

## FASD-CAN INCORPORATED CONSTITUTION

NZBN 9429043251414

Incorporation Number 2583263

Charities Services No CC53623

### BACKGROUND

- a) In June 2013 fifteen people passionate about forming an organisation to unite caregivers, strengthen families, support individuals and educate about FASD across their communities joined together to make an application for the incorporation of FASD-CAN Incorporated as a society under the Incorporated Societies Act 1908. That application was successful and FASD-CAN's journey was underway. Claire Gyde was elected as Chair of the inaugural committee.
- b) In November 2014 FASD-CAN appointed Judge Tony FitzGerald to the position of Patron.
- c) In 2016 FASD-CAN made an application to be registered as a charity under the Charities Act 2005. In August 2016 advice was received from Charities Services that the application was successful.
- d) Over subsequent years FASD-CAN continued to grow, with increasing membership and funding resources. Along with that growth came the capacity to employ personnel who would increasingly carry out the work required for the organisation to fulfil its objectives.
- e) Over time, as the organisation grew, the 'Rules' of the society underwent minor changes to accommodate the evolution, in particular the separation of governance and operations.
- f) In April 2022 the Incorporated Societies Act 2022 was passed into law. This new legislation requires all incorporated societies to reregister with a new constitution which meets the bolstered requirements under the new act. The FASD-CAN board has taken the opportunity to draft a new constitution to meet the needs of FASD-CAN into the foreseeable future

### OPERATIVE PART

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. *Definitions*

In this Constitution unless the context requires otherwise:

- (a) **Act** means the Incorporated Societies Act 2022 or any Act which replaces it (including any amendments to, and any regulations made under, that legislation from time to time);
- (b) **Annual General Meeting** or **AGM** means the Annual General Meeting of FASD-CAN required to be held annually under the Act;
- (c) **Appointed Director** means a Director appointed by the Board pursuant to clause 10;

- (d) **Board** means the committee of FASD-CAN constituted in accordance with clauses 8 to 10 and operating in accordance with clause 11 (which is the committee and governing body of FASD-CAN for the purposes of the Act);
- (e) **Board Chair** means the person elected to chair the Board in accordance with clause 12;
- (f) **Business Day** means a day other than a Saturday, Sunday or public holiday and **Business Days** has a corresponding meaning;
- (g) **Chair** means any person appointed to chair a General Meeting of FASD-CAN or a meeting of the Board pursuant to this Constitution;
- (h) **Chief Executive Officer** or **CEO** means the Chief Executive Officer of FASD-CAN as appointed under clause 19;
- (i) **Code** means a code of FASD-CAN made by the Board and **Codes** has a corresponding meaning;
- (j) **Committee** means a committee established by the Board under clause 18;
- (k) **Conflicts Register** means the register of conflicts declared by Directors, maintained by the Chief Executive Officer in accordance with clause 11.9 (f);
- (l) **Constitution** means this Constitution for FASD-CAN as amended from time to time;
- (m) **Contact Person** means a person holding the position of contact person of FASD-CAN for the purposes of sections 112 to 116 of the Act;
- (n) **Director** means a member of the Board, being either an Appointed Director, an Elected Director, or an individual appointed by the Board to fill a vacancy on the Board;
- (o) **Effective Date** means the date of FASD-CAN's reregistration as an incorporated society under the Act;
- (p) **Elected Director** means a Director elected in accordance with clause 9 and the Nominations Policy;
- (q) **FASD** means Fetal Alcohol Spectrum Disorder;
- (r) **Fee** means any money owed by a Member to FASD-CAN as set out in this Constitution or the Policies;
- (s) **Financial Report** means the annual financial statements of FASD-CAN as referred to in section 102 of the Act and **Financial Reports** has the corresponding meaning;
- (t) **General Meeting** means a general meeting of Members and includes an Annual General Meeting or a Special General Meeting, and **General Meetings** has the corresponding meaning;
- (u) **Incorporated Society** or **FASD-CAN** means FASD-CAN Incorporated (NZBN9429043251414, Incorporation Number 2583263, Charities Services No CC53623);
- (v) **Instruction** means the written instruction appointing a proxy or attorney for a Voting Member in accordance with clause 17.3;

- (w) **Lived Experience** means the experience a person gains while living with and or supporting a person who is, or is suspected to be, living with FASD.
- (x) **Member** means a person admitted to FASD-CAN as a member in accordance with clause 6 and **Members** and **Membership** have the corresponding meanings;
- (y) **Membership Secretariat** means the person responsible for maintaining the Membership systems and Register of Members;
- (z) **Nominations Policy** means the policy adopted by the Board for the nomination and appointment of Directors as amended, supplemented or replaced from time to time;
- (aa) **Purposes** means the Purposes of FASD-CAN as set out in clause 4;
- (bb) **Policy** means a policy of FASD-CAN made by the Board and Policies has a corresponding meaning
- (cc) **Professional** means those persons engaged in careers affecting the lives of Members including but not limited to those working in such fields as health, education, justice, legislators, policymakers, media and social support.
- (dd) **Register of Members** means the Membership register maintained by the Membership Secretariat pursuant to clause 6.7;
- (ee) **Registered Office** means the registered office required under section 110 of the Act;
- (ff) **Special General Meeting** means a meeting of the Members other than an Annual General Meeting, as referred in clause 14.4.
- (gg) **Special Resolution** means a resolution passed by a majority of at least seventy percent (70%) of Voting Members present and voting (in person or by proxy or by attorney) at a General Meeting, or passed by a majority of at least seventy percent (70%) of Voting Members that vote in the case of a postal or electronic vote in lieu of, or in conjunction with, a General Meeting.
- (hh) **Stakeholder** means a party that has an interest in FASD-CAN and can either affect or be affected by FASD-CAN.
- (ii) **Voting Member** means, at any time, a Member who, at that time and in accordance with the terms of the relevant category of Membership, is entitled to attend and vote at any General Meeting and **Voting Members** has the corresponding meaning.

## 1.2. Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to a document or instrument includes any subsequent amendments made to it and, unless the contrary intention appears, includes a replacement;
- (b) words expressing gender include all genders;
- (c) words in the singular include the plural and vice versa;

- (d) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, the trustee or trustees of a trust, an unincorporated body or association or an authority;
- (e) a reference to an organisation includes a reference to its successors, executors, administrators, substitutes and permitted assigns;
- (f) headings in this Constitution are for convenience only and do not affect interpretation;
- (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (h) a reference to any legislation or legislative provision includes regulations and instruments made under it and includes any statutory modification, re-enactments of, or legislation or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or provision;
- (i) the words “include”, “includes”, “including”, for example or similar expressions are not to be interpreted as expressing limitation;
- (j) a reference to something being written or in writing includes that thing being represented or reproduced in any mode in a visible form;
- (k) where a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document as permitted by law relating to electronic transmissions or in any other manner approved by the Board;
- (l) a reference to a Member present at a General Meeting or to a Member voting at a General Meeting means a Member present or voting (as applicable) in person or by proxy or by attorney, and includes any such presence or voting by means of virtual (audio or audio and visual) technology designated for the General Meeting (if applicable);
- (m) where, by a provision of this Constitution a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any other manner approved by the Board; and
- (n) writing and written includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

### 1.3. *Incorporated Societies Act 2022*

- (a) Unless the context otherwise requires, words and expressions used in this Constitution have the same meaning as that those words and expressions have when used in the Act.
- (b) In the event a provision of this Constitution is void, voidable or in breach of a provision of the Act, the provision will be read down and will apply to the extent that it complies with the Act. Any such provision that may not be read down in that manner will be deemed to be struck out from the Constitution.
- (c) In the event that the Act permits an act to be done, a decision to be made or a meeting to be held in a way that is:

- (i) more convenient for the Incorporated Society or the Board; or
- (ii) more favourable to the Members or the Board,

than what is required or permitted by this Constitution, then the Board may in its discretion determine to:

- (iii) make the decision;
- (iv) take the action;
- (v) give the notice;
- (vi) hold the meeting; or
- (vii) do the particular thing,

as permitted, in the time and in the manner permitted, by the Act

## **2. NAME, CAPACITY, REGISTERED OFFICE AND CONTACT PERSON(S)**

- (a) The name of the Incorporated Society is FASD-CAN Incorporated (**FASD-CAN**).
- (b) Subject to the Act, any other legislation and the general law, FASD-CAN has:
  - (i) full capacity to carry on or undertake any activity, do any act, or enter into any transaction in furtherance of its Purposes; and
  - (ii) for that purpose, full rights, powers, and privileges.
- (c) Nothing in this Constitution authorises FASD-CAN to do anything which contravenes, or is inconsistent with, the Act or any other applicable legislation.
- (d) In accordance with the Act, FASD-CAN will have a Registered Office and up to three (3) Contact Persons (who will normally be, or include, the Chief Executive Officer), as determined by the Board.
- (e) Any changes to the Registered Office or Contact Person(s) for FASD-CAN shall be notified to the Registrar of Incorporated Societies in accordance with the Act.

