing of a resolution) at a General Meeting is not invalid because a person does not receive either or both notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.
- (d) The Company must give its auditor:
  - (i) notice of General Meetings in the same way that a Member is entitled to receive notice under Article 29(a); and
  - (ii) any other communication relating to the General Meeting that a Member is entitled to receive.
- (e) A notice of a General Meeting must:
  - (i) set out the **place, date and time for the meeting** (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this); and
  - (ii) state the **general nature of the meeting's business**; and
  - (iii) if a resolution is to be proposed at the meeting, set out an intention to do so either as a resolution or a special resolution and state that **resolution**; and

- (iv) in the case of an election of Directors, state the **names of the candidates for election**; and
- (v) contain a statement setting out the following information:
  - A that an Ordinary and Life Member has the right to appoint a proxy; and
  - B that the proxy must be a natural person; and
  - C any **proxy form** for the meeting may be given in the form pursuant to Article 40(d).

### 30. Business of General Meetings

- (a) All business will be **special business** that is **transacted at a General Meeting**, not being an Annual General Meeting, or an Annual General Meeting with the exception of the business pursuant to Article 30(c), and **shall include items of business submitted by**:
  - (i) **the Board**;
  - (ii) **Members** of the Company eligible pursuant to Article 13(c)&(d) and 14(c) with at least 5% of the votes that may be cast on the resolution;
- (b) The notice of the item of business submitted by Members pursuant to Article 30(a)(ii) must:
  - A be in writing; and
  - B set out the wording of any proposed resolution; and
  - C be signed by the Members proposing to move the resolution.

Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.
- (c) In addition to any special business pursuant to Article 30(a), the business that may be transacted at an **Annual General Meeting** is:
  - (i) the confirmation of the minutes of the preceding meeting;
  - (ii) the consideration of the annual:
    - A Financial report,
    - B Directors' report; and

- C Auditor's report.
  - (iii) the election of Directors;
  - (iv) if required at that particular AGM, the appointment of auditor and the fixing of their remuneration.
- (d) Except with the approval of the Board or with the permission of the Chair of the meeting, no person may move at any General Meeting:
- (i) any resolution except in the form set out in the notice of meeting pursuant to Articles 29(e) (iii) and 30(a)(ii); or
  - (ii) any amendment that substantially changes the intent of any resolution or of a document which relates to any resolution. Any objection raised under this Article 30(d)(ii) in relation to the question of the validity of the amendment of the resolution must be decided by the Chair of the General Meeting, whose decision, made in good faith, is final and conclusive.

### 31. Quorum of General Meetings

- (a) No business may be transacted at a General Meeting except, subject to Article 32, the election of the Chair of the meeting and the adjournment of the meeting, unless a quorum for a General Meeting is present at the time when the meeting commences.
- (b) A **quorum** for a General Meeting is **ten (10) Members or twenty five percent (25%) of the total membership** eligible to vote pursuant to Article 13(c)&(d) and 14(c) present in person or by proxy [or if there are less than 10 Members of the Company eligible to vote pursuant to Article 13(c)&(d) and 14(c), fifty per cent (50%), rounded up, of those Members].
  - (i) Where there is only **one Member** then a quorum is that Member attending or otherwise resolving in writing any matter required to be decided by that Member.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a General Meeting, the meeting is dissolved unless the Chair of the meeting or the Board adjourn the meeting to a date, time and place determined by that Chair or the Board.
- (d) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned General Meeting, **five (5) Members** eligible to vote pursuant to Article 13(c)&(d) and 14(c) present in person or by proxy [or if there are less than 5 Members of the Company eligible to vote pursuant to Article 13(c)&(d) and 14(c), fifty per cent (50%), rounded up, of those Members] present in person or by proxy constitute a quorum. If a quorum is not present within 30 minutes after the

time appointed for the commencement of the adjourned General Meeting, the meeting is dissolved.

### 32. Chair of General Meetings

(a) Subject to Articles 32(b) and 32(c), the Chair must preside at each General Meeting or in the Chair's absence; the Vice-Chair may preside as Chair at every General Meeting.

(b) If at a General Meeting:

(i) there is no Chair or Vice-Chair; or

(ii) the Chair or Vice-Chair is not present within 15 minutes after the time appointed for the commencement of a General Meeting or either is not willing to chair all or part of the meeting,

the Directors present may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Members of the Company eligible to vote pursuant to Article 13(c)&(d) and 14(c) present in person or by proxy may elect one of their number, to chair that meeting.

(c) A Chair of a General Meeting may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her.

### 33. Conduct of General Meetings

(a) Subject to any relevant and applicable sections of the Corporations Act, the Chair of a General Meeting is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.

(b) The Chair of a General Meeting may:

(i) make **rulings** without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;

(ii) determine the **procedures** to be adopted for proper and orderly discussion or debate at the meeting;

(iii) determine, in the absence of such pursuant to Article 36(b), the **rules and procedures** in relation to a poll to be adopted for the casting of votes, the circumstances in which such a vote will be valid and the recording of votes at the meeting;

(iv) be guided in their determination of the rulings, procedures and conduct of General Meetings by **Standing Orders** that the Board may determine, pursuant to

Article 53(e), that are not inconsistent with this Constitution that it considers as a readily accessible guide to influence the proper conduct of all Company meetings. It should be noted that any ruling of the Chair pursuant to Articles 33(b)(i)-(iii) or any decision made by a validly constituted meeting shall not be void by reason only of a departure from such Standing Orders.

- (c) The Chair of a General Meeting may:
- (i) at their discretion and with their permission, permit interested persons (other than Members) to attend General Meetings of the Company but who, subject to Article 34(d), have no right to speak at or otherwise participate in the meeting and must follow any directions of the Chair;
  - (ii) where they deem necessary to maintain a safe, respectful and professional environment, refuse to admit a person, or require them to leave and not return to a General Meeting if the person:
    - A. refuses to permit examination of any article in the person's possession; or
    - B. is in possession of any electronic or recording device; placard or banner; or other similar sign or article; or
    - C. acts or behaves in a manner unbecoming of appropriate decorum or in conflict with or disregard for the Chair's rulings;

which the Chair considers in "good faith" (i.e. a sincere intention to deal fairly with others and without any malice) to be dangerous, offensive or liable to cause disruption.

- (d) The Chair of a General Meeting may determine any dispute concerning the admission, validity or rejection of a vote or proxy at the meeting.
- (e) The Chair of a General Meeting may, subject to any relevant and applicable sections of the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The Chair of a General Meeting may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted under any relevant and applicable sections of the Corporations Act without being referred to in the notice of meeting.

*[Note: The only business that can be conducted at a General Meeting of members is the business which they have been advised of in the notice of meeting. There is in effect no "business arising" or "other business". General Meetings can only deal with the business in the notice. Members only have specific matters they can deal with in General Meetings and they need notice to deal with them, in the main the matters are: amend the Constitution; appoint/remove directors; appoint/remove Auditor; receive particular information and disclosures (accounts, reports, etc.); wind up the organisation.]*

- (g) If (at a meeting held in one physical location) the Chair of a General Meeting considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the Chair may nominate a separate meeting place using any technology that gives eligible attending Members as a whole a reasonable opportunity to participate.
- (h) The Chair of a General Meeting may delegate any power conferred by this Article to any person.
- (i) Nothing contained in this Article 33 limits the powers conferred by law on the Chair of a General Meeting.

#### **34. Attendance at General Meetings**

- (a) Subject to this Constitution and any rights and restrictions of a category of Members set out in Article 14, an Ordinary or Life Member may, if so entitled, attend and vote:
  - (i) in person;
  - (ii) by proxy; or
  - (iii) by attorney.
- (b) The Chair of a General Meeting may require a person acting as a proxy or attorney at that meeting to establish to the Chair's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy this requirement, the Chair may exclude the person from attending or voting at the meeting.
- (c) A **Director** is entitled to receive notice of all General Meetings, pursuant to Article 29(a), and to attend all General Meetings and is entitled to speak at those meetings.
- (d) A person, whether a Member or not, requested by the Board to attend a General Meeting is entitled, with the permission of the Chair of the meeting, to attend that meeting and to speak at that meeting pursuant to Article 33(c)(i).
- (e) The **Company's auditor** is entitled to receive notice of all General Meetings, pursuant to Article 29(d)(i), and entitled to attend any General Meeting.

