



# CONSTITUTION

## **Continence Nurses Society Australia Ltd**

ACN 658 800 054

ABN 27 396 684 314

28 October 2021

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PART A – THE COMPANY

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**1. Name and type of company**

- 1.1. The name of the company is Continenence Nurses Society Australia Ltd.
- 1.2. The Company is a not-for-profit public company limited by guarantee.
- 1.3. The liability of Members is limited to the guarantee amount in clause 1.4.
- 1.4. Each Member must contribute an amount not more than \$1.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
  - a. debts and liabilities of the Company incurred before the Member stopped being a Member, or
  - b. costs of winding up.

**2. Definitions and interpretation**

- 2.1. In this Constitution unless contrary intention appears:

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

"AHPRA" means the Australian Health Practitioner Regulation Agency.

"Appointed Director" means the Chair of a Sub Committee.

"ASIC" means the Australian Securities and Investments Commission.

"Board" means the Board of Directors that is constituted by the individuals who hold office as Directors, from time to time.

"Chair" means the individual appointed to chair:

- a. a general meeting under clause 23; or
- b. a Board meeting under clause 49.1.

"Company" means Continenence Nurses Society Australia Ltd ABN 27 396 684 314.

"Company Secretary" means any individual appointed by the Board in accordance with clause 59 to perform the duties of company secretary of the Company.

"Constitution" means this Constitution as amended or supplemented from time to time.

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

"Director" means any individual holding a position of Director of the Company, including the Office Bearers, as appointed or elected pursuant to this Constitution.

“Elected Director” means an individual elected as a Director by the Members as described in clause 36.

“Member” means a Member of the Company pursuant to PART B – MEMBERSHIP.

“Objects” mean the objects of the Company as set out in clause 3.

“Office Bearer” means an individual holding the position of President, Vice-President, Treasurer or Secretary of the Company in accordance with this Constitution.

“President” means the individual elected or appointed as President of the Company in accordance with this Constitution.

“Special Resolution” means a resolution for which notice has been given under clause 19 and that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

“Sub Committee” means a Committee set up to focus on a specific area of the business and operations of the Company as defined by the Board.

#### 2.2. Reading this constitution with the Corporations Act:

- a. The replaceable rules set out in the Corporations Act do not apply to the Company.
- b. Should the Company become a registered charity the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- c. If the Company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.
- d. A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

#### 2.3. The following rules of interpretation apply unless contrary intention appears:

- a. a reference to any legislation or to any provision of any legislation includes any regulations made under it and any statutory modification or replacements thereto for the time being in force;
- b. a reference to a clause is a reference to a clause of this Constitution and includes any further embedded content;
- c. the word *person* means a natural person and any company, corporation, association, body or entity whether incorporated or not;
- d. the words *writing* and *written* means printing, typewriting and all other means of representing or reproducing words in visible form;
- e. singular includes plural and vice versa;
- f. where a word or phrase is defined, its other grammatical forms have corresponding meaning;

- g. headings, bold type and italics are for convenience only and do not affect the interpretation of this Constitution.

### **3. Objects**

3.1. The primary object for which the Company is established is to act as a national professional association for nurses who have knowledge and skills in continence care.

3.2. To support the primary objects the Company will:

- a. Represent the interests of nurses and midwives in continence care;
- b. Promote and protect the role of Nurse Continence Specialist (NCS);
- c. Develop and sustain quality organisational governance processes;
- d. Provide comprehensive, useful services to members;
- e. Develop positive and productive relationships with all levels of government and non-government organisations, industry, professional and consumer organisations;
- f. Promote evidence-based continence care that places the person with continence needs and their family at the centre of the care;
- g. Advocate for the interests of people with incontinence and other bladder and bowel issues, their families, carers and unregulated workers;
- h. Provide, support and promote education on continence care;
- i. Contribute to policy on continence care;
- j. Promote research that will contribute to evidence based practice for continence care;
- k. Be a forum for discussion, collaboration, reflection, problem solving and consultation for nurses interested in continence promotion;
- l. Facilitate communication between members and other stakeholders;
- m. Advocate increasing nursing research in the area of continence nursing care;
- n. To act as mentors to other health professionals who are interested in continence care and continence education; and
- o. To act as a consultative/facilitator for research in the field of continence and continence nursing practice.

### **4. Powers**

4.1. The Company has the legal capacity and powers of a company set out under section 124(1) of the Corporations Act and may only exercise such powers to:

- a. pursue its Objects; and
- b. do all things incidental or convenient in relation to the exercise of power under sub-clause (a).

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**5. Application of income and property**

- 5.1. The income and property of the Company will only be applied towards the promotion of the Objects.
- 5.2. The Company must not distribute any surplus, income or assets directly or indirectly to its Members in the form of dividends or distribution of profits.
- 5.3. Clause 5.2 does not prevent the Company from paying a Member:
- a. by way of reimbursement for expenses properly incurred by the Member on behalf of the Company;
  - b. in return for any services rendered or goods supplied in the ordinary course of business to the Company;
  - c. as a Director in accordance with clause 45; or
  - d. for any other bona fide reason or purpose for the attainment of the Objects.