## **3. TE TIRITI O WAITANGI**

- (a) As a treaty aligned organisation FASD-CAN operates within its policy to recognise and uphold its obligations to the articles and principles of Te Tiriti o Waitangi.

## **4. PURPOSES**

The Purposes of FASD-CAN are to:

- (a) Unite caregivers, strengthen families, support individuals and educate about FASD across our communities;
- (b) provide a national organisation in New Zealand;

- (c) promote FASD-CAN to the public and to those organisations which either do or should provide support to those in the neuro disability community;
- (d) provide education on FASD related topics to Members, Professionals and the general public;
- (e) facilitate and promote the continuing education of Professionals and to foster relationships with tertiary education providers for the purpose of ensuring the appropriate education of persons training to become Professionals;
- (f) consider, promote and advocate for amendments to policies, regulations and legislation pertaining to neurodisability and related subjects and to initiate and advocate for changes to meet the needs of the neurodisability community;
- (g) provide support and development opportunities for Members and people living with FASD;
- (h) support alcohol harm reduction activities and initiatives;
- (i) undertake any other actions or activities necessary, incidental or conducive to advance these Purposes and the conduct of the activities of FASD-CAN.

The Purposes of FASD-CAN do not include any purpose for the financial gain of any of its Members that would contravene the Act.

## **5. APPLICATION OF INCOME AND PROPERTY**

### *5.1. Purposes Only*

The income and property of FASD-CAN will only be applied towards the promotion of the Purposes of FASD-CAN.

### *5.2. Payments to Members Restricted*

Income or property of FASD-CAN will not be paid or transferred directly or indirectly to any Member, except for payments to a Member of a reasonable amount approved by FASD-CAN:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to FASD-CAN;
- (b) as reimbursement for expenses properly incurred on behalf of FASD-CAN;
- (c) for interest, at a rate not exceeding then-current bank overdraft rates of interest, on money borrowed by FASD-CAN;
- (d) in return for services as a Director, as permitted by this Constitution or the Act;
- (e) as reimbursement for expenses incurred in performing duties as a Director, as permitted by this Constitution or the Act;
- (f) in the course of employment for a Member who is an employee of FASD-CAN;

- (g) for reasonable rent for premises let to FASD-CAN by them; or
- (h) as reimbursement for expenses properly incurred or to be incurred so that the Member can further their education, participate in therapy or events related to FASD or the effects of FASD; or
- (i) for any other amount of a similar character to those in this clause.

## **6. MEMBERSHIP**

### *6.1. Categories of Membership and Right to Attend and Vote*

The categories of Membership offered by FASD-CAN at the Effective Date are:

- (a) Honorary Life Members who have the right to attend, speak and vote at General Meetings;
- (b) Members who have the right to attend, speak and vote at General Meetings;
- (c) Associates who have no right to attend, vote or speak at General Meetings; and
- (d) any other category of Membership as may be created by the Board in accordance with clause 6.2.

### *6.2. Changes to Membership Categories*

- (a) The Board may from time to time create, discontinue or amalgamate categories of Membership in the form of a Policy and specify the criteria, rights and Fees attached to that category of Membership.
- (b) Any new category of Membership created by the Board may be granted the right to attend General Meetings and may be granted the right to speak or vote at General Meetings.

### *6.3. Membership Policies*

Subject to this Constitution, the Policies of FASD-CAN will set out:

- (a) the categories of Membership in accordance with clause 6.1 and clause 6.2;
- (b) the Fees for each category of Member; and

The Board may vary or amend these requirements from time to time.

### *6.4. Membership Application*

- (a) A person may apply to become a Member by:
  - (i) completing the specified application form determined by the Board from time to time (including by digital means) and delivering it to FASD-CAN, including agreeing to become a Member of FASD-CAN; and
  - (ii) paying any Fees and subscriptions determined by the Board, from time to time to apply to the Member under clause 6, if and where applicable.

#### 6.5. *Members' Benefits and Obligations*

A Member:

- (a) is entitled to any benefits of Membership determined by the Board in accordance with this Constitution;
- (b) does not have the right to inspect or access any information or document of FASD-CAN (including registers kept by the Incorporated Society) except as set out in the Act, and any Member request for any such information or document may be declined by the Board on the grounds set out in the Act or for any other reason.

#### 6.6. *Membership Approval*

- (a) The Board, at its full discretion, may approve or reject an application for Membership.

#### 6.7. *Register of Members*

- (a) Every Member shall provide the Membership Secretariat with that Member's name and contact details (including postal address, telephone number(s), and any email address) and promptly advise the Membership Secretariat of any changes to any of those details.
- (b) The Membership Secretariat shall, in accordance with section 79 of the Act, keep an up-to-date Register of Members, recording for each Member their name, their last known contact details, the date they became a Member, their category of Membership, and any other information required by or for the purposes of this Constitution or prescribed by the Act.

#### 6.8. *Cessation of Membership*

- (a) A person will cease to be a Member on:
  - (i) resignation by providing FASD-CAN written notice;
  - (ii) death;
  - (iii) the expulsion or termination of the Member in accordance with this Constitution or the Policies; or
  - (iv) without limiting anything else in this clause 6.8 (a), that Member no longer meeting the requirements for Membership under clause 6.4 or any applicable Policy.
- (b) Any former Member may apply for re-admission in the manner prescribed for new applicants. If a former Member's Membership was terminated following a dispute resolution process, the applicant may be re-admitted only by a resolution of the Board.

#### 6.9. *Expulsion of Member*

The Board may resolve to:

- (a) expel or terminate a Member; or

(b) suspend a Member for such period and on such terms determined by the Board, where the Member contravenes the terms of this Constitution as determined by the Board.

#### 6.10. *Forfeiture of Rights*

A Member who ceases to be a Member will forfeit all right in and claim upon FASD-CAN and the Directors for any claim, loss, or to exercise any right.

#### 6.11. *General*

- (a) Membership of FASD-CAN does not confer on a Member any right, title, or interest (legal or equitable) in the property of FASD-CAN.
- (b) A Member must treat all staff, contractors and representatives of FASD-CAN with respect and courtesy at all times.

### **7. MEMBERSHIP FEES AND SUBSCRIPTIONS**

#### *7.1. Determination and Payment of Fees*

- (a) The Board must determine the Fee from time to time, being:
  - (i) the annual subscription Fee payable by each Member, or any category of Members; and
  - (ii) any other amount to be paid by each Member, or any category of Members.
- (b) The Board has the power to:
  - (i) set a different level of subscription for each category of Membership; and
  - (ii) set the date or dates by which the subscription must be paid; and
  - (iii) waive the requirement for any category of Member to pay any Fee.
- (c) Subject to clause 7.2, each Member must pay to FASD-CAN the Fee determined under this clause 7 by the payment method and on or before the due date for payment of the Fee, as determined by the Board from time to time.

#### *7.2. Extension or Waiver of Fee*

- (a) The Board may determine to reduce the Fee payable by a Member or Members (including to a zero Fee), or extend the time for payment of the Fee payable by any Member, if the Board is satisfied that:
  - (i) there are reasonable grounds for doing so;
  - (ii) FASD-CAN will not be materially disadvantaged as a result; and
  - (iii) the Member agrees to pay the deferred or (if greater than zero) reduced Fee or other amount within a time fixed and prescribed by the Board.

- (b) If the Board defers or reduces a Fee payable by a Member, that Member will retain their rights (if any) to attend and vote at a General Meeting, unless otherwise specified by the Board, at the absolute discretion of the Board.

### *7.3. Non-payment of Fees*

- (a) If the Fee is not paid in accordance with this clause 7 within twenty (20) Business Days of when it was due, the right of a Member (if any) to attend and vote at a General Meeting and access Member benefits is suspended.
- (b) If the Fee remains unpaid for more than three (3) calendar months of the date the same was due for payment the Member may have their Membership terminated by the Board (without further notice being given to that Member) and the Member will be removed from the Register of Members and will be required to reapply for Membership in accordance with the Policies and this Constitution.

## **8. DIRECTORS**

### *8.1. Number of Directors*

- (a) The Board must have at least four (4) Directors but may not have more than nine (9) Directors comprised of:
  - (i) up to seven (7) Elected Directors in accordance with clause 9; and
  - (ii) up to six (6) Appointed Directors in accordance with clause 10.
- (b) If required under the Act, a majority of the Directors constituting the Board must be Members and the Board must take this requirement into account when appointing any Appointed Director and any Director to fill a casual vacancy.