#### **35. Authority of Members at General Meetings**

- (a) An Ordinary or Life Member has the rights to act in accordance with Member's rights under this Constitution at a General Meeting pursuant to Article 14(a)&(c).
- (b) An Ordinary or Life Member also has authority to:

- (i) vote on any permitted amendment moved to a proposed resolution subject to Article 30(d)(ii), and on any motion that a proposed resolution not be put or any similar motion; and
- (ii) vote on any procedural motion, including any motion to elect the Chair of the General Meeting to which the appointment relates, to vacate the chair or to adjourn the meeting;
- (iii) attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

### 36. Voting at General Meetings

- (a) A resolution put to the vote at a General Meeting at a meeting held in:
  - (i) one physical location must be decided on a show of hands, unless a poll is demanded in accordance with Article 39 and that demand is not withdrawn;
  - (ii) two (2) or more places that uses technology that gives eligible attending Members as a whole a reasonable opportunity to participate, a poll will be held that relies on a vocal "aye" or "nay" response with each voter counted separately.
- (b) The Board may determine, pursuant to Article 53(e), the rules and procedures in relation to a poll to be adopted for the casting of, the circumstances in which such a vote will be valid and the recording of votes at the meeting.
  - (i) Where a notice of meeting specifies a poll, a vote cast by an Ordinary or Life Member is taken to have been cast by that person at the meeting if the rules and procedures in relation to a poll (whether set out in the notice of meeting or otherwise determined by the Board or the Chair) are complied with.
- (c) Subject to this Constitution and any rights or restrictions of a category of Members, on a **show of hands** at a General Meeting, **each Ordinary or Life Member** having the right to vote on the resolution **has one vote** each.
- (d) Subject to this Constitution and any rights or restrictions of a category of Members, on a **poll** at a General Meeting, **each Ordinary or Life Member** having the right to vote on the resolution **has one vote** each.
- (e) Subject to this Constitution and any rights or restrictions of a category of Members, where the Board has determined **other means** (including postal and electronic) permitted by law for the casting and recording of votes by Ordinary or Life Members on any resolution to be put at a General Meeting, **each Ordinary or Life Member** having a right to vote on the resolution **has one vote** each.

- (f) An objection to a right to vote at a General Meeting or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection under this Article must be decided by the Chair of the General Meeting, whose decision, made in good faith, is final and conclusive.
- (g) Except where a resolution at a General Meeting is a special resolution that requires a special majority pursuant to any relevant or applicable sections of the Act, the resolution is passed if more votes are cast by Ordinary or Life Members in favour of the resolution than against it [and for the sake of clarity, a tied vote is NOT passed].
- (h) In the case of an equality of votes [i.e. a tied vote] on a resolution at a General Meeting, **the Chair** of that meeting, if they are an Ordinary or Life Member has a right to their deliberative vote in respect of that resolution, but **does not have a casting vote** on that resolution and the resolution is decided in the negative.
- (i) Unless a poll is demanded and the demand is not withdrawn, a determination by the Chair of a General Meeting following a vote on a show of hands that a resolution has been passed or not passed is conclusive, and an entry to that effect in the book containing the minutes of the proceedings of the Company signed by the Chair will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

### **37. Voting by proxy or attorney**

- (a) The validity of any resolution passed at a General Meeting is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Ordinary or Life Member.
- (b) If a proxy of an Ordinary or Life Member purports to vote in a way or circumstances that contravene any relevant and applicable sections of the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which any relevant and applicable sections of the Corporations Act require a proxy of an Ordinary or Life Member to be cast in a given way must be treated as cast in that way.
- (c) Subject to this Constitution and any relevant and applicable sections of the Corporations Act, a vote cast at a General Meeting by a person appointed by an Ordinary or Life Member as a proxy or attorney is valid despite the revocation of the appointment (or the authority under which the appointment was executed), if no notice in writing of that matter has been received by the Company at least 48 hours before the commencement of that meeting.

### **38. Restrictions on voting rights**

- (a) The authority of a proxy or attorney for an Ordinary or Life Member to speak or vote at a General Meeting to which the authority relates is suspended while the appointing Ordinary or Life Member is present in person at that meeting.
- (b) An Ordinary or Life Member is not entitled to vote on any resolution on which any fee or other amount due and payable to the Company in respect of that Member's membership of the Company has not been paid.
- (c) An Ordinary or Life Member is not entitled to vote on a resolution at a General Meeting where that vote is prohibited by any relevant and applicable sections of the Corporations Act or an order of a court of competent jurisdiction.
- (d) The Company must disregard any vote on a resolution at a General Meeting purported to be cast by an Ordinary or Life Member, proxy or attorney where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 38 does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the Chair of that meeting.

### **39. Polls**

- (a) A poll on a resolution at a General Meeting may be demanded by not less than two (2) Ordinary or Life Members only in accordance with any relevant and applicable sections of the Corporations Act and any Board determined rules and procedures in relation to a poll, or by the Chair of that meeting.
- (b) No poll may be demanded at a General Meeting on:
  - (i) the election of a Chair of that meeting; or
  - (ii) (unless the Chair of the meeting otherwise determines) the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a General Meeting for the adjournment of that meeting (subject to Article 39(b)(ii)) must be taken immediately. A poll demanded on any other resolution at a General Meeting must be taken in the manner and at the time and place the Chair of the meeting directs.
- (e) The result of a poll demanded on a resolution of a General Meeting is a resolution of that meeting.
- (f) A demand for a poll on a resolution of a General Meeting does not prevent the continuance of that meeting or that meeting dealing with any other business.

**40. Proxies**

- (a) An Ordinary or Life Member who is entitled to attend and vote at a General Meeting may appoint **another natural person** to attend and vote at that General Meeting, as proxy for the Ordinary or Life Member but not otherwise.
  - (i) In respect of any one General Meeting, a person may not be appointed as proxy for more than two Ordinary or Life Members other than the Chair who may be appointed as proxy for any number of Ordinary or Life Members.
- (b) If the name of the proxy in a form of appointment of proxy is not filled in, the proxy of that Ordinary or Life Member is:
  - (i) the person specified by the Company in the form of appointment of proxy in the case the Ordinary or Life Member does not choose; or
  - (ii) if no person is so specified, the Chair of that meeting.
- (c) A proxy appointed in accordance with this Constitution to attend and vote may only exercise the rights of the Ordinary or Life Member on the basis and subject to the restrictions provided in this Constitution.
- (d) A form of appointment of proxy is valid if it is in writing, or in any other form (including electronic) which the Board may determine or accept.

**41. Receipt of appointments of proxy or attorney**

- (a) An appointment of proxy or attorney for a General Meeting is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the meeting to commence or (in the case of an adjourned meeting) resume.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which an Ordinary or Life Member may give the Company a proxy appointment (and any authority under which the appointment is signed), a proxy given at that electronic address or by that other electronic means is taken to have been given by the Ordinary or Life Member and received by the Company if the requirements set out in the notice of meeting are complied with.

**42. Multiple appointments of proxy or attorney**

- (a) If more than one proxy or attorney appointed by an Ordinary or Life Member is present at a General Meeting and the Company has not received notice of any revocation of any of the appointments:

- (i) a proxy or attorney appointed to act at that particular meeting may act to the exclusion of a proxy or attorney appointed under a standing appointment; and
  - (ii) subject to Article 42(a)(i), a proxy or attorney appointed under the most recent appointment may act to the exclusion of a proxy or attorney appointed earlier in time.
- (b) An appointment of a proxy of an Ordinary or Life Member is revoked (or, in the case of a standing appointment, suspended for that particular General Meeting) if the Company receives a further appointment of a proxy from that Member which would result in there being more than one proxy of that Member entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article.
- (c) The appointment of a proxy for an Ordinary or Life Member is not revoked by an attorney for that Member attending and taking part in a General Meeting to which the appointment relates, but if that attorney votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Member's proxy on that resolution.

#### **43. Adjournments of a General Meeting**

- (a) The Chair of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair.
- (b) If the Chair of a General Meeting exercises the right to adjourn that meeting under Article 43(a), the Chair may (but is not obliged to) obtain the approval of those present at the meeting entitled to vote to the adjournment.
- (c) No person other than the Chair of a General Meeting may adjourn that meeting.
- (d) The Company may give notice of a General Meeting resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a General Meeting or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a General Meeting resumed after an adjournment.

