

‘ Constitution of Physical Disability Australia Ltd



PHYSICAL DISABILITY AUSTRALIA

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1 TYPE OF COMPANY

Public Company Limited by Guarantee

1.1 The Company is a not for profit public company limited by guarantee.

Contribution to Property of the Company on Winding Up

1.2 Each Member undertakes that:

1.2.1 if the Company is wound up; and

1.2.2 the Member is a Member at the time the Company is wound up or was a Member during the year ending on the day of commencement of the winding up; the Member must contribute a maximum amount of \$20.00 to the property of the Company to:

1.2.3 pay the Company's debts and liabilities;

1.2.4 pay the costs, charges and expenses of winding up; and

1.2.5 adjust the rights of contributories among Members.

Distribution of Profits on Winding Up

1.3 If the Company is wound up, the property available for distribution after satisfaction of all debts and liabilities must be given or transferred to another non-profit Australian institution approved by the Australian Commissioner of Taxation as exempt from income tax.

No Power to Issue Shares

1.4 The Company does not have the power to issue shares.

2 REPLACEABLE RULES

If this Constitution is inconsistent with a Replaceable Rule, it displaces the Replaceable Rule.

3 DEFINITIONS AND INTERPRETATION

3.1 In this Constitution, unless it is inconsistent with the subject or context in which it is used:

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

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

AGM means annual general meeting.

ASIC means Australian Securities Investment Commission.

Associate Member means a natural person who is a Member and:

(a) is, as at the date of adoption of this Constitution, registered as an associate member of the Company;

(b) or becomes registered as an associate member of the Company pursuant to **Clause 6**.

Board means the board of Directors of the Company.

Company means Physical Disability Australia Limited (ACN: 081 345 164).

Confidential Information means discussions at board meetings determined by the board to be confidential and all and any information which relates to the business or financial affairs of the Company which is disclosed to a Director or Secretary ("the Recipient") by or on behalf of the Company or which is otherwise acquired by the Recipient directly or indirectly from the Company or which otherwise comes to the knowledge of the Recipient, whether the information is in oral, visual or written form or is recorded in any other medium, unless it is:

- (a) Information which the Recipient can establish was, at the time of disclosure to them, in the public domain;
- (b) Information which the Recipient can establish becomes, subsequent to disclosure, part of the public domain, except through disclosure by the Recipient directly or indirectly, in violation of the obligations imposed by this Constitution; and
- (c) Information which the Recipient can establish was in the Recipient's possession at the time of disclosure by or on behalf of the Company to the Recipient and was not otherwise acquired from the Company directly or indirectly.

Associate Director means a **Member** who has been appointed to assist Directors in their jurisdiction and the company generally by participating in **Board** meetings and other activities.

Board means the board of Directors and Associate Directors of the Company.

Constitution means this Constitution as amended from time to time.

Corporate Member means a Member who is not a natural person.

DGR means a deductible gift recipient as defined by the law from time to time.

Director means a director of the Company, including an alternate director.

Financial Records includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
 - i. the methods by which financial statements are made up; and
 - ii. adjustments to be made in preparing financial statements.

Individual Member means a Member who is a natural person and:

- (a) is, as at the date of adoption of this Constitution, registered as an individual member of the Company; or
- (b) becomes registered as an individual member of the Company pursuant to **Clause 6**.

Member means a member of the Company within the meaning of the Act.

Membership Fee means the annual fee payable by a Member as determined in accordance with **Clause 8**.

Negotiable Instrument means:

- (a) a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (b) an endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (c) a letter of credit;

of, or purporting to be issued or signed by or on behalf of, the Company.

Objectives means the objectives of the Company as set out in **Clause 4**.

Office means the registered office of the Company.

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

Replaceable Rules means the replaceable rules applicable to the Company pursuant to the Act.

Secretary means the secretary of the Company or the employee acting in that capacity.

Special General Meeting (SGM) means a meeting of the Company's Members other than an AGM.

3.2 In this Constitution, unless the subject or context requires otherwise:

3.2.1 The singular includes the plural and vice versa;

3.2.2 A reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;

3.2.3 A recital, schedule, annexure or a description of the parties forms part of this Constitution;

3.2.4 A reference to any statute, regulation, agreement or other legal document is to that agreement or document as amended, notated, supplemented or replaced from time to time;

3.2.5 Where an expression is defined anywhere in this agreement, it has the same meaning throughout; and

3.2.6 Headings do not form part of or affect the construction or interpretation of this Constitution.

4 OBJECTIVES

4.1 The objectives of the Company are:

4.1.1 To ensure that the rights of people with physical disability are acknowledged by promoting their inclusive participation in all aspects of the Australian community;

4.1.2 To include within all our operations, an active promotion of the rights, responsibilities, issues and participation of people with physical disability;

4.1.3 To be acknowledged as the national peak organisation for people with physical disabilities throughout Australia;

4.1.4 To generate political force through pro-active lobbying and representation to promote the change necessary to meet the needs of people with physical disabilities;

4.1.5 To have links with State and Territory Physical Disability Councils, other peak disability organisations and representatives to and of the Company;

4.1.6 To provide a forum for the discussion of issues of relevance to people with physical disabilities;

4.1.7 To disseminate information to State and Territory organizations and individuals and to the membership on issues of relevance to people with physical disabilities;

4.1.8 To provide mechanisms for formal and informal consultations with Members and organisations providing services to people with physical disabilities; and

4.1.9 To represent and present the views of people with physical disabilities to all tiers of governments and the general community.