### *8.2. Term*

- (a) Subject to clause 8 and clause 9.1, an Elected Director will hold office until the conclusion of the third Annual General Meeting held after their election, with each such period deemed to be three (3) years for the purpose of this clause 8.2.
- (b) An Appointed Director will hold office until the end of the period determined by the Board at the time of appointment, with each such period to be no more than three (3) years.

### *8.3. Suspension of Director*

- (a) The Board may resolve to suspend a Director in the event that the Board considers the Director's conduct or behaviour to be prejudicial to the interests of FASD-CAN.
- (b) A suspended Director is not permitted to take part in the business or affairs of FASD-CAN until their suspension has been ended.
- (c) Within twenty (20) Business Days of a Director's suspension, the Board must either review and end the suspension or call a General Meeting at which the Voting Members may consider a motion to remove the Director from office in accordance with clause 8.4 (a).
- (d) If the Voting Members do not pass the motion to remove the Director, the suspension of the

Director is terminated and the Director is reinstated.

#### 8.4. *Removal of Director*

- (a) Subject to the provisions of the Act, FASD-CAN may, in a General Meeting by resolution passed by a majority of the Voting Members present at the General Meeting, remove any Director prior to the expiration of that Director's term of office.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with clause 8.4 (a) cannot be re-appointed as a Director within three (3) years from the date of their removal.

#### 8.5. *Vacation of Office*

The office of a Director becomes vacant if it is vacated in accordance with the Act and also if the Director:

- (a) is removed in accordance with clause 8.4 (a);
- (b) becomes ineligible to act as an officer of an incorporated society in accordance with the Act;
- (c) ceases to be eligible for their Elected Director or Appointed Director position (as applicable) under the Constitution or the Policies;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (e) is convicted of any offence punishable by imprisonment;
- (f) dies;
- (g) resigns from office by notice in writing to FASD-CAN;
- (h) becomes an employee of FASD-CAN;
- (i) was appointed to the office for a specified period and that period expires;
- (j) has served the term they were elected for, or otherwise served their Maximum Term;
- (k) is not present at three (3) consecutive Board meetings without leave of absence from the Board;
- (l) is found by a court of competent jurisdiction or resolution of the Voting Members to have breached this Constitution or the Policies;
- (m) is prohibited from being an officeholder of FASD-CAN pursuant to the Act or other applicable legislation or by reason of any order made pursuant to the Act or other applicable legislation;  
or
- (n) is directly or indirectly interested in any contract or proposed contract with FASD-CAN and fails to declare the nature of the interest as required by the Act or this Constitution.

#### 8.6. *Effect of Vacancy*

- (a) Subject to clause 8.6 (b) the continuing Directors may act despite a vacancy in their number.
- (b) If the number of Directors is reduced below the minimum number of Directors set out at clause 8.1, the remaining Directors may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required or to convene a General Meeting.

#### 8.7. *Remuneration*

- (a) A Director may be paid for services as a Director provided the following conditions are satisfied:
  - (i) a resolution is approved by the Members in a General Meeting as to payment and the total pool of payment for the Board; and
- (b) such payment complies with the Act.
- (c) Directors of FASD-CAN may also, with the approval of the Board, and subject to the Act be paid, or reimbursed, by FASD-CAN for:
  - (i) services rendered to it other than as a Director; and
  - (ii) their reasonable travelling, accommodation and other expenses in line with the Policies.

#### 8.8. *No Alternate Directors*

A Director cannot appoint an alternate.

### **9. ELECTED DIRECTORS**

#### 9.1. *Eligibility*

A person is eligible to be nominated for election as an Elected Director at an Annual General Meeting of FASD-CAN (Eligible Candidate) if they are:

- (a) a Voting Member of FASD-CAN;
- (b) eligible to stand for election under any Policy in place from time to time; and
- (c) not banned or otherwise disqualified from being an officer of an incorporated society.

#### 9.2. *Nominations*

- (a) Nominations for election will be called for ahead of any Annual General Meeting where it is known that a vacancy in relation to any of the seven (7) Elected Director positions has arisen or will arise prior to or at the conclusion of the relevant Annual General Meeting.
- (b) The Board will implement a Nominations Policy specifying the nominations process in relation to the election of Directors and any eligibility criteria required to be fulfilled by a nominee for election. The Nominations Policy will include matters such as:

- (i) the requirements for calling for nominations;
  - (ii) the role of the Nominations Committee in recommending nominees for the position of Elected Director to the Board on the basis of eligibility set out at clause 9.1;
  - (iii) the manner in which the ballot will be conducted, including by electronic or postal means;
  - (iv) the determination of results; and
  - (v) other such matters relating to the election of the Board.
- (c) In accordance with this clause 9.2 and the Nominations Policy, upon recommendation by the Nominations Committee to the Board, candidates (referred to as **Eligible Candidates**) will be nominated for election as Elected Directors.
- (d) The Board is under no obligation to accept the recommendations of the Nominations Committee and will have the final decision regarding any question of eligibility of a nominee.

### *9.3. Election/Deemed Election*

- (a) Subject to the provisions of this Constitution, the Voting Members may elect a person as an Elected Director at an Annual General Meeting.
- (b) The election of Elected Directors will be conducted as follows:
- (i) the method of voting will be determined by the Board, and may include voting by electronic means at or prior to the relevant Annual General Meeting;
  - (ii) if at the close of nominations, and following a recommendation by the Nominations Committee to the Board, the number of nominees is equal to or less than the number of positions to be filled, then no election is to take place, and those Eligible Candidates nominated for election in accordance with clause 9.2 will be taken to be elected;
  - (iii) if an insufficient number of Eligible Candidates are elected under this clause to fill all Elected Director positions, the unfilled positions are casual vacancies and may be filled by the Board under clause 9.4; and
  - (iv) the results of the election of Elected Directors will be announced at the relevant Annual General Meeting, and the Elected Directors will be taken to be elected from the end of that meeting.
- (c) If a person is an employee of FASD-CAN and is elected as an Elected Director, they must immediately resign from employment with FASD-CAN.

### *9.4. Casual Vacancy in Ranks of Elected Directors*

- (a) The Board may at any time appoint a person to fill a casual vacancy arising under clause 9.3 (b) (iii) or otherwise.
- (b) A person appointed under clause 9.4 (a) holds office until the next Annual General Meeting at which time they can offer themselves for re-election.

## 10. APPOINTED DIRECTORS

- (a) Subject to compliance with clause 8.1, the Board may at any time appoint up to six (6) Appointed Directors because of their function, Lived Experience or technical skills in accordance with the Policies in addition to the Elected Directors to complete the composition of the Board in accordance with the Policies.
- (b) Subject to compliance with clause 8.1, the Board may appoint an additional Appointed Director from time to time, because of their function, Lived Experience or technical skills in accordance with the Policies, bringing the total number of Appointed Directors to six (6), where there is a specific need for an additional Director or skillset on the Board.
- (c) An Appointed Director's term commences on the date on which the Board resolves to appoint the Appointed Director to the Board and is otherwise subject to clause 8.2.
- (d) The Nominations Policy will include the role of the Nominations Committee in recommending nominees for the position of Appointed Director based on the criteria, guidelines and competencies set out in the Nominations Policy.

## 11. ROLE AND POWERS OF THE BOARD AND DUTIES OF DIRECTORS

### 11.1. *General Role and Powers of the Board*

Except as otherwise required by the Act, any other applicable law, or this Constitution, the Board is the governing body of FASD-CAN and accordingly:

- (a) the operation and affairs of FASD-CAN must be managed by, or under the direction or supervision, of the Board, and the Board has all the powers necessary for that purpose including the power to manage the business of FASD-CAN; and
- (b) the Board may exercise the capacity and all rights, powers and privileges of FASD-CAN in furtherance of its Purposes, to the exclusion of the Members and FASD-CAN in General Meetings.

### 11.2. *Specific Aspects of the Board's Role*

Without limiting the scope of clause 11.1, the Board's role includes:

- (a) setting the strategic direction of FASD-CAN in accordance with its purposes;
- (b) monitoring the day-to-day operations and affairs of FASD-CAN, including the control and management of its finances;
- (c) overseeing the performance of FASD-CAN to ensure its strategic objectives are met;
- (d) supporting Members;
- (e) approving the annual financial plan and budget, the preparation of accounts and the annual report;
- (f) ensuring appropriate risk management and compliance frameworks are established and maintained;

- (g) ensuring FASD-CAN maintains high standards of ethical and organisational behaviour;
- (h) promoting and living organisational values and expected behaviours;
- (i) appointing, and managing the performance of, the Chief Executive Officer;
- (j) overseeing succession planning for the Chief Executive Officer and senior management;
- (k) holding management to account; and
- (l) undertaking all such other acts and functions as the Board considers appropriate in pursuit of the Purposes of FASD-CAN and in managing and administering the affairs and operations of FASD-CAN.