#### **44. Cancellations and postponements of a General Meeting**

- (a) The Company may by resolution of the Board cancel or postpone a **General Meeting called in accordance with this Constitution by the Board or a Director** or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 44(a) does not apply to a meeting **called by Members or by the Board on the request of Members**, unless those Members consent to the cancellation or postponement.
- (c) The Company may give notice of a cancellation or postponement or change of place of a General Meeting as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a General Meeting or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice calling the meeting.

#### **45. Resolutions determined without General Meetings**

- (a) Any written resolution of Ordinary or Life Members determined without a General Meeting having been held (and whether contained in one document or in several copies) and signed (including by electronic signature) by each Ordinary or Life Member entitled to vote, is as valid and effectual as a resolution duly passed at a General Meeting of the Company.
- (b) Any such written resolution under Article 45(a) may consist of:
  - (i) several copies of a document each signed by one or more Ordinary or Life Members and takes effect at the date and time on which the last Ordinary or Life Member necessary for the resolution to be passed, signs a copy of the resolution; or
  - (ii) a record of several electronic messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last Ordinary or Life Member's message necessary for the resolution to be passed is received.

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## **Directors**

### **46. General**

- (a) Subject to Article 46(b), **only Ordinary or Life Members who are natural persons may be appointed Directors**, noting that:

- (i) Directors are elected as individuals and are not elected as representatives of any Member or any internal unit of the Company, including a Branch, and have a duty to act in good faith in the Company's best interests, to further the purposes of the Company and must disclose perceived or actual material conflicts of interest of the Company.  
*Ref: ACNC Regulation 2013 Reg.45.25(2)*
- (b) A natural person, who may be an Ordinary or Life Member, one of the two Corporate Member Representatives, or alternatively, may not have any association with any Member, but with an appropriate mix of skills and attributes pursuant to Article 46(e)(ii), may be appointed to the position of Director by, and at the discretion of the Board;
  - (i) A Director so appointed, holds office until the conclusion of the AGM next following their appointment, at which time they must retire but are eligible to be re-appointed by the Board.
  - (ii) The person ceases to be Director pursuant to Article 50(a-h) or otherwise if they retire at the end of their term pursuant to Article 46(b)(i) and are not re-appointed by the Board.
- (c) The Directors of the Company (other than a Director, if any, appointed pursuant to Article 46(b)) are those persons appointed or elected as Directors pursuant to Article 47.
- (d) The **number of Directors** appointed or elected pursuant to Article 46(a) and 47 will be not be less than three (3) and not more than six(6) subject to Article 46(d)(i).
  - (i) The number of Directors may be increased by one (1) - i.e. up to seven (7) - to accommodate the Director appointment option, if implemented, pursuant to Article 46(b).
- (e) The Company intends that the Board to the extent possible includes Directors that:
  - (i) are drawn from a wide **geographical coverage** of Australia; and
  - (ii) have a mix of **skills and attributes**, as prescribed by the Board from time to time pursuant to Article 53(e), that are commensurate with those expected of a person to adequately govern an entity of similar size and complexity and to fulfil the duties pursuant to Article 46(f);
- (f) In relation to their **duties**, Directors shall be and are required, pursuant to the ACNC Act, and any additional duty set out in the ACNC Regulation, this Constitution or the law, to:
  - (i) act with reasonable **care and diligence** in the exercise of their powers;

- (ii) act in **honestly and fairly, in the best interest of the Company** (pursuant to Article 46(a)(i)) and for its **charitable purpose**;
- (iii) not misuse their **position** or **information** they gain as a reasonable person to advantage themselves or someone else or cause detriment to the Company;
- (iv) disclose **conflicts of interest**;
- (v) ensure that the **financial affairs** financial affairs of the Company are managed responsibly;
- (vi) not allow the Company to operate while it is **insolvent**.

*Ref: ACNC Regulation 2013 Reg.45.25(2)*

#### **47. Appointment and Procedure for Election of Directors**

A person becomes a Director (other than the Director appointed pursuant to Article 46(b)), where a Director retires pursuant to Article 49(a), when:

- (a) the Board appoints a Director to fill a casual vacancy pursuant to Article 48(a); or
- (b) the Company, pursuant to Article 30(c)(iii) at an Annual General Meeting or, pursuant to Article 58(j)(iv) at a General Meeting, fills the vacancy by election of Directors.
- (c) No person, other than a person nominated by the Board pursuant to Article 46(b) or appointed pursuant to Article 48(a), is eligible to be appointed as a Director pursuant to Article 47(b) unless a **nomination** (in the form determined by the Board from time to time) is signed by an Ordinary or Life Member proposer and seconder endorsing the nominee's eligibility (who must be a financial Member) and accompanied by the consent of the nominee to act, is given to the Company Secretary at least 28 days (or such other time as is allowed for by the Board) before the meeting.
  - (i) The nomination may be accompanied by a written statement containing not more than one hundred words, signed by the nominee setting out the relevant skills and attributes, against those prescribed by the Board from time to time pursuant to Article 53(e) which, in the opinion of the nominee, constitutes his or her qualifications for the position of Director of the Company. This statement is referred to as a "**qualification resume**".
- (d) If on the close of nominations the number of candidates for election as Directors is equal to or less than the number of vacancies, the nominated candidates shall be declared elected at the AGM and the Board may fill the remaining positions (or sufficient a the number required to form a quorum required by this Constitution) as set out in Articles 46(b) and 48(a).

- (e) If the number of candidates for election as Directors is greater than the number of vacancies on the Board, a ballot must be held for the election.
- (f) If a ballot is required, balloting lists must be prepared by the Company Secretary listing the names of the candidates in the order drawn by lot.
- (g) Each Ordinary or Life Member entitled to vote may cast the number of votes equal to the number of vacancies, provided that no person so voting may cast more than 1 vote in favour of each candidate.
- (h) The candidates receiving the greatest number of votes in their favour must be declared by the Chair of the meeting to be elected as Directors.
- (i) In the event of a tie for a board position the result will be decided by lot.

#### **48. Board may appoint a Director to fill a casual vacancy**

- (a) Where a Director retires or otherwise ceases to be a Director:
  - (i) prior to the time at which that person would have been required to retire under Article 49; or
  - (ii) pursuant to Article 50(a-h);

the **Board may appoint a person to fill the casual vacancy**, provided that the person appointed to fill the vacancy meets the eligibility requirements that apply under this Constitution pursuant to Article 46(e)(i)&(ii) in relation to the Company's appointment of a person to that position.

- (b) A person appointed by the Board to fill a vacancy under Article 48(a) holds office until the conclusion of the AGM next following their appointment, and is eligible for election at that AGM pursuant to the requirements of Article 46(a) and 47(c).

#### **49. Tenure of Directors**

- (a) A Director appointed pursuant to Article 46(a) and 47 (i.e. other than the Director appointed pursuant to Article 46(b) and 48(a)), must **retire** from office two (2) AGMs following that Director's last election or appointment and is eligible to **re-nominate**, in accordance with Article 47(c), for **re-appointment** pursuant to the requirements of Articles 46(a) and subject to 49(a)(i).
  - (i) Such a retirement/re-nomination/re-appointment may occur twice (i.e. on a 2yr x 2yr x 2yr tenure) at which point, the Director may not be eligible to nominate again for a minimum period of two years at which point they may be eligible to nominate for the position of Director and hold office again pursuant to this Constitution.

- (b) A Director who retires under Article 49(a) holds office as Director until the end of the meeting at which the Director retires, and is eligible for re-election pursuant to the requirements of Articles 46(a) and in accordance with Article 47(c).
- (c) The Board may, on application of a Director, grant that **Director leave of absence** from the Board that is likely to exceed three (3) months in duration, but not beyond their designated tenure pursuant to Article 49(a). As Director leave of absence is not a formal casual vacancy, the Director cannot be replaced during the term of the leave of absence subject to Article 58(j)(iii).