5 POWERS OF THE COMPANY

General Powers

- 5.1 The Company may only exercise the powers conferred on it by Section 124(1) of the Act to:
- 5.1.1 carry out the Objectives; and
 - 5.1.2 do things incidental or convenient to the exercise of power under **Clause 5.1.1**.

Exercise of Powers Affecting Income and Property

- 5.2 The Company may only apply its income and property towards the promotion of the Objectives.
- 5.3 Nothing in this Constitution prevents the Company from paying in good faith:
- 5.3.1 a Member or Director in return for any services rendered or goods supplied other than in their capacity as a Member or Director;
 - 5.3.2 remuneration to any employee of the Company;
 - 5.3.3 interest to a Member or Director for moneys lent to the Company at a rate not exceeding present rates of interest charged by banks in Australia;
 - 5.3.4 rent to a Member or Director for premises leased by the Member or Director to the Company; or
 - 5.3.5 moneys representing reimbursement to a Member or Director for out-of-pocket expenses reasonably incurred by the Member or Director on behalf of the Company.

6 MEMBERSHIP

Eligibility for Membership

- 6.1 The Company offers Membership to the following persons:
- 6.1.1 People with a physical disability (Individual Member). This category encompasses full voting membership during Board elections. To be eligible to become an individual member, a person must:
 - (a) have a physical disability; and
 - (b) be 18 years or over (for persons under 18 years, refer to **Clause 6.2**).
 - 6.1.2 Families of people with physical disability, Carers and people employed or involved in the disability community (either through paid or volunteer service) can become Associate Members. This is a non-voting membership.
 - 6.1.3 Organisations. Corporate entities and organisations are welcome to join as members of the Company and receive information about but are not eligible to vote in Board elections. To be eligible to become a corporate member, the entity must provide support or services to the physical disability sector. Persons who have a physical disability and are employed within organisations must join separately as an Individual Member.
 - 6.1.4 Other categories of membership as may be determined by the Board upon terms and conditions stipulated by the Board.
- 6.2. People under the age of 18 are welcome to join the Company membership and receive information with regarding the organisation, but will not be eligible to vote until the age of 18. A permission statement by a parent of legal guardian must be provided to process the membership.

Application for Membership

- 6.3 To apply to become a Member, a person must:
 - 6.3.1 complete the application form located on the Company's website under 'Register Your Membership', alternatively a printed application can be provided to if requested.
 - 6.3.2 provide the completed application form to the Board either via post or online.
- 6.4 On receipt of a completed application form, the Secretary must promptly provide the completed application form to the Board for consideration.
- 6.5 On receipt of a completed application form, the Board must consider the application and either accept or reject the application without any need to provide any reasons for its decision.

Notification to Applicant and Payment of Subscription Fees

- 6.6 On receiving notice of the Board's decision, the Secretary must promptly notify the applicant of the decision.
- 6.7 If the Board approved the application, the applicant must pay the Membership Fee to the Company within 28 days.

Registration and Becoming a Member

- 6.8 On receipt of payment of the Membership Fee, or if there is no Membership Fee payable, on notification of the applicant that the Board has accepted the application, the Secretary must enter in the register of members the applicant's name, address, type of membership and the date on which entry of the Members' name in the register is made.
- 6.9 Subject to the Act, a person becomes a Member on registration. Notification of Change of Address

Notification of Change of Address

- 6.10 When a Member changes the Member's address, the Member shall notify the Company of the change as soon as reasonably practicable.
- 6.11 As soon as reasonably practicable after receiving notice from a Member of a change of address, the Secretary must enter the change in the register of members.

7 MEMBERSHIP RIGHTS NOT TRANSFERABLE

A right, privilege or obligation which a person has in the person's capacity as a Member of the Company cannot be transferred to another person.

8 MEMBERSHIP FEES

Payment of Membership Fees

- 8.1 Each Member must pay Membership Fees to the Company.

Determination of Membership Fees

- 8.2 For each year, Membership Fees shall be as follows:
 - 8.2.1 In the case of Individual Members and Associate Members, zero; and

- 8.2.2 In the case of Corporate Members, the Board shall determine the Membership Fees payable.
- 8.3 For the purposes of **Clause 8.2.2**, the Board may determine the Membership Fees payable to be zero.

Waiver or Discount of Membership Fees

- 8.4 The Board may in its discretion determine that:
- 8.4.1 No Membership Fee is payable; or
- 8.4.2 A discounted Membership Fee is payable;
- by a Member in a given year.