**PART B – MEMBERSHIP**

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**6. Admission and Membership Register**

- 6.1. Membership of the Company is open to individuals. A person is eligible to be a Member of the Company if all of the below criteria are met:
- a. The person meets the criteria of their membership class in accordance with clause 7.1;
  - b. the person is over 18 years of age;
  - c. the person is committed to the Objects of the Company; and
  - d. Who the Board in its discretion admits to membership in accordance with this Constitution.
- 6.2. The Company must establish and maintain a register of members of the Company. The register must include the following particulars for each member—
- a. the full name of the member;
  - b. the postal or residential address of the member;
  - c. the email address of the member;
  - d. the date of admission as a member;
  - e. the date of death or time of resignation of the member; and
  - f. the details about the termination or reinstatement of membership.
- 6.3. The register of members must be open for inspection free of charge, by any full member of the Company at any reasonable hour.
- 6.4. A full member of the Company may obtain an electronic copy of any part of the register on payment of a fee of not more than \$1 for each page copied, in line with the Australian Privacy Principles.

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- 6.5. If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection that information must not be made available for inspection.
  - 6.6. A member must not use information about a person obtained from the register to contact or send material to the person, other than for any purpose necessary to comply with a requirement of the Act or the Regulation.

## **7. Membership classes and rights**

### **7.1. The classes of membership are:**

a. Full Members

For registered nurses working in or having an interest in continence care and are registered with AHPRA. The full member is eligible for voting rights of the Company and election to the Board and Committees.

b. Student Members

For pre-registration nursing students who are not registered or enrolled nurses and who have an interest in continence care. Student members are not eligible for voting rights of the Company or election to the Board or Committees. Proof of enrolment status must be provided.

c. Life Members

For full members who have held continuous membership of the Company for 10 or more years. Life memberships are by invitation or nomination and must be agreed on by the Board of the Company. Life members are eligible for voting rights of the Company and election to the Board and Committees.

d. Affiliate Members

For non-nurses with an interest in continence care. Affiliate members are not eligible for voting rights of the Company or election to the Board or Committees.

e. Associate Members

For enrolled nurses working in or having an interest in continence care and are registered with AHPRA, or nurses residing overseas who are registered with an equivalent nursing licensing body. Associate members are not eligible for voting rights of the Company or election to the Board or Committees.

f. Retired

For retired members of the Company, who are no longer registered with AHPRA. Retired members are not eligible for voting rights of the Company or election to the Board or Committees.

- 7.2. The Board may create additional categories or make amendments to membership rights within a class of membership on such conditions and criteria as the Board may determine, provided the rights of each class of membership are in accordance with clause 7.3.



- 7.3. Members are entitled to:
- a. receive notices of and to attend and be heard at a general meeting;
  - b. except for Non-voting Members, vote at a general meeting;
  - c. except for Non-voting Members, vote in elections for Directors;
  - d. except for Non-voting Members, be elected as an Elected Director if eligible under this Constitution; and
  - e. be appointed as Appointed Directors.

- 7.4. The Board may transfer a Member from one category of membership to another category provided the Member consents to the transfer and satisfies the eligibility criteria for the new category.

## **8. Applications for Membership**

- 8.1. Applications for membership must be made in the form and manner as prescribed by the Board.
- 8.2. The Board may at its discretion accept or reject an applicant as a Member.
- 8.3. The Board may delegate the authority to consider and determine membership applications.
- 8.4. The Company must notify the applicant of the Board's decision to accept or reject the application for admission to membership in accordance with the procedures as determined by the Board. The Board need give no reason for the rejection of an application.
- 8.5. Upon acceptance of an applicant to be a Member, the applicant must pay any subscriptions in accordance with clause 11.1 within a period as determined by the Board. If any such payment is not made then the Board may, in its discretion, cancel its acceptance of the applicant for membership of the Company.
- 8.6. Subject to clause 8.5, an applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the register of Members.

## **9. Legal effect of Constitution**

- 9.1. This Constitution constitutes a contract between:
  - a. the Company and each Member;
  - b. the Company and each Director and Officer; and
  - c. each Member and each other Member

under which each person referred to above agrees to comply with and be bound by the provisions of this Constitution so far as they apply to that person.

## **10. Cessation of membership**

10.1. A Member may resign from membership of the Company by giving written notice to the Company. The resignation of a Member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

10.2. A Member ceases to be a Member:

- a. if membership lapses under clause 11.4;
- b. on the death of the Member;
- c. if the Member is from a registered health profession and their registration is revoked by AHPRA for disciplinary reasons unless resolved otherwise by the Board;
- d. if the Member is expelled under clause 13;
- e. if the Member is convicted of an indictable offence unless resolved otherwise by the Board; or
- f. in any other circumstances prescribed in the terms of membership applicable to the Member or in the failure to satisfy any undertaking given by the Member upon the Member's admission to membership on the date that the Board resolves to cease the membership unless the Board resolves otherwise.