#### 50. Termination of office

A person ceases to be a Director and also ceases to occupy that position if the person:

- (a) fails to attend more than two (2) consecutive Board meetings without the consent of the Board;
- (b) resigns by notice in writing to the Company;
- (c) is removed from office under any relevant and applicable sections of the Corporations Act;
- (d) is, or becomes a paid employee (whether full-time or part-time) of, or holds paid employment in the Company or of any related body corporate of the Company (noting that acting as a volunteer worker, or employed in a voluntary or honorary capacity or position within the Company, does not disqualify a person from being a Director of the Company);
- (e) becomes an insolvent under administration;
- (f) becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health; or
- (g) is not permitted to be a Director, or to manage a corporation, pursuant to any relevant and applicable sections of the Corporations Act;
- (h) is removed from office by resolution of the Members entitled to attend and vote in General Meeting;
- (i) retires pursuant to Article 49(a) and fails to gain relevant nomination for another term pursuant to Articles 46(a) and 47(c);
- (j) retires pursuant to Article 49 or ceases to hold office under Article 48(b), and is not re-elected or re-appointed;

**51. Interests of Directors**

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
- (i) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
  - (ii) being a Member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
  - (iii) contracting or entering into any agreement or arrangement with the Company; or
  - (iv) acting in a professional capacity (or being a Member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with ACNC Act and Regulation in relation to the disclosure of the Director's interests.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except that the director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
- (i) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
  - (ii) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.
- (d) If a Director has an interest in a matter, then subject to Article 51(c), Article 51(e) and this Constitution:
- (i) that Director may be counted on in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
  - (ii) that Director may participate in and vote on matters that relate to the interest subject to Article 51(c);
  - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;

- (iv) the Director may retain the benefits under any transaction that relates to the interest even though the Director has the interest; and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed under Article 51(b), Article 51(d)(iv) applies only if the interest disclosed before the transaction is entered into.
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## Board

### 52. Composition and role of Board

- (a) The Board will comprise of the Directors of the Company appointed pursuant to Article 47 and, if so appointed, a Director pursuant to Articles 46(b).
- (b) Without limiting the general powers of the Board pursuant to this Constitution, **the role, functions and activities of the Board** include (in the main, but not necessarily limited to):
  - (i) formulate the Company's strategic direction;
  - (ii) determine the Company's governance policies (pursuant to Article 53(e));
  - (iii) appoint and work with and through the CEO (pursuant to Article 64);
  - (iv) monitor and supervise the Company's CEO and strategic, organisational and financial performance and risk and compliance management processes;
  - (vi) provide accountability to the Members and comply with the ACNC governance standards;

in pursuit of the furtherance of the objects of the Company.

## Powers of the Board

### 53. General powers of the Board

- (a) The Board is **responsible for the management, control and direction of the affairs of, and the pursuit of the furtherance of the objects of, the Company**, and may exercise, to the exclusion of the Company in general meeting, **all powers of the Company** which are not, by the law or this Constitution, required to be exercised by the Company in General Meeting provided that no resolution of the Company in General Meeting shall invalidate any prior act of the Board.

- (b) Subject to any relevant or applicable sections of the Act and this Constitution, **the Board has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management, control and direction of the affairs of the Company** including those powers pursuant to Article 5(b).
- (c) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 58, a **resolution passed by signing a document** in accordance with Article 57, or in accordance with a delegation of the power under Article 55 or 56. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power under Article 55 or 56.
- (d) Except in the case permitted by a specific delegation of authority pursuant to Article 55 or as otherwise pursuant to Article 64(b), the Board shall approve any and all **public statements** made on behalf of the Company by any Member, director, office bearer, officer, employee, delegated person, persons, or committee and/or agent of the Company, Branch Management Committees or their members, volunteers, etc. prior to that person or body making such statement.
- (e) Pursuant to Article 53(b), the Board shall have the power to establish **governing policies** relating to the effective and prudent internal control, administration and management of the Company that give effect to the Constitution, the achievement of the objects of the Company and to regulate the business of the Company. Such governance policies will be those deemed necessary, expedient or convenient for the proper regulation of the competent governance, management, conduct, control and direction of the Company and shall define how those with delegated powers in the Company (Board, director, office bearer, officer, employee, delegated person, persons, or committee and/or agent of the Company, Branch Management Committees or their members, volunteers, etc.) are expected to act and behave in the exercise of their delegated powers and authorities, the performance of their assigned roles and functions and the discharge their obligatory duties. The Board may at any time rescind, modify, change or vary any of the governing policies and make others to replace them in accordance with the changing needs and requirements of the Company. The governing policies must not be contrary to this Constitution or any relevant or applicable sections of the Act.
- (f) The Board shall set out its governing policies in the Company's **Governance Charter**. The charter may also specify requirements for reporting to Commonwealth agencies in relation to any funds raised and held on a specific Gift Fund established and maintained by the Company and reporting of distributions made from that Gift Fund so as to maintain any endorsement of the Company as an income tax exempt charity or public benevolent institution and any endorsement of the Company as a deductible gift recipient under Commonwealth income tax legislation.

- (g) The Members, Board, director, office bearer, officer, employee, delegated person, persons, or committee and/or agent of the Company, Branch Management Committees or their members, volunteers, etc. of the Company shall be **bound by and must comply with any governing policies** in force from time to time.
- (h) The Board shall, pursuant to Article 2(h)&(i), have authority to **interpret the meaning of the Articles in this Constitution** and any other matter relating to the Company on which this Constitution is silent, subject to any amendment of the Constitution made pursuant to Article 69.

#### 54. Execution of documents and financial instruments

- (a) If the Company has a **common seal**, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by either of:

- (i) two (2) Directors; or
- (ii) one (1) Director and the Company Secretary; or
- (iii) two (2) persons as the Board may appoint for that purpose;

and that witnessing is sufficient for all purposes that was affixed by those signatures by authority of the Board.

- (b) The Company may execute a document **without a common seal** provided the dealing or deed is signed and attested by the signatures either of:

- (i) two (2) Directors; or
- (ii) one (1) Director and the Company Secretary; or
- (iii) two (2) persons as the Board may appoint for that purpose;

and that attestation is sufficient for all purposes that was affixed by those signatures by authority of the Board.

*This provision is in accordance with provisions of the Corporations Act (2001) s.123(1): A company may have a common seal. If a company does have a common seal, the company must set out on it the company's name; and the company's ACN. Note 1: A company may ...execute documents without using a seal (see s.126 and s.127).*

- (c) The Board may determine the manner in which, and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other **financial, negotiable or transferable instruments** in the name of, or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

#### 55. Delegation authority of the Board

- (a) The **Board may delegate** any of its powers to:
- (i) a committee of the Board made up of reliable and competent persons as determined at the Board's discretion,
  - (ii) a Director (including an Office Bearer),
  - (iii) an employee of the Company; or
  - (iv) any other person, group or body deemed reliable and competent to exercise the power.
- Directors have the right and entitlement to delegate any of their powers to a committee, a director, a company employee, any other person remembering however that a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves (Ref: Corporations Act 2001 s.190(1))*
- (b) A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (c) The Board may, subject to this Constitution, determine, or vary any determination of, the functions, responsibilities, powers, authorities of (and any constraints, related processes and protocols and relevant accountability obligations applying to) the committee or delegate.
- (d) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (e) Subject to the terms of appointment or reference of a committee, Article 58 applies, with the necessary changes, to meetings of a committee of the Board and Branch Management Committees.

#### **56. Attorney or agent**

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

## **Proceedings of the Board**

#### **57. Written resolutions of Directors**

- (a) The **Board may pass a resolution without a Board meeting** being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution under Article 57(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority. A document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 57(a) and is taken to be signed when received by the Company in legible form.

## 58. Board Meetings

- (a) The **Board may meet, adjourn and otherwise regulate their meetings** as it thinks fit on dates and at a location determined by the Board.
- (b) The Chair or any three (3) Directors may **call a Board meeting** at any time. On request of the Chair or any three (3) Directors, the Company Secretary must call a meeting of the Directors.
- (d) **Notice of a Board meeting** must be given to each Director (except a Director on leave of absence approved by the Board) and the Chief Executive Officer within seven (7) days or such period as may be unanimously agreed by the Board before the time appointed for the holding of the meeting. Notice of a Board meeting may be given in person in writing or by post or by electronic means.
- (e) A Director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by electronic means.
- (f) A Director who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.
- (g) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (h) For the purposes of the relevant and applicable sections of the Corporations Act, each Director, by consenting to be a Director, or by reason of the adoption of this Constitution, consents to the **use of technology** which permits each Director to communicate with every other participating Director or any combination of technologies for the holding of a Board meeting;
- (i) A Director may withdraw the consent given under this Article.