9 CESSATION OF MEMBERSHIP

- 9.1 A person ceases to be member:
- 9.1.1 If the person is an Individual Member or Associate Member, on the person's death;
- 9.1.2 If a person provides written notice to the Secretary of the person's intention to resign as a Member, on the date of that notice;
- 9.1.3 If the person is a Corporate Member, on the appointment of a:
- 9.1.3.1 receiver;
- 9.1.3.2 receiver and manager;
- 9.1.3.3 liquidator; or
- 9.1.3.4 administrator.
- 9.1.4 If the person is convicted of an indictable offence., on the date of conviction.
- 9.2. The Board may resolve to expel or suspend a Member where the Board is of the opinion that the Member:
- 9.2.1 has persistently or wilfully refused or neglected to comply with a provision of this Constitution; or
- 9.2.2 has persistently or wilfully acted in a manner prejudicial to the interests, welfare or Objectives of the Company.
- 9.3 If a resolution under **Clause 9.2** is proposed in relation to a Member, the Member is entitled:
- 9.3.1 to receive at least 7 day's notice of the proposed resolution and the reasons why the resolution has been proposed; and
- 9.3.2 to put their case to the Directors by providing a written statement of reasons why the Member should not be expelled or suspended to the Secretary for circulation to each of the Directors.
- 9.4 Notwithstanding any reasons put forward by the Member in the written statement, the Board may at its absolute discretion resolve to expel or suspend the Member in accordance with **Clause 9.2**.
- 9.5 On cessation of a person as a Member, the Secretary must enter in the register of members that:
- 9.5.1 the person ceased to be a Member; and
- 9.5.2 the date on which the person ceased to be a Member.
- 9.6 In accordance with Subsection 169(7) of the Act, the Company must maintain the details specified in **Clause 9.1.2** for 7 years after the person ceased to be a Member.

10 WHO MAY CALL SPECIAL GENERAL MEETINGS

- 10.1 A SGM of the Company may be called by:
 - 10.1.1 Two (2) Directors;
 - 10.1.2 Members with at least 5% of the votes that may be cast at a SGM.
 - 10.1.3 Resolution of the Board or in accordance with the Act.
- 10.2 Any person (whether a Member or not) requested by the Board to attend any general meeting is entitled to be present at and, at the request of the President, to speak at that general meeting.
- 10.3 When Members call a SGM, they must pay the expenses of calling and holding the SGM.
- 10.4 The Board must call a SGM on the request of:
 - 10.4.1 Members with at least 5% of the votes that may be cast at the Special General Meeting; or
 - 10.4.2 at least 100 Members who are entitled to vote at the SGM; within 21 days of the Company receiving the request.
- 10.5 For the purposes of **Clause 10.3**, the request must:
 - 10.5.1 be in writing;
 - 10.5.2 state any resolution to be proposed at the meeting;
 - 10.5.3 be signed by the Members making the request; and
 - 10.5.4 be given to the Company.

11 HOW TO CALL SPECIAL GENERAL MEETINGS

- 11.1 A Special General Meeting (SGM) can be called by resolution of the Board or in accordance with the Act.
- 11.2 Any person (whether a Member or not) requested by the Board to attend any general meeting is entitled to be present at and, at the request of the President, to speak at that general meeting.
- 11.3 A person who calls a SGM must give at least 21 days' notice of the meeting to each Member entitled to vote at the meeting, each Director and the Company's auditor, if the Company has appointed an auditor.
- 11.4 Despite **Clause 11.1**, the person may give shorter notice than 21 days if permitted by Section 249H of the Act.
- 11.5 A notice of a SGM must:
 - 11.5.1 set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - 11.5.2 state the general nature of the meeting's business;
 - 11.5.3 if a special resolution is to be proposed at the meeting--set out an intention to propose the special resolution and state the resolution; and
 - 11.5.4 if a Member is entitled to appoint a proxy — contain a statement setting out the following information:
 - 11.5.4.1 that the Member has a right to appoint a proxy;
 - 11.5.4.2 whether or not the proxy needs to be a Member of the Company; and
 - 11.5.4.3 that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

- 11.4 The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.
- 11.5 Notice of a SGM may be given:
 - 11.5.1 personally;
 - 11.5.2 by sending it by post to the address for the Member in the register of Members or the alternative address (if any) nominated by the Member;
 - 11.5.3 by sending it to the fax number or electronic address (if any) nominated by the Member;
 - 11.5.4 by sending it to the Member by other electronic means (if any) nominated by the Member; or
 - 11.5.5 by notifying the Member in accordance with **Clause 11.6**.

Notice by Email

- 11.6 If a Member nominates:
 - 11.6.1 email as an electronic means by which the Member may be notified that notices of meeting are available (nominated notice); and
 - 11.6.2 the Company's website as an electronic means the Member may use to access notices of meeting (nominated access); the Company may give the Member notice of a SGM by notifying the Member by email:
 - 11.6.3 that the notice of the meeting is available; and
 - 11.6.4 how the Member may use the Company's website to access the notice of the meeting.
- 11.7 A notice of meeting:
 - 11.7.1 sent by post is taken to be given 3 days after it is posted;
 - 11.7.2 sent by fax, or other electronic means, is taken to be given on the business day after it is sent; or
 - 11.7.3 given to a Member under **Clause 11.6** is taken to be given on the business day after the day on which the Member is notified that the notice of meeting is available.
- 11.8 When a SGM is adjourned, the person calling the meeting must use reasonable endeavours to provide notice of the adjournment to all persons entitled to receive notice of the meeting.

12 ANNUAL GENERAL MEETINGS

- 12.1 The Company must hold an AGM at least once in each calendar year and within 6 months after the end of its financial year.
- 12.2 The Company shall give notice of an AGM in accordance with **Clause 11**.
- 12.3 An AGM is to be held in addition to any other meetings held by the Company in the year.
- 12.4 The business of an AGM may include any of the following, even if not referred to in the notice of meeting:
 - 12.4.1 the consideration of the annual financial report, directors' report and auditor's report;
 - 12.4.2 the election of directors;
 - 12.4.3 the appointment of the auditor; and
 - 12.4.4 the fixing of the auditor's remuneration.
- 12.5 If the Company's auditor or their representative is at the meeting, the chair of an AGM must:
 - 12.5.1 allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:
 - 12.5.1.1 the conduct of the audit;

- 12.5.1.2 the preparation and content of the auditor's report;
- 12.5.1.3 the accounting policies adopted by the Company in relation to the preparation of the financial statements; and
- 12.5.1.4 the independence of the auditor in relation to the conduct of the audit.