10.3. Any Member who ceases to be a Member:

- a. will not be entitled to any refund or part refund of any membership fee; and
- b. will not be readmitted as a Member until any unpaid monies outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding monies.

## **11. Membership fees**

11.1. The Board may from time to time charge fees to Members including annual membership fees. The Board may determine different amounts of such fees to be charged:

- a. to each Member; or
- b. to each class or category of membership; or
- c. as between Members within a class or category of membership.

11.2. Fees are payable at such times and in such manner as determined by the Board.

11.3. The Board may at its discretion determine that no fee, in full or in part, is payable by a Member or a particular class or category of membership.

11.4. If the full amount of the annual membership fee payable by a Member is not received by the Company within 3 months after the due date for payment, the membership of the Member shall without any further action be terminated.

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## **12. Conduct of Members**

- 12.1. The Board may make policies and by-laws regarding the conduct of Members. This may include establishing a code of conduct. Any such by-law or code of conduct does not take effect until it is approved by the Full Members by ordinary resolution at a general meeting.
- 12.2. Subject to clause 13, the Board may implement policies and procedures relating to the disciplining of Members who in the opinion of the Board:
- a. have failed to comply with this Constitution;
  - b. have failed to comply with any policies, by-laws or code of conduct referred to in clause 12.1; or
  - c. are guilty of any conduct which, in the opinion of the Board is unbecoming of a Member or prejudicial to the interest of the Company.
- 12.3. The Board may establish or delegate to a disciplinary committee that will have the power to investigate such complaints or disciplinary matters about a Member.
- 12.4. Procedural fairness must be applied to any procedures relating to the disciplining of Members.

## **13. Expulsion of Member**

- 13.1. A Member may only be expelled from membership subject to the following provisions being fulfilled:
- a. In the opinion of the Board, the Member:
    - i. has failed to comply with this Constitution;
    - ii. has failed to comply with any policies, by-laws or code of conduct referred to in clause 12; or
    - iii. is guilty of any conduct which, in the opinion of the Board is unbecoming of a Member or prejudicial to the interest of the Company.
  - b. The Member is given 28 days written notice of the date when the Board will consider the matter of expulsion. The notice is to outline the grounds for expulsion and how the Member may address the Board or provide a written submission in response to the allegations.
  - c. If the resolution to expel the Member is passed by the Board, the Member is notified within 14 days of the date of the resolution. The notice must state that the Member has 21 days from the date of the notice (or such later time as the Board may decide) to advise the Board in writing that the Member requires the matter to be referred to mediation.
  - d. If the matter is referred to mediation then the mediation must be conducted in such manner as the Board reasonably determines and in accordance with the rules of procedural fairness.
  - e. Once the mediation under sub-clause (d) is concluded or if the Member gives no advice in writing under sub-clause (c) then the Board may decide whether or not to endorse the resolution to expel the Member and it is only at that time that any resolution to expel the Member will be effective.

13.2. The Board's decision in clause 13.1.e is final.

**14. Rights not transferable**

- 14.1. A right, privilege or obligation which a person has by reason of being a Member:
- a. is not capable of being transferred or transmitted to another person; and
  - b. terminates upon the person ceasing to be a Member.

**15. Dispute resolution**

- 15.1. The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:
- a. one or more Members;
  - b. one or more Directors; or
  - c. the Company.
- 15.2. A Member must not start a dispute resolution procedure under this clause 15 in relation to a matter which is the subject of a disciplinary procedure under clause 12 or 13.
- 15.3. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 15.4. If those involved in the dispute do not resolve it under clause 15.3, they must within 10 days:
- a. tell the Board about the dispute in writing;
  - b. agree or request that a mediator be appointed; and
  - c. attempt in good faith to settle the dispute by mediation.
- 15.5. The mediator:
- a. must be agreed by the parties to the dispute and, if the parties to the dispute do not agree, be a community justice centre that is convenient to the parties;
  - b. may be a Member or former Member but must not have a personal interest in the dispute and must not be biased towards or against any party to the dispute; and
  - c. when conducting the mediation must:
    - i. allow the parties involved a reasonable chance to be heard;
    - ii. allow the parties involved a reasonable chance to review any written statements;
    - iii. ensure the parties involved receive procedural fairness; and
    - iv. not make a decision on the dispute which is for the parties involved to resolve if they can.

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## PART C - GENERAL MEETINGS

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### **16. Calling of general meetings**

- 16.1. The Board may call a general meeting whenever it sees fit.
- 16.2. A written request to the Company for a general meeting to be held for a proper purpose may be made by Full Members with at least 10% of the votes that may be cast at a general meeting.
- 16.3. The Board must:
- a. within 21 days of the Members' request in clause 16.2 give all Members notice of a general meeting, and
  - b. hold the general meeting within 2 months of the Members' request.
- 16.4. The percentage of votes that Members have (in clause 16.2) is to be worked out as at midnight (Australian Eastern Time) before the Members request the meeting.
- 16.5. The Members who make the request for a general meeting must:
- a. state in the request the resolution to be proposed at the meeting which must be for a proper purpose;
  - b. sign the request; and
  - c. give the request to the Company.
- 16.6. Separate copies of a document setting out the request may be signed by the Members if the wording of the request is the same in each copy.