- (i) If a Board meeting is held in 2 or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the Chair of the meeting that the Director is discontinuing her or her participation in the meeting; and
  - (ii) the Chair of that meeting may determine at which of those places the meeting will be taken to have been held.
  
- (j) A **quorum** for a Board meeting is fifty one per cent (51%) [rounded to the nearest whole number] of the total membership of the Board or such greater number as may be fixed by the Board from time to time. A quorum for a Board meeting must be present at all times during the meeting. Each individual present may only be counted once towards a quorum.
  - (i) No formal business shall be transacted or resolutions passed by the Board unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting stands adjourned to the same place and at the same hour of the same day in the following week.
  - (ii) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting shall be dissolved.
  - (iii) The **attending Directors may act notwithstanding any vacancy in the Board** as long as there is a the number required to form a quorum required by this Constitution;
  - (iv) If the number of Directors in office at any time falls below the minimum number of Directors required by this Constitution pursuant to Article 46(d), the remaining Directors shall not act in the affairs of the Company, other than to:
    - A appoint suitable and eligible persons to fill casual Director vacancies pursuant to Article 48 up to at least the minimum number required by this Constitution pursuant to Article 46(d); or otherwise
    - B call a general meeting pursuant to Article 28(a) for the purpose of the election of additional Directors until the number of Directors is made up to at least the minimum number required by this Constitution pursuant to Article 46(d).
  
- (k) The Chief Executive Officer:
  - (i) shall, unless otherwise excused or directed by the Board, attend all Board meetings.

- (ii) does not have any right to vote at Board meetings.
- (l) The Company Secretary (or their delegate):
  - (i) shall, unless otherwise excused or directed by the Board, attend all Board meetings to fulfil their delegated governance administrative functions pursuant to Article 65.
  - (ii) does not have any right to vote at Board meetings.
- (m) Anything done (including the passing of a resolution) at a Board meeting is not invalid because of non-attendance by the Chief Executive Officer or Company Secretary.
- (n) Except for the provisions of Articles 58 (k) & (l), the Board shall ordinarily hold all Board meetings as *in camera* sessions, but may invite, at their own discretion, any person or persons as **attendees** to any part of the Board meeting who may be invited to make representations or, by permission of the Chair, speak (either in person or via telecommunication means if thought most practical and appropriate) on agenda items to provide reports, advice, counsel, guidance and information or answer questions on matters as requested by Board members.

#### 59. Chair of the Board

- (a) Subject to Article 59(b) the Chair of the Board must chair each Board meeting or in the Chair's absence, the Vice-Chair may preside as Chair at each Board meeting.
- (b) If at a Board meeting:
  - (i) there is no Chair or Vice-Chair; or
  - (ii) the Chair or Vice-Chair is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the Directors present must elect one of their number to, chair that meeting or part of the meeting.
- (c) A person does not cease to be a Chair of the Board if that person retires as a Director at a General Meeting and is re-elected as a Director at that meeting (or any adjournment of that meeting).
- (d) A person does cease to be a Chair of the Board if that person retires as a Director at a General Meeting and is not re-elected as a Director at that meeting (or any adjournment of that meeting).

#### 60. Board resolutions

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it [and for the sake of clarity, a tied vote is NOT passed].
- (b) Subject to Article 51 and this Article 60, each Director present in person has **one vote** on a matter arising at a Board meeting.
- (c) In case of an equality of votes [i.e. a tied vote] on a resolution at a Board meeting, **the Chair** of that meeting has a deliberative vote in his or her capacity as a Director in respect of that resolution, but **does not have a casting vote** on that resolution and the resolution is decided in the negative.

#### **61. Valid proceedings**

- (a) An act at any Board meeting or a committee of the Board or Branch Management Committees or an act of any person acting as a Director is not invalidated by:
  - (i) a defect in the appointment or continuance in office of a person as a Director, a Member of the committee or of the person so acting; or
  - (ii) a person so appointed being disqualified or not being entitled to vote,

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

## **Office Bearers of the Board**

#### **62. Chair**

- (a) At the first meeting of the Board after the Annual General Meeting in each year, the Board shall elect one of the Directors from among their number to the office of Chair. The Chair will hold office until the next Annual General Meeting but is eligible for re-election.
- (b) A person who is elected Chair is, for the purposes of this Constitution, first and foremost a Director who has the same tenure as any other Director pursuant to Article 49. If the Chair retires as a Director or otherwise ceases to be a Director, the person ceases to be the Chair at which time the Board shall elect one of the Directors from among their number to the office of Chair pursuant to Article 62(a).
- (c) The person elected Chair, in addition to their Director role, has all the corresponding authorities delegated in this Constitution and those further delegated by the Board pursuant to Articles 53(e) and 62(d),(e)&(f).

- (d) The Board may, subject to this Constitution, determine, or vary any determination of, the functions, responsibilities, powers, authorities of (and any constraints, related processes and protocols and relevant accountability obligations applying to), and subject to Article 6, the remuneration of, the Chair.
- (e) The Board may delegate any of its powers to the Chair for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Chair.
- (f) The Chair must exercise the powers delegated to him or her in accordance with any directions of the Board.

### **63. Vice-Chair**

- (a) At the first meeting of the Board after the Annual General Meeting in each year, the Board shall elect one of the Directors from among their number to the office of Vice-Chair. The Vice-Chair will hold office until the next Annual General Meeting but is eligible for re-election.
- (b) A person who is elected Vice-Chair is for the purposes of this Constitution first and foremost a Director who has the same tenure as any other Director pursuant to Article 49. If the Vice-Chair retires as a Director or otherwise ceases to be a Director, the person ceases to be the Vice-Chair at which time the Board shall elect one of the Directors from among their number to the office of Vice-Chair pursuant to Article 63(a).
- (c) The person elected Vice-Chair, in addition to their Director role, has all the corresponding authorities delegated in this Constitution and those further delegated by the Board pursuant to Articles 53(e) and 63(d),(e)&(f).
- (d) The Board may, subject to this Constitution, determine, or vary any determination of, the functions, responsibilities, powers, authorities of (and any constraints, related processes and protocols and relevant accountability obligations applying to), and subject to Article 6, the remuneration of, the Vice-Chair.
- (e) The Board may delegate any of its powers to the Vice-Chair for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Vice-Chair.
- (f) The Vice-Chair must exercise the powers delegated to him or her in accordance with any directions of the Board.

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## **CEO**

### **64. Chief Executive Officer**

- (a) The CEO is appointed by the Board on terms and conditions (including as to remuneration) as determined by the Board, and may be removed by the Board (subject to any contract of employment between the Company and the CEO).
- (b) The Board may, subject to this Constitution, determine, or vary any determination of, the functions, responsibilities, powers, authorities of (and any constraints, related processes and protocols and relevant accountability obligations applying to) the CEO who may perform any such function or exercise any other power specified or delegated by the Board.
- (c) The CEO may (subject to any other direction of the Board) delegate to an employee of the Company a function or power delegated to the CEO under Article 63(b), but that power or function may not be further delegated.

## Company Secretary

### 65. Company Secretary

- (a) The Board **shall** appoint a **Company Secretary** (who may be either an employee, a Member or any other eligible person, including - but preferably not - a Director), who shall hold office for any period and on such terms and conditions (including as to remuneration) as the Board determines and who may vary or revoke any determination of, the functions, responsibilities, powers, authorities of (and any constraints, related processes and protocols and relevant accountability obligations applying to) the Company Secretary.
- (b) Subject to any agreement between the Company and the Company Secretary, the Board may vary or terminate the appointment of a Company Secretary at any time, with or without cause.
- (c) The person appointed Company Secretary has all the corresponding authorities delegated in this Constitution and those further delegated by the Board pursuant to pursuant to Articles 53(e) and 65(a).
- (d) The Board may, by resolution, delegate some or all of the above duties to another person pursuant to Article 55 not acting formally as the Company Secretary of the Company. The Company Secretary may also, delegate some or all of the above duties to another person from time to time.