13 MEMBERS' NOTICE OF PROPOSED RESOLUTIONS

Notice of Proposed Resolution

- 13.1 The following Members may give the Company notice of a resolution that they propose to move at a SGM or AGM:
 - 13.1.1 Members with at least 5% of the votes that may be cast on the resolution; or
 - 13.1.2 at least 100 Members who are entitled to vote at a general meeting.
- 13.2 The notice must:
 - 13.2.1 be in writing;
 - 13.2.2 set out the wording of the proposed resolution; and
 - 13.2.3 be signed by the Members proposing to move the resolution.
- 13.3 If a Company has been given notice of a resolution under **Clause 13.1**, the resolution is to be considered at the next SGM or AGM that occurs more than 2 months after the notice is given.
- 13.4 The Company must give all its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting of Members.
- 13.5 The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.
- 13.6 The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Company does not receive the Members' notice in time to send it out with the notice of meeting. At a SGM or AGM, the Company may resolve to meet the expenses itself.
- 13.7 The Company need not give notice of the resolution:
 - 13.7.1 if it is more than 1,000 words or contains material that is unlawful or defamatory; or
 - 13.7.2 if the Members making the request are to bear the expenses of sending the notice out — unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

Members' Statement to be Distributed

- 13.8 Members may request the Company to give to all its Members a statement provided by the Members making the request about:
 - 13.8.1 a resolution that is proposed to be moved at a SGM or AGM; or
 - 13.8.2 any other matter that may be properly considered at a SGM or AGM.
- 13.9 The request must be made by:
 - 13.9.1 Members with at least 5% of the votes that may be cast on the resolution; or
 - 13.9.2 at least 100 Members who are entitled to vote at the meeting.
- 13.10 The request must be:
 - 13.10.1 in writing; and

- 13.10.2 signed by the Members making the request; and
- 13.10.3 given to the Company.
- 13.11 After receiving the request, the Company must distribute to all its Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a SGM or general meeting.
- 13.12 The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.
- 13.13 The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a SGM or AGM, the Company may resolve to meet the expenses itself.
- 13.14 The Company need not comply with the request:
 - 13.14.1 if the statement is more than 1,000 words long or defamatory; or
 - 13.14.2 if the Members making the request are responsible for the expenses of the distribution--unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

14 HOLDING GENERAL MEETINGS

Purpose

- 14.1 A SGM must be held for a proper purpose.

Time and Place for Meetings of Members

- 14.2 A SGM or AGM must be held at a reasonable time and place.

Technology

- 14.3 The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

Quorum

- 14.4 The quorum for a SGM or AGM is 10 Members and the quorum must be present at all times during the meeting.

Chairing General Meetings

- 14.5 The Board may elect an individual to chair a SGM or AGM.
- 14.6 The Chairperson of a general meeting has conduct of the meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.
- 14.7 Subject to this Constitution, the chair of a SGM or AGM may conduct the meeting in such manner as he or she thinks fit and invite any person who is not a Member to attend and address the persons at the meeting.

Adjournments

- 14.8 The chair must adjourn a SGM or AGM if the Members present with a majority of votes at the meeting agree or direct that the chair must do so.

15 VOTING AT GENERAL MEETINGS

- 15.1 At a SGM or AGM:

- 15.1.1 each Individual Member has 1 vote, both on a show of hands and on a poll;
- 15.1.2 Corporate Members and Associate Members do not have any votes; and
- 15.1.3 the Chair has a casting vote, and also, if they are a Member, any vote they have in their capacity as a Member.
- 15.2 A resolution put to the vote at a SGM or AGM must be decided on a show of hands unless a poll is demanded.
- 15.3 Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- 15.4 On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 15.5 At a SGM or AGM, a poll may be demanded by:
 - 15.5.1 at least 5 Members entitled to vote on the resolution; or
 - 15.5.2 Members with at least 5% of the votes that may be cast on the resolution on a poll; or
 - 15.5.3 the chair; or
 - 15.5.4 in accordance with the Act
- 15.6 The poll may be demanded:
 - 15.6.1 before a vote is taken;
 - 15.6.2 before the voting results on a show of hands are declared; or
 - 15.6.3 immediately after the voting results on a show of hands are declared.
- 15.7 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken within 14 days from request to conducting the poll.

16 PROXIES

- 16.1 A Member who is entitled to attend and cast a vote at a SGM or AGM may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- 16.2 The person appointed as the Member's proxy may be an individual or a body corporate.

Rights of Proxies

- 16.3 A proxy appointed to attend and vote for a Member has the same rights as the Member:
 - 16.3.1 to speak at the meeting;
 - 16.3.2 to vote (but only to the extent allowed by the appointment); and
 - 16.3.3 join in a demand for a poll.
- 16.4 If a Member has appointed a proxy to attend and vote at a SGM or AGM, the Member's presence at the meeting does not affect the rights of the proxy.