### **17. General meetings called by Members**

- 17.1. If the Board does not call the meeting within 21 days of being requested under clause 16.2, provided the meeting is for a proper purpose, 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- 17.2. To call and hold a meeting under clause 17.1, the Members must:
- a. as far as possible, follow the procedures for general meetings set out in this Constitution;
  - b. call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Members making the request at no cost; and
  - c. hold the general meeting within 3 months after the request was given to the Company.
- 17.3. The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

### **18. Annual general meetings**

- 18.1. A general meeting called the annual general meeting must be held within 6 months at the end of the Company's financial year.

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- 18.2. The business of the annual general meeting may include the following matters even if not referred to in the notice of meeting:
- a. consideration of any annual financial report, Directors' report and any auditor's report;
  - b. election or announcement of Directors; and
  - c. appointment of the auditor, if any.
- 18.3. All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.
- 18.4. The business of the annual general meeting also includes any other business which under this Constitution or the Corporations Act ought to be transacted at an annual general meeting. The business must be included in the notice calling the meeting.
- 18.5. If the Company's auditor or the auditor's representative is at the meeting, the Chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report, if any.

## **19. Notice of general meetings**

- 19.1. At least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting or at least 14 days' notice of a general meeting in any other case must be given in writing to those persons who are entitled to receive notice of a general meeting.
- 19.2. Notice of a general meeting must be given to:
- a. each Member;
  - b. each Director; and
  - c. the Company's auditor, if any.
- 19.3. No other person is entitled to receive notice of general meetings.
- 19.4. A notice of a general meeting must:
- a. set out the place, date and time for the meeting (and, if the meeting is to be held online, in 2 or more places, or via a combination of online and face-to-face, the technology that will be used to facilitate this);
  - b. subject to clause 18.2, state the general nature of the meeting's business;
  - c. 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
  - d. a statement that Full Members have the right to appoint proxies and the relevant proxy form.
- 19.5. The accidental omission to give notice of any general meeting to, or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

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## **20. Cancellation or postponement of general meeting**

- 20.1. The Board may cancel or postpone or change the venue of a general meeting (other than a meeting requisitioned by Members) at any time prior to the meeting.
- 20.2. The Board must endeavour to notify each person entitled to receive notice of the meeting of the cancellation, postponement or change of venue. Any failure to notify any person entitled to receive notice of the meeting or failure of a person to receive a notice will not affect the validity of the cancellation, the change of venue or the postponement of the meeting.
- 20.3. If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the majority of the requesting Members.

## **21. Technology**

- 21.1. The Company may hold a general meeting at 2 or more venues, wholly online or in a combination of online and face-to-face using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 21.2. Anyone using this technology is taken to be present in person at the meeting and may vote if entitled to do so under this Constitution.

## **22. Quorum**

- 22.1. The quorum for a general meeting is 5 members, present in person, via audio-visual connection or by proxy and entitled to vote under this Constitution. The quorum must be present at all times during the meeting.
- 22.2. If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present:
  - a. the meeting if convened upon the requisition of Members shall be dissolved;
  - b. in any other case the meeting shall stand adjourned to such other day and at such other time and place as the Chair may determine.
- 22.3. If at the adjourned meeting the quorum is not present within half an hour after the appointed time for the commencement of the meeting, then the meeting will lapse.

## **23. Chair for general meetings**

- 23.1. The President will be the Chair for each general meeting.
- 23.2. If the President is not present within 15 minutes after the time appointed for the commencement, or is unable or unwilling to act, the following may chair the meeting (in order of precedence):
  - a. the Vice-President;
  - b. if the Vice-President is not present or is unable or unwilling to act, any other Director present who has been appointed as Chair by those other Directors present;

- c. if none of the Directors is present or is able or willing to act, then a Voting Member present chosen by a majority of the Voting Members present.

23.3. The Chair is responsible for the conduct of the meeting. Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the Chair of the meeting whose decision is final.

#### **24. Adjournment of general meeting**

24.1. The Chair may with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

24.2. When a meeting is adjourned for 28 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

24.3. Except as provided by clause 24.2, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **25. Voting at general meetings**

25.1. Subject to clauses 25.3 and 26, each Full Member has 1 vote on a show of hands, or via online poll, and on a vote in writing if demanded.

25.2. The vote may be exercised in person or by proxy or attorney.

25.3. A Full Member will not be entitled to exercise their right to vote if at the time of the meeting, their membership fee is overdue and unpaid.

#### **26. Objections to right to vote**

26.1. A challenge to a right to vote at a general meeting:

- a. may only be made at the meeting; and
- b. must be determined by the Chair, whose decision is final.