## Branches

### 66 Branches

(a) **The Board may**, pursuant to Article 5(b)(xix) and in accordance with any governing policies established by the Board pursuant to Article 53(e):

(i) **approve the establishment of a Branch** as an internal "business unit" of the Company organised and existing within a specific geographical locality (within Board designated geographical boundaries of the locality that describe the Branch's territory) where the Board deems there to be sufficient existing or potential members to enable a Branch to be formed and maintained except a Branch must only be established with and must maintain at all times a minimum of ten (10) members;

#### **Interest Groups**

A. Where a Branch falls below a minimum of ten (10) members, the remaining members may still operate as an **Interest Group** of the Company in a manner similar to a Branch of the Company pursuant to Articles 66(a-m) but may NOT establish or operate a Branch Fund pursuant to Articles 66(n-u).

(ii) **determine the initiation process of the establishment and formation of a Branch;**

(iii) **change such Branch geographical locality and boundaries of the locality** (in consultation with the Branch Management Committee) as deemed necessary from time to time;

(iv) **require each Branch to adopt as its name** such term as will identify it with its locality thus: *Heart Support – Australia Limited (locality) Branch*, which will be subject to approval and registration by the Board and when so approved and registered such name shall not be changed except with the consent of the Board (in consultation with the Branch Management Committee);

(v) **deem the membership of a Branch shall not exceed five hundred** (500) members; and where the membership of a Branch appears likely to exceed five hundred (500) members, the Board (in consultation with the Branch Management Committee) shall consider proposals for subdividing the Branch and forming another Branch;

(vi) **dissolve or suspend a Branch** (in consultation with the Branch Management Committee):

A. when the number of members of the Branch is reduced below twenty (20);

B. if members of the Branch present at a general meeting of the Branch vote by a seventy-five percent (75%) majority that the Branch be dissolved; or

- C. where the Board has reason to believe that a Branch Management Committee whether by wilful and/or persistent violation of the Constitution or defiance of the directions given to it by the Board or their authorised delegate or for other serious reasons has acted in a manner detrimental to the interests of the Company.

### Branch Management Committees

- (b) Each **Branch shall be governed by a Branch Management Committee** in accordance with any governing policies established by the Board pursuant to Article 53(e).
- (c) The **members of the Branch Management Committee shall be elected or appointed** and their eligibility qualifications, nominations procedures, election processes, tenure and vacation of or removal from office events shall be in accordance with any governing policies established by the Board pursuant to Article 53(e).
- (d) The **Branch Management Committee is responsible and accountable to the CEO** for the Branch's day-to-day management, guidance and oversight and shall be under the direction of the CEO in accordance with any governing policies established by the Board pursuant to Article 53(e).
- (e) The **Branch Management Committee must report to the Board** (through the CEO) in accordance with any governing policies established by the Board pursuant to Article 53(e) and shall furnish to the Board in such manner as the Board may require at any time such information, details and explanations, etc. in relation to its operations, financial management and administration as are, by that Board or the Constitution or any governing policies established by the Board pursuant to Article 53(e), required to be furnished.
- (f) The Board may, subject to this Constitution, determine, or vary any determination of, the **functions, responsibilities, powers, authorities of** (and any constraints, related processes and protocols and relevant accountability obligations applying to) the **Branch Management Committee** who may perform any such function or exercise any other power specified or delegated by the Board in accordance with any governing policies established by the Board pursuant to Article 53(e).

Specifically, a Branch Management Committee:

- (i) determines (in consultation with the CEO) the strategies and activities of the Branch to:
  - A. **advance the objects of the Company** by assisting with the delivery of national programs and services;
  - B. **initiate local programs that:**

- (i) **deliver specific services** to the Branch memberships that are aligned with the Company's overarching strategic direction priorities and Branch membership needs;
- (ii) **attract new members**;
- (iii) **raise funds** for the Company;
- (ii) **provides leadership and direction to, and co-ordinates and manages the performance and oversight of Branch volunteers and monitors compliant fulfilment and the risk profile of Branch activities** in accordance with any governing policies established by the Board pursuant to Article 53(e);
- (iii) guides (in conjunction with the CEO) the preparation of an **annual Branch operational plan and budget** in accordance and alignment with the Company's strategic direction and Branch membership needs;
- (iv) provides **counsel to Board** (pursuant to Article 71) on:
  - public policy issues affecting the Branch and its operations and activities within the wider context of the Company's pursuit of its objects;
  - the views, concerns and aspirations of members in the Branch;
  - the Branch Management Committee's views on Company governance matters;
- (v) provides a **public presence for and promotes the objects of the Company** within the Branch's geographical locality;
- (vi) performs a **membership approval role** pursuant to Article 15;
- (vii) may **appoint and discharge Branch Members**, in accordance with any governing policies established by the Board pursuant to Article 53(e), **to hold voluntary/honorary positions** within the Branch deemed necessary for the efficient functioning of the Branch and its activities;
- (viii) may establish and dissolve such **subcommittees**, in accordance with any governing policies established by the Board pursuant to Article 53(e), deemed necessary for the efficient functioning of the Branch and its activities.
- (g) a **Branch Management Committee shall consist of six (6) members**, made up of four (4) office bearer members including a:
  1. Branch President
  2. Branch Vice President
  3. Branch Secretary
  4. Branch Treasurerand two (2) ordinary Management Committee members.

- (h) The **Branch Management Committee members may be deemed to be Officers of the Company** and are bound by the duties pursuant to the ACNC Act and Regulation, this Constitution and Article 46(f) and other such duties in accordance with any governing policies established by the Board pursuant to Article 53(e).
- (i) Subject to Article 46(a)(i), a **Branch Management Committee member may hold simultaneous positions** as a Branch Management Committee member and a Director of the Company, and/or may also partake in (non-governance related) Branch activities in their capacity as a Company member or as an Branch volunteer as directed by the Branch Management Committee.  
*ACNC Governance Standard 2: Accountability to members. Charities must take reasonable steps to be accountable to their members and provide their members adequate opportunity to raise concerns about how the charity is governed.*
- (j) Any person appointed as a **Branch Management Committee member** shall occupy that position in **an honorary capacity** subject to Article 6(b).
- (k) The **functions, responsibilities, powers, authorities of** (and any constraints, related processes and protocols and relevant accountability obligations applying to) **the Branch Management Committee office bearers** shall be determined in accordance with any governing policies established by the Board pursuant to Article 53(e).
- (l) The Branch General and Branch Management Committee **meeting administration and protocols** shall be determined in accordance with any governing policies established by the Board pursuant to Article 53(e).
- (m) Any decisions to **employ or contract with persons at a Branch level** shall be approved and appointed by the CEO (under Board delegated authority) on the terms and conditions (including as to remuneration) as determined by the CEO and may be removed by the CEO.

## BRANCH FUNDS

- (n) A Branch may, in accordance with any governing policies established by the Board pursuant to Article 53(e), establish and operate a **bank account** in the Branch's name [i.e. *Heart Support - Australia Limited (locality) Branch Fund*] as a **Branch Fund** solely for the purposes described in Article 6(a) and 66(o).

A Branch Fund shall consist of:

- (i) **any real or personal property of which the Branch**, by the Constitution or by any established practice not inconsistent with the Constitution, has, or in the absence of any limited term lease, bailment or arrangement, **would have, the right of custody and management;**
- (ii) the **proportion of the General Funds of the Company as may be allocated to the Branch** by the Board from time to time;

- (iii) the amounts of **monies received from fundraising** directly relating to activities of the Branch and received by a Branch, less so much of those amounts as may be deemed payable by the Branch to the General Fund as determined by the Board from time to time;
- (iv) **any interest or other income derived from investment or use of the Branch Fund;**
- (v) any **property acquired** wholly or mainly by expenditure of the monies of the Branch Fund or derived from other assets of the Branch Fund;
- (vi) the **proceeds of any disposal** of parts of the Branch Fund;
- (vii) any **funds from any other source** due to or generated by the Branch other than membership fees or tax deductible donations or those funds as may be deemed payable by the Branch to the General Fund as determined by the Board from time to time.

For the sake of clarity, a **Branch Fund** is deemed an instrument of and **comprises funds and property** acquired on behalf and under the name of, and **belonging to, the Company** [NOT the Branch - it is the manager of the Fund] and as such, said funds are ultimately under the overarching control, direction and oversight of the Board who, through the CEO's delegated functions, responsibilities, powers, authorities pursuant to Article 64(b), will be responsible for the allocation, control, supervision or direct disbursement of all Company resources in accordance with the strategic direction priorities of the Company or acquittal of all Company resources in accordance with statutory financial record keeping and reporting requirements.