Sending Proxy Appointment Forms

- 16.5 If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
 - 16.5.1 if the Member requested the form or list — the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or

- 16.5.2 Otherwise, the Company must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

Validity of Appointment of a Proxy

- 16.6 An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the Regulations, by the Member making the appointment and contains the following information:
- 16.6.1 the Member's name and address;
 - 16.6.2 the Company's name;
 - 16.6.3 the proxy's name or the name of the office held by the proxy; and
 - 16.6.4 the meetings at which the appointment may be used.
- 16.7 For the purposes of **Clause 16.6**, under the Regulations, if a Member appoints a proxy by e-mail or Internet-based voting:
- 16.7.1 the Member must be identified by personal details (for example, the Member's name, address and date of birth); and
 - 16.7.2 the Member's approval of the information communicated must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

Effective Appointment of a Proxy

- 16.8 For an appointment of a proxy for a SGM or AGM to be effective, the following documents must be received by the Company at least 24 hours before the meeting:
- 16.8.1 the proxy's appointment; and
 - 16.8.2 if the appointment is signed, or otherwise authenticated in a manner prescribed by Regulations by the appointer's attorney — the authority under which the appointment was signed or authenticated or a certified copy of the authority.
 - 16.8.3 when the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the Chairperson of the meeting.
- 16.9 The Company receives a document referred to in **Clause 16.8** when the document is received at any of the following:
- 16.9.1 the Company's registered office;
 - 16.9.2 a fax number at the Company's registered office;
 - 16.9.3 a place, fax number or electronic address specified for the purpose in the notice of meeting; and
 - 16.9.4 if the notice of meeting specifies other electronic means by which a Member may give the document--when the document given by those means is received by the Company as prescribed by the Regulations.
 - 16.9.5 In the event that the Board does not receive notice of revocation, unsoundness of mind, death or dissolution of the principal, the vote presented by proxy will stand.

17 APPOINTMENT AND TENURE OF DIRECTORS

Number of Directors

- 17.1 The Company must have at least 3 Directors (not counting alternate directors).
- 17.2 All Directors of the Company must ordinarily reside in Australia.

- 17.3 The Company may not have more than 8 Directors and preferably (although not mandatory) no two Directors ordinarily reside in the same State or Territory in Australia.

Consent to Act as Director

- 17.4 A person must give the Company a signed consent to act as a director of the Company before being appointed. The Company must keep the consent to appoint a Director onto the Company directory as part of the legal obligations required by ASIC.

Eligibility to be Director

- 17.5 To be eligible to be a Director (including an alternate director), a person must:
- 17.5.1 be over the age of 18 years;
 - 17.5.2 have a physical disability; and
 - 17.5.3 be a Member.

Appointment of Director by Resolution in General Meeting

- 17.6 The Company may appoint a person as a director by resolution passed in SGM or AGM.
- 17.7 A resolution passed at a SGM or AGM appointing or confirming the appointment of 2 or more Directors is void unless:
- 17.7.1 the meeting has resolved that the appointments or confirmations may be voted on together; and
 - 17.7.2 no votes were cast against the resolution.

Appointment of Director by Board

- 17.8 The Board may appoint a person as a Director.
- 17.9 If a person is appointed as a Director by the Board, the Company must confirm the appointment by resolution at the Company's next AGM. If the appointment is not confirmed, the person ceases to be a Director at the end of the AGM.

Appointment of Associate Directors

- 17.10 The Board may appoint a person as an Associate Director.
- 17.11 The Company may not have more than 8 Associate Directors and preferably (although not mandatory) no two Associate Directors ordinarily reside in the same State or Territory in Australia (jurisdiction).
- 17.12 As with Directors, such a person must:
- 17.12.1 be over the age of 18 years;
 - 17.12.2 have a physical disability; and
 - 17.12.3 be a Member.

Appointment of Alternate Directors

- 17.13 With the Board's approval, a Director may appoint an alternate director to exercise some or all of the Director's powers for a specified period.
- 17.14 If a person is already appointed as an Associate Director in the Director's jurisdiction, that person should be the preferred alternate director.
- 17.15 If the appointing Director requests the Company to give the alternate director notice of Directors' meetings, the Company must do so.
- 17.16 When an alternate director exercises the Director's powers, the exercise of the powers is just as effective as if the Director exercised the powers.
- 17.17 The appointing director may terminate the alternate director's appointment

- 17.18 An appointment or its termination of an alternate director must be in writing. A copy must be given to the Company for record keeping.

Tenure of Directors

- 17.19 From the date of appointment of a person as a Director, other than an alternate director, the person shall hold office as a Director for a term of 3 years, unless the person resigns, is removed or otherwise ceases to hold office as a Director prior to the end of the 3 year term.
- 17.20 On expiration of a person's first 3 year term as a Director, the person may, with the approval of a resolution passed in the first SGM or AGM held after the date of expiration, continue to hold office as a Director for a further two 3 year terms. Otherwise, the person ceases to be a Director.
- 17.21 An expiration of a person's third consecutive 3 year term as a Director, the person must cease to hold office as a Director and may not be re-appointed as a Director.

Part 18 Cessation as a Director or Associate Director

Resignation as a Director or Associate Director

- 18.1 A Director or Associate Director may resign by giving a written notice of resignation to the Company. The resignation shall take effect at the time expressed in the Notice.