26.2. A vote not disallowed following the challenge is valid for all purposes.

#### **27. How voting is carried out**

27.1. A resolution put to the vote at a general meeting must be decided on a show of hands, or via online poll, unless a vote in writing is demanded.

27.2. On a show of hands or online poll, a declaration by the Chair is conclusive evidence of the result. Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

27.3. Unless otherwise required by this Constitution or the Corporations Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by Members entitled to vote on the resolutions.

27.4. If the votes are equal, the motion is not carried.



**28. Votes in writing**

- 28.1. A vote in writing may be demanded on any resolution.
- 28.2. A demand for a vote in writing may be withdrawn.
- 28.3. At a general meeting, a vote in writing may be demanded by:
- a. the lesser of at least 3 Full Members entitled to vote on the resolution or Full Members with at least 5% of the votes that may be cast on the resolution on a vote in writing; or
  - b. the Chair.
- 28.4. A vote in writing may be demanded:
- a. before a vote is taken;
  - b. before the voting results on a show of hands are declared; or
  - c. immediately after the voting results on a show of hands are declared.
- 28.5. A vote in writing demanded on a matter other than the election of a Chair or the question of an adjournment must be taken when and in the manner the Chair directs.
- 28.6. A vote in writing on the election of a Chair or on the question of an adjournment must be taken immediately.
- 28.7. The demand for a vote in writing does not prevent the continuance of a meeting for the transaction of any business other than the question on which a vote in writing has been demanded.
- 28.8. The result of the vote in writing is the resolution of the meeting at which the vote in writing was demanded.

**29. Proxies**

- 29.1. A Full Member may appoint a proxy to attend and vote at a general meeting on their behalf, subject to clause 29.8.
- 29.2. A proxy must be a Member.
- 29.3. A proxy appointed to attend and vote for a Full Member has the same rights as the Full Member to:
- a. speak at the meeting;
  - b. vote in a vote in writing (but only to the extent allowed by the appointment); and
  - c. demand or join in to demand a vote in writing under clause 28.
- 29.4. An appointment of proxy (proxy form) must be signed by the Full Member or their attorney appointing the proxy and must contain:
- a. the Full Member's name and address;
  - b. the proxy's name or the name of the office held by the proxy; and

- 
- c. the meeting(s) at which the appointment may be used.
- 29.5. A proxy appointment may be a standing one.
- 29.6. In the event of a Full Member not nominating a particular person as proxy on the proxy form, the proxy may be exercised by the Chair unless the Full Member indicates otherwise.
- 29.7. Proxy forms must be received by the Company at the address or email stated in the notice of meeting or at the Company's registered address or email at least 48 hours before a general meeting or such shorter period as the Board may permit.
- 29.8. A proxy is not entitled to vote on a show of hands (but this does not prevent a Full Member appointed as a proxy from voting as a Full Member in their own right on a show of hands).
- 29.9. When a vote in writing is held, a proxy:
- a. does not need to vote, unless the proxy appointment specifies the way they must vote;
  - b. if the way they must vote is specified on the proxy form, must vote that way; and
  - c. if the proxy is also a Full Member or holds more than one proxy, may cast the votes held in different ways.
- 29.10. Unless the Company receives written notice at least 48 hours (or any shorter period the Board may permit) before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- a. dies;
  - b. is mentally incapacitated;
  - c. revokes the proxy's appointment; or
  - d. revokes the authority of a representative or agent who appointed the proxy.
- 29.11. Despite clause 29.10.c if a Full Member attends a general meeting and they have appointed a proxy, the proxy's appointment is deemed revoked. This means the proxy does not have the authority to speak and vote for a Full Member at a meeting while the Full Member is at the meeting.

### **30. Attorney of Member**

- 30.1. An attorney for a Member may do whatever the Member could do personally as a Member, but if the attorney is to vote at a general meeting the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

### **31. Members' resolutions**

- 31.1. A general meeting must not consider any resolution relating to special business, other than resolutions incidental to the business of the meeting, unless

- a. the consideration of the resolution has been approved by the Board; or
- b. Full Members with at least 10% of the votes that may be cast on the resolution, which is for a proper purpose, have given the Company written notice of the proposed resolution and at least 2 months has elapsed since the notice was given; and
- c. the resolution has been included in the notice of meeting.

### **32. Direct voting**

- 32.1. The Board may determine that at any general meeting, a Full Member who is entitled to vote at that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the Board. The Board may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.
- 32.2. If a Full Member casts a direct vote on a particular resolution that is put to a vote at a general meeting, and the Member or their proxy or attorney attends the meeting, then they are not entitled to vote on the matter at the general meeting.

### **33. Non-members attending a general meeting**

- 33.1. Any Director or auditor of the Company is entitled to attend and address a general meeting.
- 33.2. Any other person that is not a Member may attend and address a general meeting if invited to do so by the Chair of the meeting.

## **PART D - BOARD OF DIRECTORS**

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### **34. Number of Directors**

- 34.1. The Board will comprise:
  - a. 4 Elected Directors (being the Office Bearers); and
  - b. 6 Appointed Directors (being the Chairs of each of the Sub Committees)
- 34.2. The minimum number of Directors is 6.