### 11.3. *Exercise of Powers*

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with clause 13.5;  
or
- (b) in accordance with a delegation of the power under clause 11.5 (a), clause 18.1(b) or clause 19.2 (a).

### 11.4. *Time and Extension of Time*

Subject to the Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Board may at its absolute discretion extend that time, period or date as it thinks fit, even if that time or date has already passed.

### 11.5. *Delegation of Powers*

- (a) Without limiting clause 18.1(b) or clause 19.2 (a), the Board may delegate any of its powers as permitted under the Act or Policies.
- (b) The Board may revoke a delegation previously made, whether or not the delegation was expressed to be for a specified period.
- (c) A delegation of powers under this clause 11.5 may be made:
  - (i) for a specified period or without specifying a period; and
  - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (d) A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

### 11.6. *Duties of Directors*

In carrying out their role on the Board, each of the Directors must comply with their duties under the Act and any other applicable law including:

- (a) their core duties owed to FASD-CAN under sections 54 to 59 of the Act, namely:
  - (i) when exercising their powers or performing their duties as a Director, to act in good faith and in what they believe to be the best interests of FASD-CAN;
  - (ii) to always exercise their powers for a proper purpose;
  - (iii) not to act, or agree to FASD-CAN acting, in a manner that contravenes the Act or this Constitution;
  - (iv) when exercising their powers or performing their duties as a Director, to exercise the care and diligence that a reasonable individual with the same responsibilities would exercise in the same circumstances;
  - (v) not to agree to, cause or allow FASD-CAN's activities to be carried on in a manner likely to create a substantial risk of serious loss to FASD-CAN's creditors;
  - (vi) not to agree to FASD-CAN incurring an obligation unless they believe at the relevant time, on reasonable grounds, that FASD-CAN will be able to perform the obligation when required to do so; and
- (b) their further duties not to misuse their position as a Director, not to misuse information they gain in their role as a Director, to disclose any perceived or actual material conflicts of interest, and to ensure that the financial affairs of FASD-CAN are managed responsibly.

#### 11.7. *Appointment of Attorney*

- (a) The Board may appoint any person to have power of attorney for FASD-CAN for the purposes, with the powers, authorities and discretions, for the period, and subject to the conditions that the Board thinks fit.
- (b) A power of attorney granted under clause 11.7(a) may contain any provisions for the protection and convenience of persons dealing with the attorney that the Board thinks fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

#### 11.8. *Code of Conduct and Board Charter*

The Board may:

- (a) adopt a code of conduct and Board charter; and
- (b) periodically review the code of conduct and Board charter in light of the general principles of good corporate governance.

#### 11.9. *Directors' Interests*

- (a) Directors should be free from any business or other relationship which could materially interfere with the exercise of independent judgement and fulfilment of their duties as Directors.
- (b) A Director must declare to the Board any material personal interest or related party

transaction (Conflict of Interest), as defined by the Act, as soon as practicable after that Director becomes aware of their Conflict of Interest.

- (c) Where a Director declares a Conflict of Interest, that Director must absent themselves from discussion of such matter unless otherwise determined by the Board and will in any event not be entitled to vote in respect of such matter.
- (d) In the event of any uncertainty as to how to resolve a Conflict of Interest, the issue of how to resolve the Conflict of Interest will immediately be determined by a vote of the Board or, if this is not possible, the matter will be adjourned or deferred to the next meeting.
- (e) If more than fifty percent (50%) of Directors are prevented from voting under clause 11.9, a Special General Meeting may be called by the Board Chair, but is not required to be called (unless the Act provides otherwise, or it is essential to determine the relevant matter), for the Membership to consider and determine the matter.
- (f) All Conflicts of Interest will be entered into the Conflicts Register which will be maintained by the Chief Executive Officer and disclosed to the Board, and where relevant the Members, by way of a standing notice.

## **12. BOARD CHAIR**

- (a) The Board Chair of FASD-CAN shall be a Director and shall be appointed by the Board by a majority vote at the first meeting of the Board after an Annual General Meeting of FASD-CAN, and a Board Member shall hold office as the Board Chair for a maximum continuous period of six (6) years from the time that they are appointed as Board Chair.
- (b) The Board may revoke any such appointment at any time by a majority vote and appoint another Director to serve as Board Chair.
- (c) The Director appointed to be Board Chair will be the Chair of any Board meeting and any General Meeting, unless this Constitution provides otherwise.
- (d) In relation to any Board meeting or General Meeting, if:
  - (i) there is no person appointed as Board Chair; or
  - (ii) the Board Chair is not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
  - (iii) the Board Chair is unwilling or unable to act,the Directors present may elect one of their number to be Chair of the meeting.

## **13. PROCEEDINGS OF THE BOARD**

### **13.1. *Board Meetings***

- (a) Subject to clause 13.1 (b), the Board may meet as it considers necessary for the performance of its functions and may regulate its meetings as it thinks fit.
- (b) The Board must meet at least four (4) times in each calendar year.

13.2. *Use of Technology*

- (a) A Board meeting may be held solely or partly using virtual meeting technology by which each Director participating can hear and be heard by each other Director participating, or in any other way permitted by the Act.
- (b) Where a meeting is held in accordance with clause 13.2 (a), a Director attending using virtual meeting technology is taken to be present at the meeting.

13.3. *Notice of Board Meetings*

- (a) A Director may, and the Chief Executive Officer on the request of a Director must, convene a Board meeting.
- (b) Notice of a meeting of the Board must be given to all Directors (except a Director on leave of absence approved by the Board) not less than five (5) Business Days prior to the Board meeting. Notice of a meeting of the Board must be given in writing (including by electronic means).
- (c) Failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.
- (d) A Director may waive notice of a meeting of the Board by giving notice to that effect to FASD-CAN orally (including by telephone) or in writing (including by electronic means).
- (e) A person who attends a meeting of the Board waives any objection that person may have in relation to a failure to give proper notice of the meeting.

13.4. *Quorum*

- (a) Unless the Board decides otherwise, the quorum necessary for the transaction of business at a Board meeting will be a simple majority of the total number of Directors at the relevant time.

13.5. *Resolutions and Questions Decided by Majority*

- (a) Subject to clause 11.9, each Director present at a Board meeting has one (1) vote on a matter arising for decision by the Board.
- (b) A resolution or question arising at a Board meeting is to be decided by a majority of votes of the Directors present and entitled to vote.
- (c) If equal numbers of votes are cast for and against a resolution or question, and no alternative resolution can be agreed, the Chair of the meeting will have a second casting vote.

13.6. *Circulating Resolutions*

- (a) The Directors may pass a written resolution without a Board meeting being held if all of the Directors who are entitled to vote on the resolution agree in favour of the resolution set out in the document (referred to as a **Circular Resolution**).
- (b) FASD-CAN may send a physical copy of a Circular Resolution, in which case separate copies may be signed by the Directors to agree to the resolution if the wording of the resolution and statement is identical in each copy. Subject to the Act, electronic signatures will be acceptable.

- (c) FASD-CAN may send a Circular Resolution by email or other electronic means to the Directors in which case the Directors may agree to the resolution by sending a reply via email or other electronic means to that effect, including the text of the resolution in their reply.
- (d) The resolution is passed when the last Director agrees to the resolution in the manner set out in this clause.

13.7. *Validity of Acts of Directors*

Everything done at a Board meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

13.8. *Minutes*

The Board must ensure that minutes and other appropriate records are kept in relation to all Board meetings, all resolutions passed at such meetings, and all Circular Resolutions.

**14. GENERAL MEETINGS**

14.1. *Annual and Special General Meetings*

General Meetings of FASD-CAN, which must include Annual General Meetings and may include Special General Meetings held at any time, are to be convened and held:

- (a) in accordance with this Constitution and the Act; and
- (b) at times and in accordance with arrangements determined by the Board.

14.2. *Method of Holding General Meetings*

- (a) A General Meeting may be held by attendees:
  - (i) assembling together at a place designated for the meeting; and/or
  - (ii) participating in the meeting solely using virtual meeting (audio or audio and visual) technology designated for the meeting, by which each Member attending and participating can hear and be heard by each other Member attending and participating.
- (b) If virtual meeting technology is to be used in holding a General Meeting, Members will be provided with sufficient information to allow the Members to attend and participate in the meeting by means of the virtual meeting technology.