Removal of Director by Resolution in General Meeting

- 18.2 The Company may remove a Director by resolution passed in SGM or AGM.
- 18.3 Notice of intention to move the resolution must be given to the Company at least 2 months before the meeting is to be held. However, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
- 18.4 The Company must give the Director a copy of the notice within 1 month.
- 18.5 The Director is entitled to put their case to Members by:
- 18.5.1 giving the Company a written statement for circulation to Members (see Clauses 18.6 and 18.7); and
 - 18.5.2 speaking to the motion at the meeting
- 18.6 The written statement is to be circulated by the Company to Members by:
- 18.6.1 sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - 18.6.2 if there is not time to comply with paragraph (a) — having the statement distributed to Members attending the meeting and read out at the meeting before the resolution is voted on.
- 18.7 The Director's statement does not have to be circulated to Members if it is more than 1,000 words long or defamatory.

Removal of Associate Directors by Resolution of the Board

- 18.8 The Company may remove an Associate Director by a resolution passed by Directors.

Cessation as a Director or Associate Director by Other Events

- 18.9 In addition to the circumstances prescribed by the Act, the office of a Director or Associate Director becomes vacant if the Director or Associate Director:
- 18.9.1 Ceases to be a member;
 - 18.9.2 Absents himself or herself from three consecutive meetings of the Board without special leave of absence from the Board and the Board resolves that the person's office be vacated;
 - 18.9.3 Becomes unsound of mind or a person, who is, or whose estate is, liable to be dealt with in anyway under the law relating to mental health; or

- 18.9.4 Becomes an insolvent under administration or makes any composition or arrangement with his or her creditors, or any class of them.

19 POWERS AND DUTIES OF DIRECTORS AND ASSOCIATE DIRECTORS

Board Powers

- 19.1 The Board may exercise all powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.

Negotiable Instruments

- 19.2 Any 2 Directors may sign, draw, accept, endorse or otherwise execute a Negotiable Instrument.
- 19.3 The Board may determine that a Negotiable Instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

Delegation of Powers

- 19.4 The Board may from time to time confer on:
- 19.4.1 any Director(s) and Associate Director(s);
- 19.4.2 committee established by the Board; or 19.4.3 any other person or group of persons; any of the powers exercisable by the Board under this Constitution or the Act subject to any terms and conditions that it may think expedient.
- 19.5 An exercise of powers by any Director(s) or Associate Director(s), committee, person or group of persons on whom the Board has conferred the powers under **Clause 19.4** is as effective as if the Board had exercised it.
- 19.6 The Board may from time to time withdraw, revoke or vary a conferral of powers made under **Clause 19.4**.

Committees

- 19.7 The clauses in this Constitution regulating Director's meeting shall apply to the meetings of any committee established by the Board as if those meetings were Director's meetings unless the Board imposes any terms or conditions to the contrary.

Duties of Directors and Associate Directors under the Act and General Law

- 19.8 Each of the Directors and Associate Directors is subject to the duties imposed on them as Directors under the Act and general law.

Additional Duties

- 19.9 In addition to the Directors' duties under **Clause 19.8**, a Secretary, ~~or~~ Director, or Associate Director must not, whether during their service as a Secretary, ~~or~~ Director or after they cease to be a Secretary, ~~or~~ Director, or Associate Director, disclose or reveal any Confidential Information to any person unless:
- 19.9.1 the Secretary, ~~or~~ Director, or Associate Director has the prior written consent of the Board; or
- 19.9.2 the law requires the disclosure.
- 19.10 A Secretary, ~~or~~ Director, or Associate Director must not use any Confidential Information or any part of it except for the purpose of carrying out their role as a Secretary, ~~or~~ Director, or Associate Director.
- 19.11 The Company reserves all rights in Confidential Information. The Secretary, ~~or~~ Director, or Associate Director acknowledges that Confidential Information and any part of it is the exclusive property of and will remain the exclusive property of Company.
- 19.12 When a person ceases to hold office as a Secretary, ~~or~~ Director, or Associate Director, the person agrees to, as soon as reasonably practicable:
- 19.12.1 return to the Company all documents, books, records and other information in the person's possession which was obtained in the course of performing his or her duties as a Secretary, ~~or~~ Director, or Associate Director; and
- 19.12.2 delete all electronic information obtained by the person in the course of performing his or her duties as a Secretary, ~~or~~ Director, or Associate Director (unless the Board requests the person return the electronic information to the Company, in which case the person must return the requested information as soon as reasonably practicable).

20 DIRECTOR OR ASSOCIATE DIRECTOR MATERIAL PERSONAL INTEREST

- 20.1 A Director or Associate Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors and Associate Directors notice of the interest in accordance with **Clause 20.2** unless:

- 20.1.1 the interest:
 - 20.1.1.1 arises because the Director or Associate Director is a Member and is held in common with the other Members;
 - 20.1.1.2 arises in relation to the Director's remuneration as a Director or Associate Director;
 - 20.1.1.3 relates to a contract the Company is proposing to enter into that is subject to approval by the Members and will not impose any obligation on the Company if it is not approved by the Members;
 - 20.1.1.4 arises merely because the Director or Associate Director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company;
 - 20.1.1.5 arises merely because the Director or Associate Director has a right of subrogation in relation to a guarantee or indemnity referred to in **Clause 20.1.1.4**;
 - 20.1.1.6 relates to a contract that insures, or would insure, the Director or Associate Director against liabilities the Director incurs as an officer of the Company (but only if the contract does not make the Company or a related body corporate the insurer);
 - 20.1.1.7 relates to any payment by the Company or a related body corporate in respect of an indemnity permitted under section 199A or any contract relating to such an indemnity; or
 - 20.1.1.8 is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the Director or Associate Director is a Director of the related body corporate; or
- 20.1.2 all the following conditions are satisfied:
 - 20.1.2.1 the Director or Associate Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company in accordance with this Constitution;
 - 20.1.2.2 if a person who was not a Director or Associate Director at the time when the notice was given is appointed as a Director – the notice is given to that person;
 - 20.1.2.3 the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- 20.1.3 the Director or Associate Director has given a standing notice of the nature and extent of the interest in accordance with Section 192 of the Act and the notice is still effective in relation to the interest.
- 20.2 The notice required by **Clause 20.1** must:
 - 20.2.1 give details of:
 - 20.2.1.1 the nature and extent of the interest; and
 - 20.2.1.2 the relation of the interest to the affairs of the Company; and
 - 20.2.2 be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter.
- 20.3 The details of a notice given under **Clause 20.2.1** must be recorded in the minutes of the meeting.