### **35. Director eligibility**

- 35.1. An Elected Director must be a Full Member with membership dues fully paid.
- 35.2. Having regard to the skills and degree of diversity required to achieve the Objects and strategic goals of the Company, the Board may prescribe further eligibility criteria to give guidance for nomination as an Elected Director.
- 35.3. A person is not eligible to be a Director if they are ineligible to be a director under the Corporations Act or a responsible person under the ACNC Act.
- 35.4. A Director must be domiciled in Australia.

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## **36. Elections**

- 36.1. Elections will be held prior to the annual general meeting in accordance with the procedures determined by the Board. This includes the procedures for nomination of candidates.
- 36.2. If the number of nominations exceeds the number of vacancies to be filled, a ballot must be held prior to the annual general meeting, which may include an electronic ballot as determined by the Board.
- 36.3. If insufficient nominations are received to fill all vacancies on the Board or if the number of nominations received is equal to the number of vacancies to be filled, the candidates nominated shall be declared elected at the annual general meeting following the election, subject to endorsement of each candidate by the Full Members by separate ordinary resolutions at that annual general meeting.
  - a. If any of the candidates are not endorsed by the Full Members at the annual general meeting following the election, then they will not become Directors.
- 36.4. Any unfilled positions, as a result of insufficient nominations or a candidate not being endorsed by the Full Members as per clause 36.3.a, shall be deemed casual vacancies.

## **37. Terms of office**

- 37.1. Results of an election will be announced at the annual general meeting. Elected Directors will hold office for a term of 2 years commencing from the end of that annual general meeting until the end of the second following annual general meeting.
- 37.2. The incumbent Office Bearers will automatically be the new Elected Directors until the first AGM.
- 37.3. Elected Directors are automatically re-elected for a 2<sup>nd</sup> and 3<sup>rd</sup> term, unless they choose to resign from their position after their 1<sup>st</sup> or 2<sup>nd</sup> term.
- 37.4. Subject to clause 39.2, a Full Member may serve up to 3 consecutive terms as an Elected Director.
- 37.5. A Full Member who serves the maximum 3 consecutive terms as an Elected Director in accordance with clause 37.4 may then:
  - a. only be appointed as an Appointed Director after the next subsequent annual general meeting; and
  - b. only stand for re-election as an Elected Director in conjunction with the second subsequent annual general meeting after they cease to be an Elected Director under clause 37.4.
- 37.6. The limitation in clause 37.5 also applies to an Elected Director who ceases to be an Elected Director during their final year under clause 37.4.
- 37.7. For clarity, in this clause 37 the word 'year' as it relates to Elected Director means the period between the end of an annual general meeting to the end of the following annual general meeting.

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### **38. Alternate Directors**

38.1. Alternate Directors are not permitted.

### **39. Casual vacancies**

39.1. The Directors may appoint an individual as an Elected Director to fill a casual vacancy if that individual is an eligible Full Member.

39.2. Any Full Member so appointed to fill a vacancy of an Elected Director will hold office for the remainder of the term of that vacancy. The period served as an Elected Director under this clause 39.2 shall only count in determining the term limits under clauses 37.4 where the period served is equal to or greater than 18 months.

39.3. The Board may act even if there are vacancies on the Board. However, if the number of Directors is reduced below the minimum of 6, the continuing Directors may act only:

- a. in an emergency; or
- b. for the purposes of appointing additional eligible Full Members as Elected Directors up to the minimum number; or
- c. to convene a general meeting.

39.4. The office of a Director becomes vacant if the Director:

- a. dies;
- b. is an Elected Director who ceases to be a Full Member;
- c. has, for the purposes of registration with ASIC or any other relevant authority, a residential address that is outside of Australia on the date that the Director advises the Company Secretary of that address as required by law;
- d. becomes bankrupt or makes any arrangement or composition with creditors generally;
- e. becomes ineligible to be a director of a company under the Corporations Act or a responsible person under the ACNC Act;
- f. resigns their office by written notice given to the Company;
- g. is removed from office pursuant to clause 40.1;
- h. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- i. is absent for 3 consecutive Board meetings without approval from the Board;
- j. is convicted on indictment of an offence and the Board does not resolve to confirm the Director's appointment following the conviction; or
- k. fails to disclose a material personal interest in breach of the law unless at the next meeting of the Board the Board resolves otherwise.

### **40. Removal of Director**

40.1. Full Members may by ordinary resolution in a general meeting remove any Director from office in accordance with the Corporations Act.

#### **41. Office Bearers**

41.1. The Office Bearers of the Company are:

- a. President;
- b. Vice President;
- c. Treasurer; and
- d. Secretary.

41.2. Office Bearers will not hold office beyond their removal or retirement from the Board as a Director.

#### **42. Powers of the Board**

42.1. The business and affairs of the Company is managed by or under the direction of the Directors. The Directors may exercise all powers and do all such things that may be exercised or done by the Company, except for anything which must be exercised by the Company in a general meeting as required by the Corporations Act or by this Constitution.