#### **BRANCH FUNDS MANAGEMENT**

- (o) A **Branch Fund shall be managed by a Branch Management Committee** which may apply it to all or any of the following **purposes**:
  - (i) provision of **services and activities in the interest of the members** of the Branch and that are aligned with the Company's overarching strategic direction priorities and Branch membership needs;
  - (ii) defraying the costs of **administration and management** of the Branch actually and necessarily incurred,
  - (iii) subject to the Constitution, for such **other purposes** as the Branch Management Committee may from time to time determine and only as authorised by Board or their authorised delegate for a specified purpose and timeframe.

Provided that no **grant or donation** exceeding \$500 shall be made unless the Branch Management Committee:

- (iv) is satisfied that the making of the grant or donation would be in accordance with the Constitution of the Company and in alignment with the strategic direction priorities of the Company,
- (v) has approved the making of the grant or donation, and
- (vi) has applied for and received approval of the making of the grant or donation by the Board or their authorised delegate.

The Branch Management Committee:

- (vii) may, except in relation to Article 66(f)(i), NOT use the Branch Fund in relation to any of the **Company powers** pursuant to Article 5(b) unless specifically delegated or authorised by Board or their authorised delegate for a specified purpose and timeframe.
- (p) Branch Funds represented by money shall be **deposited** in an account with an accredited bank in the name of the Branch approved pursuant to Article 66(a)(iv) and the Branch Management Committee may determine the manner in which, and at least two Branch Management Committee members by whom the **withdrawal** of any money shall be effected, and receipts for money paid to the Branch must be signed, drawn, accepted, endorsed or otherwise executed.
- (q) Pursuant to Article 66(g), the Branch Management Committee members shall manage Company resources properly, efficiently and effectively "*with the degree of care and diligence that a reasonable individual would exercise if they were*" in a similar position, "*in the Company's best interests, and to further the purposes of the Company*" and as such shall:
  - (i) monitor and regularly review the Branch **financial position, statements and performance reports and ensure financial affairs are managed responsibly**;
  - (ii) maintain accurate and up-to-date **financial records** of all monies received and expenditures outgoing [in a similar manner pursuant to Article 77(a)];
  - (iii) allow the CEO such access to **financial records** in respect of a Branch or a Branch Fund as is reasonably required to enable:
    - the preparation of an annual consolidated statement of all assets and liabilities of the Company
    - general accounting compliance oversight purposes
    - responsibilities pursuant to Article 66(e).

- (iv) if instructed by the Board, appoint an approved **auditor** to audit the books, receipts and other documents at least once a year and at other such times as the Board may instruct. Should the auditor find any irregularity, they shall report forthwith to the Branch Management Committee and to the CEO.
- (r) If a Branch incurs any **liability** as a result of the actions of the Branch Management Committee any of the officers, employees or volunteers of the Branch such liability shall be met exclusively from the Branch Fund.
  - (i) If the Branch Fund is insufficient to meet the liability and if any payment has to be made from the General Fund to meet the liability then the General Fund shall be entitled to be indemnified out of the Branch Fund to the extent of the payment so made.
  - (ii) The Board may then cause a levy of members in the Branch concerned to be struck to the extent necessary to reimburse the General Fund for any payments made pursuant to this sub-rule. Such levy shall be conducted pursuant to the provisions of Article 23(a).
- (s) No Branch, Branch Management Committee or officer, employee or volunteer of a Branch shall have power to bind the Company or to undertake any liability affecting the General Fund unless authorised by Board or their authorised delegate.
- (t) The Board shall have power to consider and deal with any application for financial assistance from a Branch, and if considered necessary, to grant such assistance upon such conditions as the Board shall deem fit.
- (u) Should the Branch Management Committee not meet its fiduciary duties in respect of the financial management of the Branch Fund, such funds therein may, be requisitioned (in part or whole) by authority of the Board (in consultation with the Branch Management Committee) for application by and under the authority of the CEO.

## Minutes

### 67. Minutes

- (a) The Board shall cause minutes to be kept and entered up in accordance with the Law:
  - (i) of the names of the Directors present at each meeting of the Directors and of any Committee; and
  - (ii) of all resolutions and proceedings of General Meetings and of meetings of Directors and of Committees.

- (b) The minutes are to be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting.

## Indemnity and Insurance

### 68. Indemnity and insurance

- (a) To the extent permitted by law, the Company may indemnify each relevant officer against a liability of that person incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company and the legal costs of that person.

*Corporations Act 199A*

- (1) A company...must not exempt a person...from a liability to the company incurred as an officer...of the company.**

*...indemnity for liability (other than for legal costs) [is] not allowed [in the following circumstances]...*

- (2) A company must not indemnify a person...against any of the following liabilities incurred as an officer...of the company:**
- (a) a liability owed to the company;**
  - (b) a liability for a pecuniary penalty order under s.1317G or a compensation order under section 961M, 1317H, 1317HA or 1317HB;**
  - (c) a liability that is owed to someone other than the company...and did not arise out of conduct in good faith.**

- (b) Where an indemnity is provided by the Company under Article 68(a), that indemnity:
- (i) is enforceable without the relevant officer having first to incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by the relevant officer even though the relevant officer may have ceased to be an Officer of the Company; and
  - (iii) applies to liabilities and legal costs incurred both before and after this Article became effective.

- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a relevant officer in respect of legal costs of that person.

*Corporations Act 199A*

*...indemnity for legal costs [is] not allowed [in the following circumstances]...*

- (3) A company...must not indemnify a person...against legal costs incurred in defending an action for a liability incurred as an officer of the company if the costs are incurred:**
- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or**
  - (b) in defending or resisting criminal proceedings in which the person is found guilty; or**
  - (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or**
  - (d) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief (except costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order). This does include proceedings by ASIC for an order under s.206C, 206D, 206E or 206EAA (disqualification), s.232**

*(oppression), section 961M, 1317E, 1317G, 1317H, 1317HA Or 1317HB (civil penalties) or s.1324 (injunction).*

*The company may be able to give the person a loan or advance in respect of the legal costs (see s.212)*

(d) To the extent permitted by law, the Company may:

(i) enter into, or agree to enter into; or

(ii) pay, or agree to pay, a premium for,

a contract insuring a relevant officer against a Liability of that person and the legal costs of that person. Any such premium in relation to an Officer is in addition to, and not regarded as part of, any remuneration approved by Members under this Constitution.

*Corporations Act 199B*

*(1) A company...must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer of the company against a liability (other than one for legal costs) arising out of:*

*(a) conduct involving a wilful breach of duty in relation to the company; or*

*(b) a contravention of s.182 (misuse of position) s.183 (misuse of information).*

(e) To the extent permitted by law, the Company may enter into an agreement or deed with a relevant officer or a person who is, or has been, an Officer of the Company or a subsidiary of the Company, under which the Company must do all or any of the following:

(i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;

(ii) indemnify that person against any liability and legal costs of that person;

(iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of legal costs of that person; and

(iv) keep that person insured in respect of any act or omission by that person while a relevant officer or an Officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## Amendment of Constitution

### 69. Amendment of Constitution

(a) This Constitution, including the statement of objects in Article 5(a), may be altered, rescinded and/or added to only by a Special Resolution passed by the Company in General Meeting. The change must be consistent with any relevant and applicable section of the Corporations Act and the ACNC Act and Regulation and the rest of the Constitution.

- (b) No alteration which may affect the tax exempt status of the income of the Company shall be made to or in the Constitution unless not less than twenty-eight (28) days' prior written notice specifying the alterations proposed to be made shall have been given to the Commissioner of Taxation.  
*This is to ensure that income of the Company which attracts a tax concession is used for the purpose for which the Company was granted tax exempt status.*
- (c) The Company must, within 28 days of the Special Resolution notify, and send a copy of the amended Constitution to, the ACNC or provide a reference to where the ACNC can access the amended Constitution.