14.3. *Annual General Meetings*

- (a) The Board must ensure that an Annual General Meeting of FASD-CAN is convened and held not more than six (6) months after the end of each FASD-CAN financial year and not more than fifteen (15) months after the previous AGM.
- (b) The business of each AGM shall be to:

- (i) confirm the minutes of any previous General Meeting;
  - (ii) receive the annual report of the Board Chair;
  - (iii) receive the annual audited Financial Report (including the auditor's report) and an annual report on the operation and affairs of FASD-CAN for the most recently completed financial year, presented by the Board;
  - (iv) elect a Member or Members to fill any current or impending Elected Director vacancy or vacancies on the Board, if applicable;
  - (v) approve the appointment of the auditor for the current financial year;
  - (vi) announce the elevation of any Honorary Life Members;
  - (vii) consider any notice of motion included in the notified agenda for the AGM;
  - (viii) notify any disclosures of conflicts of interest for the most recently completed financial year that are required to be disclosed at an AGM under the Act;
  - (ix) deal with any other business that is required to be dealt with at an AGM under the Act; and
  - (x) consider any general business included in the notified agenda for the AGM.
- (c) In addition to any notice of motion or other business raised by the Board, the notified agenda for an AGM will include any notice of motion or general business duly notified by any Voting Member to the CEO not less than 10 Business Days prior to the scheduled start of the AGM. In the case of any Voting Member notice of motion:
- (i) the notice must be in writing and in the form prescribed by the Board from time to time;
  - (ii) the motion must relate to a matter in respect of which the Membership is appropriately or relevantly entitled to vote at a General Meeting; and
  - (iii) the notice must be signed or otherwise supported in writing by at least ten (10) Voting Members.

#### 14.4. *Special General Meetings*

- (a) A Special General Meeting (SGM) may be convened at any time by or at the direction of the Board Chair (or otherwise by the Board). An SGM must also be convened if such a meeting is requisitioned by any five (5) Directors or by at least twenty (20) Voting Members, stating the purpose for which the meeting is requisitioned including any proposed motion(s).
- (b) The business of an SGM shall be strictly limited to the business included in the notified agenda for the SGM.

#### 14.5. *Notice of General Meetings*

- (a) Each notice of a General Meeting must be given to all Members entitled to attend the General Meeting, all Directors, the Chief Executive Officer, and the auditor of the Incorporated Society.

- (b) Notice of a General Meeting must be sent not less than twenty (20) Business Days and not more than three (3) calendar months before the scheduled date of the General Meeting.
- (c) Subject to clause 14.3 (b), clause 14.3 (c) and clause 14.5 (d)(iv) no business other than that stated in the notice of a General Meeting may be transacted at a General Meeting.
- (d) The notice of a General Meeting must set out:
  - (i) the date and time for the meeting;
  - (ii) the place of the meeting and/or, if the meeting is to be held solely using virtual technology, relevant details to be used by Members to attend/participate using such technology;
  - (iii) the agenda for the meeting, including any notices of motion (including the terms of the proposed motion) and other business;
  - (iv) in the case of an AGM, notification that notices of Motion and other general business may be notified by Voting Members in accordance with clause 14.3 (c) for inclusion on the agenda for the AGM by submitting these to the CEO not less than 10 Business Days prior to the AGM;
  - (v) a statement that Members have the right to appoint proxies and attorneys in accordance with clause 17;
  - (vi) if applicable, details relating to voting on any resolutions by electronic means; and
  - (vii) if applicable, the name(s) of any nominee(s) to fill any current or impending Elected Director vacancy or vacancies on the Board, as recommended to the Members.
- (e) The non-receipt of a notice of a General Meeting, including the accidental omission to provide notice to a person entitled to receive it, does not invalidate the General Meeting or any resolution passed at the General Meeting.

#### 14.6. *General Meeting Attendance and Quorum*

- (a) All persons entitled to notice of a General Meeting are entitled to be present at the General Meeting.
- (b) The Board Chair, the CEO or the Chair of the General Meeting, may invite others to the General Meeting, where their attendance is necessary or in the best interests of facilitating the meeting.
- (c) The quorum for a General Meeting is twenty (20) Voting Members.
- (d) Where a Voting Member has voted in relation to any matter by electronic means in accordance with clause 14.9, that Voting Member will be considered to be present for the purpose of a particular resolution on which they have cast a vote, but will not be included in calculating a quorum for a General Meeting unless they are present at that General Meeting.
- (e) An item of business may not be transacted at a General Meeting unless a quorum is present at

the commencement of, and remains throughout, the General Meeting, other than the election of Chair of the General Meeting (if required) and adjournment of meeting.

- (f) If, within thirty (30) minutes after the time appointed for a General Meeting, a quorum is not present, the meeting:
  - (i) if convened on the requisition of Voting Members, is dissolved; and
  - (ii) in any other case stands adjourned to such other day, time and place as the Chair of the General Meeting determines.

#### 14.7. *Chair of General Meetings*

- (a) The Chair of a General Meeting will be the Board Chair, or in the event of their absence or incapacity the Board Chair's nominee or otherwise another Director as determined by the Board. If no such person is available, the Chair of a General Meeting will be elected by the Voting Members present at the meeting.
- (b) Subject to the requirements of this Constitution and the Act, the Chair of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;
  - (ii) may require the adoption of any procedure which in their opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes;
  - (iii) may terminate discussion or debate on any matter if they consider it necessary or desirable for the proper conduct of the meeting; and
  - (iv) may in their discretion refuse admission to a person, or require that a person leave, if they know or suspect that the person:
    - a. is attempting to record the meeting, without the Board's permission;
    - b. has a placard or banner;
    - c. has an article which the Chair of the General Meeting considers to be dangerous, offensive or liable to cause disruption;
    - d. refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; or
    - e. behaves or threatens to behave in a dangerous, offensive or disruptive manner.
- (c) A decision by the Chair of the General Meeting under clause 14.7 (b) is final.

#### 14.8. *Voting at General Meetings*

- (a) Subject to the provisions regarding electronic voting in clause 14.9, each Voting Member present at a General Meeting is entitled to one (1) vote and such votes shall be cast by voice, show of hands, ballot or other method as determined by the Chair of the General Meeting.
- (b) Subject to the requirements of the Act and except in any case where this Constitution requires

a Special Resolution, a resolution is carried at a General Meeting if a simple majority of the votes cast on the resolution are in favour of it.

- (c) Where an equal number of votes are cast in favour of and against a resolution, the Chair of the General Meeting may exercise a second or casting vote in addition to any vote the Chair of the General Meeting may have as a Member.
- (d) At any General Meeting a resolution is to be put to a vote unless the relevant motion is withdrawn.
- (e) If the Chair of the General Meeting makes a declaration that a resolution has been lost or carried, whether unanimously or by a particular majority, an entry to that effect in the minutes of the meeting is conclusive evidence of the fact.
- (f) Neither the Chair of the General Meeting nor the minutes need to state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.
- (g) An objection relating to the right of a person to attend, speak or vote at a General Meeting or the admission or rejection of any vote:
  - (i) may not be raised except at that meeting; and
  - (ii) must be referred to the Chair of that meeting, whose decision on the matter is final.
- (h) A vote not disallowed under the objection is valid for all purposes.

14.9. *Electronic Voting in Connection with a General Meeting*

- (a) The Board may determine to allow Voting Members to vote in respect of any resolution proposed for a General Meeting by electronic means (such as electronic voting) in any manner approved by the Board.
- (b) If electronic voting is to be used in connection with a General Meeting, the notice of the General Meeting that includes the agenda for the meeting must specify:
  - (i) any resolutions for which electronic voting will occur;
  - (ii) the method of electronic voting approved by the Board; and
  - (iii) the deadline for voting by electronic means.
- (c) The Board may determine that a resolution will be decided partly or wholly by electronic voting and may also specify the deadline for voting by electronic means.
- (d) A Voting Member who casts their vote by electronic means will be deemed to have voted on the relevant matter at the relevant General Meeting and will not be permitted to cast any further or amended vote on the matter at that meeting.
- (e) The effective date of a resolution decided partly or wholly by electronic means is the date of the General Meeting in connection with which electronic voting on the resolution is used, regardless of whether sufficient votes are cast prior to the meeting.

- (f) A proxy cannot be appointed for electronic voting.

#### 14.10. *General Meeting Minutes*

The Board must ensure that minutes are kept in relation to all General Meetings and all Member resolutions passed at such meetings, and that such minutes are notified or made available to all Members as soon as reasonably practicable following the relevant meeting.