42.2. The Board may by resolution make, amend or revoke by-laws for the purposes of giving effect to any provision of this Constitution or to govern the procedures and activities of the Company. These by-laws are binding on the Board and the Members, subject to clause 12.1.

42.3. Any question, issue or dispute relating to or arising in consequence from this Constitution shall be determined by the Board. Nothing in this Constitution reduces any rights that a Member may have at law.

#### **43. Delegation of powers**

43.1. The Board may delegate any of its powers and/or functions to one or more committees or any employee of the Company or any other person as the Board thinks fit.

43.2. In exercising any powers so delegated, the committee, employee or person must comply with any terms and conditions that may be set by the Board.

#### **44. Duties of Directors**

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

- a. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- b. to act in good faith in the best interests of the Company and to further the Objects of the Company;
- c. not to misuse their position as a Director;
- d. not to misuse information they gain in their role as a Director;

- e. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53;
- f. to ensure that the financial affairs of the Company are managed responsibly; and
- g. not to allow the Company to operate while it is insolvent.

#### **45. Payments to Directors**

45.1. The Company must not pay fees to a Director for acting as a Director.

45.2. The Company may pay Directors for:

- a. out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously agreed by the Board; or
- b. any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as a Director or an auditor, where the provision of the service has the prior approval of the Board and is on reasonable commercial terms.

45.3. The Company may pay premiums for insurance indemnifying Directors, as allowed by law and this Constitution.

### **PART E - BOARD MEETINGS**

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#### **46. Calling of Board meetings**

46.1. The Board will meet for the dispatch of business, adjourn and otherwise regulate its meetings at such place and time as the Board may determine.

46.2. The President or any 2 or more Directors may at any time, and the Company Secretary must on the request of the President and any 2 or more Directors, call a Board meeting.

#### **47. Notice**

47.1. Subject to clause 47.2, all Directors must be given at least 7 days' notice of a Board meeting. It is not necessary to give notice of a Board meeting to any Director who:

- a. has been given special leave of absence; or
- b. is absent from Australia and has not provided contact details at which he or she may be given notice.

47.2. In cases of urgency, a meeting can be held without notice being given in accordance with clause 47.1 provided that as much notice as practicable is given to each Director by the quickest means practicable.

47.3. Notice may be given orally or in writing and using any technology.

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#### **48. Quorum**

48.1. No business shall be transacted by the Board unless a quorum is present. The quorum for a meeting of the Board shall be a majority (more than 50%) of the number of Directors currently in office.

#### **49. Chair**

- 49.1. At a meeting of the Board, the President shall preside as Chair. If the President is absent or unwilling to act, then the Vice President shall preside and if the Vice President is not present or is unwilling to act, the remaining Directors shall choose another Director to preside as Chair at the meeting.
- 49.2. Despite anything in clause 49.1, if the President (or as applicable Vice President) later attends a meeting of Directors or is later willing to act then they must take the role of Chair of the meeting.

#### **50. Voting and decisions**

- 50.1. Decisions made at a meeting of the Board will be determined by a majority of votes cast by Directors present and eligible to vote at the meeting. Each Director has 1 vote.
- 50.2. In the event of an equality of votes on any question, the motion is not carried and the Chair does not have a second or casting vote.

#### **51. Use of technology**

- 51.1. A Board meeting may be held using any technology consented to by a majority of Directors. The consent may be a standing one. The Board must reconsider any technology consented to at least annually.
- 51.2. A Director may only withdraw their consent to the use of technology proposed for a Board meeting if they do so within a reasonable period before the meeting.
- 51.3. A Director who participates in a Board meeting permitted under clause 51.1 is taken to be present at the meeting and is entitled to vote.

#### **52. Resolutions made outside of Board meetings**

- 52.1. The Board may pass a resolution without a Board meeting being held. The resolution may be passed by written or electronic communication.
- 52.2. The resolution is passed if at least a majority of Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clauses 52.3 or 52.4.
- 52.3. The Directors may sign a single document setting out the resolution and containing a statement that they agree to the resolution or there may be multiple copies of the same document, each signed by one or more of the Directors.
- 52.4. The Company may send the proposed resolution by email or other electronic message to the Directors and the Directors may agree to the resolution by sending a reply email or message to that effect, including the text of the resolution in their reply.



52.5. The resolution is taken to be passed when the last Director who constitutes a majority in favour signs or otherwise agrees to the resolution in the manner set out in clauses 52.3 or 52.4.

### **53. Directors' interests**

53.1. A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a resolution made outside of a Board meeting):

- a. to the other Directors; or
- b. if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.

53.2. The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

53.3. Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is in a proposed resolution made outside of a Board meeting) must not, except as provided under clause 53.4:

- a. be present at the meeting while the matter is being discussed; or
- b. vote on the matter.