## Dispute and Grievance Resolution

### 70. Dispute and Grievance Resolution Procedure and Appeal

- (a) If any Member has a **grievance with, or disputes any decision made by the Company which directly affects that Member**, the Member may write to the Company Secretary of the Company setting out the details of the decision made and the basis of the grievance of the Member.
- (i) The Company Secretary shall, within 14 working days, acknowledge the Member's communication and set out the reasons for the decision.
- (ii) If the Member is dissatisfied with that explanation, the Member may request that the Board (at their discretion themselves or through a committee or delegate), mediate the grievance or dispute (via telecommunication means if thought most practical and appropriate), within a period of not more than two calendar months.
- (iii) The Member, if dissatisfied with the outcome of any such mediation, may at any time withdraw from the process and request that the Board meet with the Member at such place as the Board may agree (including via telecommunication means if thought most practical and appropriate), to endeavour to resolve the matter. The Board may, at their discretion, but cognisant of the rules of natural justice and their duty to act fairly, refuse to conciliate the matter if they believe the matter is of an irrelevant, frivolous or vexatious nature. Subject to the inherent jurisdiction of the judicial system, the decision of the Board shall be final and binding.

## Member Communication with the Board

### 71. Member (and Branch Management Committee) Communication with the Board

- (a) A Member or Branch Management Committee [pursuant to Article 66(f)(iv)] may comment on, and generally input suggestions and counsel on any matter **in relation**

**to the direction, control and management of the affairs of the Company** with the Board that the Member or Branch Management Committee sees fit to raise.

- (b) The Member or Branch Management Committee shall adhere to the following procedure for raising a matter with the Board:
- (i) The comment, concern, suggestion or counsel must be clearly stated in writing, addressed to the Company Secretary, signed by the Member or Branch Management Committee;
  - (ii) The Company Secretary shall ensure provision on the agenda of the next Board meeting for the correspondence relating to the matter to be considered by the Board at that Board meeting.
  - (iii) The Board may, at their discretion, but cognisant of the rules of natural justice and their duty to act fairly, refuse to discuss or consider the matter if they believe the matter is of an irrelevant, frivolous or vexatious nature. The Company Secretary, shall inform the Member or Branch Management Committee in writing of the outcome of the Board's consideration of the matter within seven (7) days of the meeting at which the matter was discussed or considered.
  - (iv) Following receipt of notification of the outcome of any Board deliberation of the matter, the Member or Branch Management Committee may, if they so choose, pursue the matter further, by making make a request, in writing, to be invited to attend (either in person at their own expense or via telecommunication means if thought most practical and appropriate) and address the Board as an **attendee** at the next Board meeting, notwithstanding that the Board can accept or reject the request for invitation for the Member or Branch Management Committee to address the Board at their absolute discretion pursuant to Article 58(n).
  - (v) Within fourteen (14) days of receipt of such a request pursuant to Article 71(b)(iv) the Company Secretary will notify the Member or Branch Management Committee of the outcome of the request, and if accepted, shall notify the Member or Branch Management Committee of the date and time that the Member or Branch Management Committee may attend the next Board meeting to discuss the matter and be dealt with pursuant to Article 58(n). The date of the meeting must be no more than sixty (60) days from the date of receipt of the request.

## Notices

### 72. Notices to Members

- (a) The Company may give notice to a Member by any of the following means at the Board's discretion:
- (i) delivering it to that Member or person;
  - (ii) leaving it at, or sending it by post to, the address of the Member in the Register or the alternative address (if any) nominated by that Member or person for that purpose;
  - (iii) sending it to the fax number or electronic address (if any) nominated by that Member or person for that purpose;
  - (iv) if permitted by any relevant and applicable section of the Corporations Act, notifying that Member of the notice's availability by an electronic means nominated by the Member for that purpose; or
  - (v) any other means permitted by any relevant and applicable section of the Corporations Act.
- (b) Where a Member does not have an address in the Register or where the Board believes that a Member is not at the address in the Register, the Company may give Notice to that Member by exhibiting the Notice at the registered office of the Company for a period of 48 hours, unless and until the Member gives the Company written notice of an address for the giving of Notices.
- (c) The Company must send all documents to a Member whose address for Notices is not within Australia by air-mail, air courier or electronic means.
- (d) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.
- (e) Pursuant to Article 29(c), the accidental omission to give notice of any meeting of Members, the Board, a Committee or the non-receipt of notice of a meeting by any Member shall not invalidate the proceedings at that meeting.

### **73. Notice to Directors**

The Company may give notice to a Director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;

- (c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

#### **74 Notice to the Company**

A person may give notice to the Company by:

- (a) leaving it at, or by sending by post to, the registered office of the Company;
- (b) leaving it at, or by sending it by post to, a place nominated by the Company for that purpose;
- (c) sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) any other means permitted by any relevant and applicable section of the Corporations Act.

#### **75. Time of service**

- (a) A notice sent by post is taken to be given five (5) working days from the date it is posted.
- (b) A notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A notice given in accordance with Article 72(a)(iv) is taken to be given on the day after the date on which the Member is notified that the Notice is available.
- (d) A notice given in accordance with Article 72(b) is taken to be given at the commencement of the 48 hour period referred to in that Article.
- (e) A certificate by a Director or Company Secretary to the effect that a notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

#### **76. Notice requirements**

The Board may specify, generally or in a particular case, requirements in relation to notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the notice is taken to be given.

## Accounts

### 77. Financial and Accounting Records and Inspection of Records

- (a) The Board shall cause (either by their own actions or pursuant to Article 55) proper and accurate written **financial and accounting records** to be kept:
  - (i) of all money received and spent by the Company and the matter in respect of which such **receipt and expenditure** takes place, and of the assets and liabilities of the Company and of all relevant activities involving the Company;
  - (ii) in such a manner as will enable true and fair **financial statements** to be prepared and audited;
  - (iii) for at least seven (7) years after the transactions covered by the records are completed.  
*ACNC Act 2001 s.55.5*
- (b) The Board shall from time to time determine, pursuant to Article 53(e), at what times and places and under what conditions, arrangements or regulations the **records, books and other documents** of the Company (other than legal documents related to Court action or current litigation, personnel files and documents and other privileged, legally restricted or commercial-in-confidence information) and including minutes of all board meetings and general meetings of the Company shall be open to **inspection by a Member** of the Company (who must be up to date with all financial obligations to the Company at the time of request);
- (c) The **records, books and other documents** (financial or otherwise) of the Company and minutes of all board meetings and general meetings of the Company are not to be electronically or manually **copied** (except for hand-written notations) and/or removed from the principal place of administration of the Company and shall be kept in the custody or under the control of the Company Secretary or their delegate (except as otherwise provided by this Constitution, any relevant or applicable sections of the Act or the law) and remain the property of the Company to be used solely for the purposes of the Company pursuant to the matters required as described in this Constitution or the law.

- (d) Each **Director** of the Company has the **right of access** personally, to the records, books and all other documents (financial or otherwise) of the Company at all reasonable times for the purposes of their duties pursuant to Article 46(f), while specifically acknowledging their duty pursuant to Article 46(f)(iv), and may ask those records, books or documents to be tabled at a Board meeting if necessary;
- (e) The Director may make **copies** of those records and other documents for the purposes of a legal proceeding to which the person is a party; or that the person proposes in good faith to bring; or that the person has reason to believe will be brought against them.

## Winding up

### 78. Winding Up

On a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must not be paid to or distributed among the Members, but must be given or transferred:

- (a) to one or more bodies corporate, associations or institutions selected by the Ordinary and Life Members by resolution at or before the dissolution of the Company:
  - (i) having object similar to the objects of the Company; and
  - (ii) whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company under Article 6; and
  - (iii) to which income tax deductible gifts can be made; orif there are no bodies corporate, associations or institutions which meet the requirements of this Article 78(a)(i)-(iii),
  - (iv) to one or more bodies corporate, associations or institutions selected by the Ordinary and Life Members by resolution at or before dissolution of the Company, the objects of which are the promotion of charity and to which gifts allowable deductions under the Income Tax Assessment Act 1997 (Cth); or
- (b) if the Ordinary and Life Members do not make a selection pursuant to Article 78(a) for any reason, to one or more bodies corporate, associations or institutions meeting the requirements of either Article 78(a) or 78(b), any surplus assets of the Company remaining after the payment of its must be given or transferred to one or more such bodies corporate, associations or institutions selected by the Board, subject to Board obtaining court approval under any relevant and applicable section of the Corporations Act to exercise this power.