### **15. ADJOURNMENT OF GENERAL MEETING**

#### 15.1. *Adjournment*

- (a) The Chair of the General Meeting at which a quorum is present:
  - (i) may in their discretion; and
  - (ii) must if directed by the majority of Voting Members present, adjourn the General Meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.
- (b) The adjournment may be either to a later time at the same General Meeting or to an adjourned meeting at any time and place agreed by vote of the Voting Members present.
- (c) Only unfinished business is to be transacted at a General Meeting resumed after an adjournment.

#### 15.2. *Notice of Adjourned Meetings*

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned General Meeting unless it is adjourned for twenty (20) Business Days or more.
- (b) Where a General Meeting is adjourned for twenty (20) Business Days or more, at least the same period of notice as was originally required for the notice of the meeting that included the agenda for the meeting must be given for the adjourned meeting.

#### 15.3. *Quorum for Adjourned Meetings*

If a quorum is not present within thirty (30) minutes after the time appointed for the adjourned General Meeting, those Voting Members then present will constitute a quorum.

### **16. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING**

#### 16.1. *Cancellation or Postponement*

Subject to compliance with this Constitution and the Act (for example, in relation to holding AGMs and the timing of AGMs), where a General Meeting is convened by the Board the Board may, if it thinks fit, cancel the meeting or postpone the meeting to a date and time they determine. This clause does not apply to a General Meeting convened by:

- (a) the Board at the request of Members under clause 14.4 (a); or
- (b) a court of competent jurisdiction.

16.2. *Written Notice of Cancellation or Postponement of General Meetings*

- (a) Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:
  - (i) each Member entitled to attend the General Meeting; and
  - (ii) each other person entitled to notice of a General Meeting under this Constitution or the Act (if applicable).
- (b) A notice postponing a General Meeting must also specify:
  - (i) the new date and time for the meeting; and
  - (ii) the place and/or, if the meeting is to be held solely using virtual technology, the details for attendance/participation such technology,and must be given at least fifteen (15) Business Days before the postponed General Meeting can occur.
- (c) The non-receipt of a notice cancelling or postponing a General Meeting, including the accidental omission to provide notice to a person entitled to receive it, does not invalidate any resolution passed at a postponed meeting, or the cancellation or postponement of the meeting.

16.3. *Business at Postponed General Meetings*

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting that included the agenda for the meeting.

**17. PROXIES AND ATTORNEYS**

17.1. *Right to Appoint Proxy*

- (a) A Voting Member entitled to attend a General Meeting is entitled to appoint another Voting Member as their proxy to attend and vote at the meeting in their place.
- (b) A proxy may be revoked by the appointing Voting Member at any time by notice in writing to FASD-CAN, which must be received by FASD-CAN at least forty-eight (48) hours before the time at which the General Meeting is to be held.

17.2. *Attorney of Member*

A Voting Member may appoint an attorney to act on the Voting Member's behalf at all or any meetings of FASD-CAN.

17.3. *Form of Proxy or Attorney*

The Instruction appointing a proxy or attorney must be in a form determined or accepted by the Board from time to time, provided it complies with any requirements of the Act.

17.4. *Lodgement of Proxy or Attorney Documents*

- (a) A proxy or attorney of a Voting Member may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the Instruction appointing the proxy or attorney is received by FASD-CAN:
  - (i) at the office specified for that purpose in the notice of meeting or via electronic transmission (for example, email) addressed to the person specified in the notice of meeting; and
  - (ii) at least forty-eight (48) hours before the scheduled commencement time specified in the notice of meeting for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the Instruction proposes to vote.
- (b) An undated proxy is taken to be dated on the day that it is received by FASD-CAN.

17.5. *Authority Given by Appointment of a Proxy or Attorney*

- (a) The Chair of a General Meeting may require any person purporting to act as a proxy or attorney to establish to the satisfaction of the Chair that the person has been validly appointed as a proxy or attorney and is the person named in the relevant instrument of appointment, failing which the Chair may exclude that person from attending or voting at the meeting.
- (b) Unless the terms of the appointment specify to the contrary, an appointment by a Voting Member confers on a proxy or attorney the authority:
  - (i) to agree to a General Meeting being convened by shorter notice than is required by the Act or by this Constitution; and
  - (ii) to speak to any proposed resolution.
- (c) Unless the terms of the appointment provide otherwise, if the Instruction of appointment refers to specific resolutions and directs the proxy or attorney on how to vote on those resolutions, the appointment also authorises the proxy:
  - (i) to vote on any amendment moved to the proposed resolutions;
  - (ii) to vote on any motion that the proposed resolutions not be put or any similar motion;
  - (iii) to vote on any procedural motion; and
  - (iv) to act generally on behalf of the Voting Member at the meeting.
- (d) Unless the terms of the appointment specify to the contrary, the Instruction of appointment to a meeting to be held at a specified date and time and the meeting is postponed or adjourned or changed to another date and/or time, then the appointment confers authority to attend and vote at the postponed or adjourned meeting.
- (e) The Instruction appointing a proxy may provide for the Chair of the General Meeting to act as proxy in the absence of any other appointment or if the person nominated fails to attend the meeting.

- (f) The Instruction appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (g) If a proxy is appointed to vote on a particular resolution by more than one (1) Voting Member and the Instructions appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution. For the avoidance of doubt, the Chair of the General Meeting has discretion to adopt a procedure that is necessary for a proper and orderly casting and recording of votes.

17.6. *Proxy or Attorney at Postponed General Meeting*

Where:

- (a) a Voting Member appoints a proxy or attorney to attend and vote at a General Meeting on a date specified in the Instruction, or at a General Meeting or General Meetings to be held on or before a date specified in the Instruction; and
- (b) the date for the meeting is postponed to a date later than the date specified in the Instruction,

then that later date is substituted for the date specified in the Instruction, unless the appointing Voting Member notifies FASD-CAN in writing to the contrary at least forty-eight (48) hours before the time at which the postponed meeting is to be held.

## **18. COMMITTEES**

18.1. *Committees*

- (a) The Board may from time to time establish Committees, sub-committees and special interest groups and must provide for their governance, formation, functions and delegations in a Policy.
- (b) The Board will appoint individuals to those Committees as it sees fit and may delegate any of its powers to Committees consisting of those persons they think fit (including Directors, individuals and consultants), and may vary or revoke any delegation.
- (c) A Committee must exercise the powers delegated to it according to any directions of the Board and as set out in the Policies.
- (d) Powers delegated to and exercised by a Committee are taken to have been exercised by the Board.

18.2. *Committee Meetings*

Unless otherwise determined by the Board, Committee meetings are governed by the Policies.

## **19. CHIEF EXECUTIVE OFFICER**

19.1. *Appointment of Chief Executive Officer*

- (a) The Board will appoint a Chief Executive Officer, for such period and on such terms as it thinks fit (including determining the remuneration), to manage the day-to-day business and affairs of FASD-CAN in accordance with the directions of the Board.

- (b) The Chief Executive Officer will not be a member of the Board.
- (c) A person must not be appointed, and must not continue to hold office, as Chief Executive Officer if the person is disqualified from acting as an officer of an incorporated society under the Act.

19.2. *Powers, Duties and Authorities of Chief Executive Officer*

- (a) The Board may delegate to the Chief Executive Officer any of the powers, duties and authorities conferred on them by this Constitution, at the Board's discretion, and subject to any terms and restrictions the Board sees fit.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the Chief Executive Officer is subject at all times to the control of the Board.
- (c) The Chief Executive Officer may from time-to-time sub-delegate their powers and responsibilities to employees or internal management committees of FASD-CAN.
- (d) The Chief Executive Officer may, in consultation with the Board, employ or engage such employees or agents as the Chief Executive Officer thinks fit and determine their remuneration.

19.3. *Suspension and Removal of Chief Executive Officer*

Subject to the terms and conditions of the appointment and the law, the Board may suspend or remove the Chief Executive Officer from that office.

19.4. *Chief Executive Officer to Attend Meetings*

- (a) The Chief Executive Officer is entitled to attend all meetings of FASD-CAN, including General Meetings and meetings of the Board and any Committees, and may speak on any matter but does not have a vote.
- (b) The Board may exclude the Chief Executive Officer from all or any part of any such meeting where the Board determines such exclusion is in the best interest of FASD-CAN.

**20. POLICIES**

20.1. *Making and Amending Policies*

The Board may from time to time make Policies:

- (a) that are required to be made under this Constitution; or
- (b) which in the Board's opinion are necessary or desirable for the control, administration and management of the operations and affairs of FASD-CAN,

and may amend, repeal and replace any such Policies.

20.2. *Effect of Policies*

A Policy:

- (a) is subject to this Constitution and the Act; and
- (b) must be consistent with this Constitution and the Act; and
- (c) should be noted by Members and Stakeholders; and
- (d) when in force, is binding on all Directors, the CEO and employees and has the same effect as a provision of this Constitution.