53.4. A Director may still be present and vote if:

- a. their interest arises because they are a Member of the Company, and the other Members have the same interest;
- b. their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 64);
- c. their interest relates to a payment by the Company under clause 64 (indemnity), or any contract relating to an indemnity that is allowed under the Act;
- d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
- e. the Directors who do not have a material personal interest in the matter pass a resolution that:
  - i. identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
  - ii. says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

### **54. Validity of acts**

54.1. Any act done by the Board is valid and effective despite any defect that may afterwards be discovered in the appointment or qualification of any Director.

54.2. A procedural defect in decisions made by the Board will not result in such decisions being invalidated.

## PART F - RECORDS

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### **55. Minutes**

- 55.1. The Board must ensure that minutes are made, approved and kept of:
- a. proceedings and resolutions of meetings of the Company's Members;
  - b. proceedings and resolutions of Board meetings (including meetings of a committee of the Board); and
  - c. resolutions passed by the Board without a meeting.

### **56. Registers**

- 56.1. The Company must keep all registers required by this Constitution and the Corporations Act.
- 56.2. The registers must be made available as required by the Corporations Act.

### **57. Financial records**

- 57.1. The Company must keep written financial records that:
- a. correctly record and explain its transactions and financial position and performance; and
  - b. where required, enable true and fair financial statements to be prepared and reviewed or audited.

### **58. Inspection of records**

- 58.1. A Member is not entitled to inspect the financial records or other documents of the Company unless authorised by the Board or the Corporations Act.

## PART G - ADMINISTRATION

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### **59. Company Secretary**

- 59.1. There must be at least 1 Company Secretary appointed by the Board on any terms as the Board sees fit. The Board may remove or terminate such appointment subject to law.
- 59.2. The Company Secretary must be a Director.

### **60. Financial year**

- 60.1. Until such time as the Board otherwise decides, the Company's financial year is the 12-month period beginning on 1 January and ending on 31 December.

### **61. Auditor**

- 61.1. If required by law or if the Board so determines, the Company will appoint an auditor, whose appointment, removal and duties will be regulated by the relevant sections of the Corporations Act.

## **62. Alteration of Constitution**

62.1. This Constitution may only be altered by the Full Members passing a Special Resolution.

## **63. Notices**

### How notice is given

63.1. Any notice required to be given to the Company may be given:

- a. by delivering it to the Company's registered office;
- b. by sending the notice by post to the registered address; or
- c. by email to the email address nominated by the Company for that purpose.

63.2. Any notice required to be given to a Member under this Constitution may be given:

- a. personally;
- b. 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;
- c. by sending it to the electronic address (if any) nominated by the Member;
- d. by sending it by other electronic means (if any) nominated by the Member; or
- e. if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

63.3. If the Company does not have an address for the Member, the Company is not required to give notice in person.

### When notice is given

63.4. A notice:

- a. delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- b. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- c. sent by email, or other electronic method, is taken to be given on the business day after it is sent; and
- d. given under clause 63.2.e is taken to be given on the business day after the notification that the notice is available is sent.

## **64. Indemnity and insurance**

64.1. The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.

64.2. In this clause, 'officer' has the same meaning as defined in the Corporations Act.

64.3. In this clause, 'to the relevant extent' means:

- a. to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and
  - b. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 64.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.
- 64.5. To the extent permitted by law (including the Corporations Act), and if the Board considers it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

## **65. Execution of documents**

- 65.1. Without limiting the manner in which the Company may execute a document, including as permitted under the Corporations Act, the Company may execute a document if the document is signed by:
- a. Two (2) Directors; or
  - b. a Director and a Company Secretary.
- 65.2. The Company is not required to execute any document under common seal for the document to be executed effectively.

## **66. Winding Up**

- 66.1. The Company may be wound up voluntarily by special resolution. In the event of the winding up or the dissolution of the Company, the surplus assets of the Company must not be distributed to any Members or former Members.
- 66.2. The surplus assets must be given to an organisation:
- a. That has similar objects to the Company and whose constitution requires it to apply its income in promoting those objects;
  - b. whose constitution prohibits it from making distributions to its members to at least the same extent as in clause 5;
- and
- c. if the Company is an endorsed deductible gift recipient just before the winding up of the Company, then such organisation must be one that is endorsed as a deductible gift recipient.
- 66.3. The organisation to which the surplus assets are to be given is to be determined by the Full Members at or before the time of winding up, or failing that, by the Board at or before the time of winding up, and failing such determination, by application to a court that has jurisdiction in the matter.
- 66.4. If the Company has been endorsed as a deductible gift recipient by the Australian Tax Office and the Company maintains accounts or a gift fund pursuant to such endorsement, the Company must on the earlier of the winding up of such accounts or

gift fund or of the Company having its deductible gift recipient endorsement revoked, transfer any surplus assets of those accounts or gift fund to another organisation or gift fund which is endorsed as a deductible gift recipient. The organisation to which the assets are to be given is to be determined by the Full Members, or failing that, by the Board, and failing such determination, by application to a court that has jurisdiction in the matter.