Not Present at Director's Meeting and No Vote

- 20.4 A Director or Associate Director who has a material personal interest in a matter, which must be disclosed under **Clause 20.1**, that is being considered at a Directors' meeting must not:
 - 20.4.1 be present while the matter is being considered at the meeting; or
 - 20.4.2 vote on the matter.
- 20.5 **Clause 20.4** does not apply if the Director or Associate Director may be present and vote if Directors and Associate Directors who do not have a material personal interest in the matter have passed a resolution that:
 - 20.5.1 identifies the Director or Associate Director, the nature and extent of the Director's or Associate Director's interest in the matter and its relation to the affairs of the Company; and
 - 20.5.2 states that those Directors and Associate Directors are satisfied that the interest should not disqualify the Director from voting or being present.

21 DIRECTOR RESOLUTIONS AND CIRCULATIONS

- 21.1 The Directors and Associate Directors may pass a resolution without a Directors' meeting being held if all the Directors and Associate Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. This document may be in either printed or electronic form to ensure secure approval for a circular resolution.
- 21.2 Separate copies of a document may be used for signing by Directors and Associate Directors if the wording of the resolution and statement is identical in each copy.
- 21.3 The resolution is passed when the last Director or Associate Director signs.

22 DIRECTORS' MEETINGS

- 22.1 Directors' meetings includes all meetings of the Board that include Directors and Associate Directors.

Calling Directors' Meetings

- 22.2 A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

Chair of Directors' Meetings

- 22.3 The Directors and Associate Directors may elect a Director to chair their meetings. The Directors may determine the period for which the Director is to be the chair.
- 22.3 The Directors and Associate Directors must elect a Director present to chair a meeting, or part of it, if:
- 22.3.1 a Director has not already been elected to chair the meeting; or
- 22.3.2 a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

Use of Technology

- 22.4 A Directors' meeting may be called or held using any technology consented to by a simple majority of the Directors and Associate Directors.

Quorum

- 22.5 The quorum for a Directors' meeting is 50% of the current directorship and the quorum must be present at all times during the meeting.
- 22.6 A Director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.

Voting

- 22.7 A resolution of the Directors must be passed by a majority of the votes cast by Directors and Associate Directors entitled to vote on the resolution.
- 22.8 The chair has a casting vote if necessary in addition to any vote they have in their capacity as a Director.

23 TREASURER, PRESIDENT AND VICE-PRESIDENTS

Appointment of Treasurer, President and Vice-Presidents

- 23.1 The Board may from time to time appoint one of the Directors to act as Treasurer, one of the Directors to act as President and one or two of the Directors to act as Vice-Presidents. A Director may not simultaneously hold office in two or more of those three positions.

Duties of Treasurer, President and Vice-Presidents

- 23.2 In addition to the Treasurer's role on the Executive, the Treasurer must supervise the keeping of the Financial Records in accordance with **Clause 30** of this Constitution and report to the Board and keep the Directors informed as to the financial circumstances of the Company.

Cessation of Treasurer

- 23.3 The Board may from time to time withdraw, revoke or vary the terms of an appointment of a Director as Treasurer, President or Vice-President.
- 23.4 A Director appointed as Treasurer, President or Vice-President shall, subject to earlier cessation of the role, cease to act in that role on ceasing to hold office as a Director.

24 EXECUTIVE

Composition of the Executive

- 24.1 The Executive shall comprise of the President, Vice-Presidents and Treasurer.

Executive Powers

- 24.2 The Executive, by a simple majority, may exercise all powers of the Board. However, any purported exercise of power by the Executive shall not be effective until ratified by the Board.

Executive Meetings

- 24.3 The clauses in this Constitution regulating Directors' meeting shall apply to the meetings of the Executive as if those meetings were Directors' meetings except that the quorum for executive meetings shall be 3 people.

Exercise of Powers

- 24.4 The Executive may exercise its powers through either:
- 24.4.1 voting on a resolution in a meeting of the Executive; or
 - 24.4.2 passing a resolution through the use of circulations in the same manner as the Directors may use them as set out in **Clause 21**.

25 SECRETARY

- 25.1 The Board must appoint a person to act as a Secretary of the company and may determine the terms and conditions of the appointment as it sees fit.

The Company Secretary have a thorough knowledge of:

- 25.1.1 the Company;
 - 25.1.2 the Company's operations;
 - 25.1.3 the Company's constitution;
 - 25.1.4 the Company's reporting obligations to ASIC and ACNC;
 - 25.1.5 the Company's members; and
 - 25.1.6 the laws which regulate the Company's operations.
- 25.2 The Secretary must ordinarily reside in Australia.