## **21. FINANCES AND ACCOUNTS**

### *21.1. Bank Account(s)*

- (a) The Board must ensure that FASD-CAN maintains a bank account or accounts in the name of FASD-CAN.
- (b) All monies received by FASD-CAN will be deposited or transferred into a bank account in the name of FASD-CAN and all payments and payment authorities in respect of any such account must be signed or otherwise authorised by two (2) persons approved by the Board.

### *21.2. Accounting Records, Financial Reports and Annual Returns*

- (a) The FASD-CAN financial year shall commence on 1 July of each year and end on 30 June.
- (b) The Board will cause proper accounting and other records to be kept at all times and Financial Reports to be produced and audited in respect of each financial year, and the Board will ensure that copies of the Financial Reports are registered, presented, and made available as required by the Act.
- (c) For the avoidance of doubt, FASD-CAN must provide or make available a copy of the latest Financial Report to all those entitled to receive notice of an Annual General Meeting in accordance with clause 14.5, at the same time it issues the notice of an Annual General Meeting that includes the agenda for the meeting, being at least ten (10) Business Days before the Annual General Meeting.
- (d) In addition to ensuring that copies of Financial Reports are registered in accordance with the Act each year, FASD-CAN must ensure that an annual return is given to the Registrar of Incorporated Societies for registration in accordance with the Act.

### *21.3. Auditor*

FASD-CAN must appoint at each Annual General Meeting (or if required, the Board must appoint) an appropriately qualified independent person to audit FASD-CAN's next Financial Report, and FASD-CAN must comply with any requirements under the Act with regards to the eligibility, appointment, removal, remuneration and rights of the auditor of FASD-CAN.

## **22. INDEMNITY**

### *22.1. Indemnity of Officers*

- (a) This clause 22 applies to every person who is or has been:

- (i) an “officer” of FASD-CAN as defined by the Act;
  - (ii) a Director, Chief Executive Officer or Contact Person of FASD-CAN;
  - (iii) a member of a Committee;
  - (iv) an officer, employee, former officer or former employee of any FASD-CAN related body corporate; and
  - (v) such other person carrying out any role in connection with FASD-CAN as the Board resolves.
- (b) Each person referred to in clause 22.1 (a) is referred to as an Indemnified Officer for the purposes of this clause 22.
- (c) FASD-CAN will indemnify each Indemnified Officer out of the property of FASD-CAN to the extent permitted by law, against:
- (i) any liability or loss that the Indemnified Officer incurs in carrying out the relevant role in connection with FASD-CAN or any related body corporate of FASD-CAN referred to in clause 22.1 (a); and
  - (ii) all reasonable legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved in carrying out the relevant role in connection with FASD-CAN or any related body corporate of FASD-CAN referred to in clause 22.1 (a),

unless:

- (iii) FASD-CAN is barred by the Act or any other statute from indemnifying the person against the liability or legal costs; or
- (iv) an indemnity by FASD-CAN for an Indemnified Officer’s liability or legal costs would, if given, be made void by the Act or any other statute; or
- (v) the loss or liability is paid by insurance – in which case, to the extent it is paid by any insurance.

## 22.2. *Insurance*

FASD-CAN may take out and pay, or agree to pay, a premium for a contract for the benefit of an Indemnified Officer insuring against liability that the Indemnified Officer incurs in carrying out the relevant role in connection with FASD-CAN or any related body corporate of FASD-CAN including a liability for legal costs, unless:

- (a) FASD-CAN is barred by the Act or any other statute to pay or agree to pay the premium; or
- (b) the contract would, if FASD-CAN paid the premium, be made void by the Act or any other statute, and the Indemnified Officer must comply with the requirements of the insurance contract.

22.3. *Deed*

FASD-CAN may enter into a deed with any Indemnified Officer or a deed poll to expand on the matters set out in clause 22.1 (c) on terms the Board thinks fit (provided they are consistent with this clause 22.

**23. NOTICES**

Unless this Constitution specifies otherwise, any document, notice or other communication to be given or served to any person may be delivered or sent by post or by email in accordance with delivery or address details publicised or notified in writing by the recipient, and in the case of a Member or FASD-CAN or the Board this may be done in accordance with clause 23.1 and clause 23.2.

23.1. *Methods of Notifying a Member*

A document, notice or other communication may be given to a Member by:

- (a) personally delivering it to the Member;
- (b) sending it by post to the address for the Member in the Register of Members or an alternative address otherwise publicised or notified in writing by the Member; or
- (c) sending it to an email address for the Member in the Register of Members or an alternative email address otherwise publicised or notified in writing by the Member.

23.2. *Methods of Notifying FASD-CAN and the Board*

A document, notice or other communication may be given to FASD-CAN or the Board by:

- (a) personally delivering it to the Registered Office or an alternative delivery address publicised or notified in writing by FASD-CAN;
- (b) sending it by post to the Registered Office or an alternative postal address publicised or notified in writing by FASD-CAN; or
- (c) sending it to an email address that is published on the register under the Act or is otherwise publicised or notified in writing by FASD-CAN.

23.3. *Time of Receipt*

A document, notice or other communication is taken, unless the contrary is proved, to have been given or served under this clause 23:

- (a) in the case of personal delivery, at the time of delivery to the recipient; or
- (b) in the case of sending by post, five (5) Business Days after the date that the notice was posted to the relevant registered address or other publicised or notified address; or
- (c) in the case of sending by email, at the time of transmission to the relevant registered email address or other publicised or notified email address (or if that time is not on a Business Day or is after 5.00pm on a Business Day, then at the start of the next Business Day).

## **24. RESOLUTION OF DISPUTES/COMPLAINTS**

- (a) Unless this Constitution provides otherwise, any dispute arising in respect of FASD-CAN and any aspect of its operations and affairs shall be resolved, and any complaint arising in respect of FASD-CAN and any aspect of its operations and affairs shall be handled, in accordance with the procedures set out in the Appendix to this Constitution.
- (b) For the avoidance of doubt, such procedures apply in relation to disputes and complaints of the type described in the Appendix and not in relation to any other disputes or complaints.

## **25. WINDING UP**

### *25.1. Liquidation or Removal from Register*

- (a) FASD-CAN may be liquidated, or removed from the Register of Incorporated Societies, in accordance with the Act.
- (b) The Board Chair shall give notice to all Members of any proposed motion to liquidate FASD-CAN or remove it from the Register of Incorporated Societies and, at the General Meeting at which any such proposal is to be considered, notice of the reasons for the proposal and of any recommendations from the Board.
- (c) Any proposal to liquidate FASD-CAN or remove it from the Register of Incorporated Societies will proceed only if it is approved by a Special Resolution.

### *25.2. Excess Property on Winding Up*

- (a) If on the winding up or dissolution of FASD-CAN, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to another not-for-profit entity or not-for-profit entities (as defined under the Act), as determined by the Voting Members at a General Meeting. Any such entity must:
  - (i) have Purposes or objectives that fall within or are similar to those of FASD-CAN; and
  - (ii) give an undertaking, or other similar assurance, that the surplus property or assets will be used to advance a charitable purpose or charitable purposes; and
  - (iii) have a constitution (or equivalent governing document) that prohibits the distribution of its income and property among its members (or equivalent persons) to an extent at least as great as the prohibitions imposed under this Constitution.
- (b) If the Voting Members fail to make a determination as to the entities or entities referred to in clause 25.2 (a) at or before the time of winding up or dissolution, the liquidator may make an application to the Courts to make that determination.

## **26. AMENDMENTS TO CONSTITUTION**

- (a) All or any part of this Constitution may be amended, repealed and/or replaced by way of a Special Resolution in accordance with this Constitution and the Act and, in the case of a minor or technical amendment (as contemplated under the Act), such an amendment may be effected by the Board in accordance with the procedures permitting such amendments under the Act.

- (b) When any such alteration, addition, rescission, variation or amendment, or replacement is approved, it shall be notified to the Registrar of Incorporated Societies as specified under the Act and shall take effect from the date of its registration under the Act.

## **27. MATTERS NOT PROVIDED FOR AND INTERPRETATION**

- (a) Subject to clause 27 (b), any matters not provided for in this Constitution or any question arising as to the interpretation of this Constitution shall be decided by the Board.
- (b) At any General Meeting, any such matter not provided for in this Constitution or question arising as to the interpretation of this Constitution shall be decided by the Chair of the meeting whose ruling shall be final.