Consent to Act as Secretary

- 25.3 A person must give the Company a signed consent to act as a Secretary of the Company before being appointed. The Company must keep the consent for record keeping.

Eligibility to be Secretary

- 25.4 To be eligible to be a Secretary, a person must:
- 25.4.1 be over the age of 18 years;

Appointment by Board

- 25.5 The Secretary is to be appointed by the Board.
- 25.6 The Secretary holds office on the terms and conditions that the Board determines.
- 25.7 The Board may from time to time withdraw, revoke or vary the appointment of the Secretary.

26 MINUTES OF MEETINGS

Maintaining Minute Books

- 26.1 The Company must keep ALL records in accordance with the relevant law.
- 26.2 The Company must keep minute books in which it records:
 - 26.2.1 proceedings and resolutions of Members;
 - 26.2.2 proceedings and resolutions of Directors' meetings;
 - 26.2.3 proceedings and resolutions of meetings of the Executive and a committee established by the Board;
 - 26.2.4 resolutions passed by Members without a meeting; and
 - 26.2.5 resolutions passed by Directors without a meeting.

Inspection and Obtaining Copies of Minute Books

- 26.4 The Company must ensure that the minute books for SGMs and AGMs and for resolutions of Members passed without meetings are open for inspection by Members free of charge.
- 26.5 A Member may ask the Company in writing for a copy of:
 - 26.5.1 any minutes of a meeting of the Company's Members or an extract of the minutes; or
 - 26.5.2 any minutes of a resolution passed by Members without a meeting.
- 26.6 The Company may require payment for the copy.
- 26.7 If the Company requires payment for the copy, the Company must send it within 14 days after the Company receives the payment.

27 INSPECTION OF REGISTERS AND BOOKS

- 27.1 A person who is not a Director does not have the right to inspect any of the Board papers, books, records or documents of the Company, except as provided by law, this Constitution or as authorized by the Board or by a resolution of the Members.
- 27.2 The Company must give a person a copy of the register of Members (or a part of the register) within 7 days if the person:
 - 27.2.1 makes an application to the Company in accordance with **Clause 27.3** and pays any fee (up to the prescribed amount) required by the Company.
- 27.3 An application is in accordance with this Clause if:
 - 27.3.1 the application states each purpose for each the person is making the application;
 - 27.3.2 none of those purposes is a prescribed purpose under the Regulations; and
 - 27.3.3 the application states the name and address of the applicant and the purpose(s) of accessing a copy of the register of Members.

Use of Information Obtained from Register of Members

- 27.4 A person must not:
- 27.4.1 use information about a person obtained from the register of Members to contact or send material to the person; or
 - 27.4.2 disclose information of that kind knowing that the information is likely to be used to contact or send material to the person.
- 27.5 In respect of **Clause 27.4** as at the date of adoption of this Constitution, the purposes include:
- 27.5.1 soliciting a donation from a member of a company;
 - 27.5.2 soliciting a member of a company by a person who is authorized to assume or use the word stockbroker or share broker in accordance with section 923B of the Act;
 - 27.5.3 gathering information about the personal wealth of a member of a company; or
 - 27.5.4 making an unsolicited offer or invitation to purchase a financial product to which Division 5A of Part 7.9 of the Act applies.
 - 27.5.5 A person who makes a profit from a contravention of **Clause 27.4** owes a debt to the Company. The amount of the debt is the amount of the profit.
 - 27.5.6 A person who contravenes **Clause 27.4** is liable to compensate anyone else who suffers loss or damage because of the contravention.

28 NOTICES TO ASIC/ACNC

New Directors or Secretaries

- 28.1 The Company must lodge with ASIC a notice of the personal details of a Director or Secretary within 28 days after they are appointed. The notice must be in the prescribed form.

New Alternate Directors

- 28.2 The Company must lodge with ASIC a notice of:
- 28.2.1 the personal details of a person who is appointed as an alternate director; and
 - 28.2.2 the terms of their appointment (including terms about when the alternate director is to act as a Director);
- within 28 days after their appointment as an alternate director. The notice must be in the prescribed form.

Personal Details

- 28.3 The personal details of a Director, alternate director, or Secretary are:
- 28.3.1 their given and family names;
 - 28.3.2 all of their former given and family names;
 - 28.3.3 their date and place of birth; and
 - 28.3.4 their address.
 - 28.3.5 their contact details

Changes in Details

- 28.4 The Company must lodge with ASIC notice of any change in the personal details of a Director, alternate director or Secretary within 28 days after the change. The notice must be in the prescribed form.

Notice Required if Person Stops Being a Director or Secretary

- 28.5 If a person stops being a Director, alternate director or Secretary of the Company, the Company must lodge with the ASIC notice of the fact within 28 days (unless the person was an alternate director who stopped being a director in accordance with the terms of their appointment as an alternate director). The notice must be in the prescribed form.

29 FINANCIAL RECORDS AND REPORTS

Company Must Keep Financial Records

- 29.1 The Company must keep written Financial Records that:
- 29.1.1 correctly record and explain its transactions and financial position and performance; and
 - 29.1.2 would enable true and fair financial statements to be prepared and audited.
- 29.2 The Financial Records must be retained for 7 years after the transactions covered by the records are completed.

Annual Financial Reports and Directors' Reports

- 29.3 For a given financial year, the Company must prepare an annual financial report and/or directors' report if the Act or governing Federal body requires this.