## **28. TRANSITIONAL PROVISIONS**

- (a) This Constitution has been approved by FASD-CAN as a new constitution to take effect on reregistration under the Act, in accordance with clause 10 of Part 1, Schedule 1 of the Act, and will accordingly come into effect on and from the Effective Date (replacing FASD-CAN's previous constitution registered under the Incorporated Societies Act 1908 at that time).
- (b) In relation to the transition to this Constitution at the time it comes into effect, unless the context requires otherwise:
  - (i) all members of FASD-CAN under FASD-CAN's previous constitution immediately prior to this Constitution coming into effect continue to be Members under this Constitution, under the same categories of membership, as if they had attained their membership under this Constitution;
  - (ii) the members of the Board under FASD-CAN's previous constitution immediately prior to this Constitution coming into effect will continue as Directors under this Constitution, under the same category of directorship (for example, as an Elected Director or Appointed Director), and for this purpose the relevant individuals will be treated as if they had been elected or appointed under this Constitution at the time that they were elected or appointed under the previous constitution;
  - (iii) any period of service undertaken by any individual as a member of the Board under FASD-CAN's previous constitution will also be counted in determining the individual's Maximum Term under this Constitution, as if it were a period of service under this Constitution;
  - (iv) the individuals holding the positions Board Chair and Chief Executive Officer (or equivalent positions) and any auditor or other person elected or appointed to a position under FASD-CAN's previous constitution immediately prior to this Constitution coming into effect where such a position is continued under this Constitution will continue to hold the relevant position under this Constitution, as if they had been elected or appointed under this Constitution at the time that they were elected or appointed under the previous constitution;
  - (v) all policies, and any other by-laws, regulations, guidelines and other such documents (however described) adopted under FASD-CAN's previous constitution immediately prior to this Constitution coming into effect will continue to apply as if they had been adopted under and in accordance with this Constitution, but only if and to the extent

that they are consistent with this Constitution and the Act (and they will be interpreted and applied accordingly); and

- (vi) all other things done, including all contractual and other arrangements entered into, all decisions and appointments made, and any proceedings commenced under FASD-CAN's previous constitution remain valid and effective and, if applicable, may be continued and completed under this Constitution.

## APPENDIX – GENERAL DISPUTES/COMPLAINTS PROCEDURES

### 1. PURPOSE AND SCOPE

- (a) Unless the Constitution provides otherwise, any Dispute arising in respect of FASD-CAN shall be resolved, and any Complaint arising in respect of FASD-CAN and any aspect of its operations and affairs shall be handled, in accordance with the procedures set out in this Appendix, with the intention of ensuring that such Dispute resolution and Complaints procedures are fair to all parties and consistent with the rules of natural justice.
- (b) The application of this Appendix is limited to the following types of **Dispute** and **Complaint** arising in respect of FASD-CAN and any aspect of its operations and affairs:
- (i) Dispute means a disagreement or conflict that:
- a. arises between:
- i. two (2) or more Members; or
  - ii. one (1) or more Members and FASD-CAN or the Board; or
  - iii. one (1) or more Members and one (1) or more Officers; or
  - iv. two (2) or more Officers; or
  - v. one (1) or more Officers and FASD-CAN or the Board; or
  - vi. one (1) or more Members or Officers and FASD-CAN or the Board; and
- b. relates to an allegation that:
- i. a Member or a Officer has engaged in misconduct;
  - ii. a Member or a Officer has breached, or is likely to breach, any duty under this Constitution or any Policies or under the Act;
  - iii. FASD-CAN or the Board has breached, or is likely to breach, any duty under this Constitution or any Policies or under the Act the Act; or
  - iv. a Member's rights or interests as a Member have been damaged or Members' rights or interests generally have been damaged.
- (ii) Complaint means the commencement, by a Member or Officer or by FASD-CAN or the Board, of the procedure for resolving a Dispute in accordance with this Constitution and this Appendix.
- (c) For the purposes of this Appendix:
- (i) **Officer** means an "officer" of FASD-CAN for the purposes of the Act, including any Director, the Chief Executive Officer, and any other relevant person; and

- (ii) references to a Member are references to a Member acting in their capacity as such, not in any other capacity, and references to an Officer are references to an Officer acting in their capacity as such, not in any other capacity.

## **2. DECISION MAKER**

- (a) The decision maker in relation to a Complaint shall be the Board or a Complaints sub-committee established by the Board, unless the Board determines otherwise or the Complaint involves an allegation against the majority of the Board or Complaints sub-committee (as applicable) in which case the Complaint shall be referred to another decision maker in accordance with clause 7.
- (b) The Board, Complaints sub-committee or any other person may not act as a decision maker in relation to a Complaint if two (2) or more members of the Board (or of a Complaints sub-committee, if applicable) consider that there are reasonable grounds to believe that the proposed decision maker may not be impartial or able to consider the matter without a predetermined view.

## **3. MAKING A COMPLAINT**

- (a) A Member or an Officer may make a Complaint by giving to the Board (or a Complaints sub-committee established by the Board, if applicable) a notice in writing that:
  - (i) states that the Member or Officer is starting a procedure for resolving a Dispute in accordance with this Constitution and this Appendix;
  - (ii) sets out the allegation to which the Dispute relates and whom the allegation is against; and
  - (iii) sets out any other information reasonably required by FASD-CAN or the Board.
- (b) FASD-CAN or the Board, in each case acting through an Officer or other person authorised or appointed by the Board, may make a Complaint involving an allegation against a Member or an Officer by giving to the Member or Officer a notice in writing that:
  - (i) states that FASD-CAN or the Board is starting a procedure for resolving a Dispute in accordance with this Constitution and this Appendix; and
  - (ii) sets out the allegation to which the Dispute relates.
- (c) The information given under clauses 3(a) and 3(b) must be enough to ensure that the person or persons against whom any allegation is made will be fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

## **4. COMPLAINANT'S RIGHT TO BE HEARD**

- (a) A Member or an Officer who makes a Complaint has a right to be heard before the Complaint is resolved or any outcome is determined.
- (b) If FASD-CAN or the Board makes a Complaint, FASD-CAN or the Board has a right to be heard before the Complaint is resolved or any outcome is determined, and an Officer or other person authorised or appointed by the Board may exercise that right on behalf of FASD-CAN or Board.

- (c) Without limiting the manner in which a Member or an Officer, or FASD-CAN or the Board, may be given the right to be heard, they must be taken to have been given the right if:
  - (i) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  - (ii) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
  - (iii) an oral hearing (if any) is held before the decision maker; and
  - (iv) the Member's or Officer's, or FASD-CAN's or the Board's, written statement or submissions (if any) are considered by the decision maker.

## **5. RESPONDENT'S RIGHT TO BE HEARD**

- (a) This clause 5 applies if a Complaint involves an allegation that a Member, an Officer, or FASD-CAN or the Board (referred to in this clause as the Respondent):
  - (i) has engaged in misconduct; or
  - (ii) has breached, or is likely to breach, any duty under this Constitution or any Policies or under the Act; or
  - (iii) has damaged the rights or interests of a Member or the rights or interests of Members generally.
- (b) The Respondent has a right to be heard before the Complaint is resolved or any outcome is determined. If the Respondent is FASD-CAN or the Board, an Officer or other person authorised or appointed by the Board may exercise that right on behalf of FASD-CAN or the Board.
- (c) Without limiting the manner in which the Respondent may be given a right to be heard, the Respondent must be taken to have been given the right if:
  - (i) the Respondent is fairly advised of all allegations concerning the Respondent, with sufficient details and time given to enable the Respondent to prepare a response; and
  - (ii) the Respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  - (iii) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
  - (iv) an oral hearing (if any) is held before the decision maker; and
  - (v) the Respondent's written statement or submissions (if any) are considered by the decision maker.

## **6. INVESTIGATING AND DETERMINING DISPUTES**

- (a) The Board must, as soon as is reasonably practicable after receiving or becoming aware of a Complaint, ensure that the relevant Dispute is investigated and determined, and the Board must ensure that all known Disputes and related Complaints are dealt with in a fair, efficient, and effective manner.
- (b) Despite clause 6(a), the Board may decide not to proceed further with a Complaint and relevant Dispute if the Board, acting honestly, in good faith and not for any improper purpose, determines that:
  - (i) the Complaint is trivial;
  - (ii) the Complaint does not disclose or involve any allegation of the following kind:
    - a. that a Member or an Officer has engaged in material misconduct;
    - b. that a Member, an Officer, or FASD-CAN or the Board has materially breached, or is likely to materially breach, any duty under this Constitution or any Policies or under the Act; or
    - c. that a Member's rights or interests or Members' rights or interests generally have been materially damaged;
  - (iii) the Complaint is without foundation or there is no apparent evidence to support it;
    - a. the person making the Complaint has an insignificant interest in the matter;
    - b. the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under this Constitution and this Appendix or any other appropriate process; or
    - c. there has been an undue delay in making the Complaint.

## **7. REFERRAL OF COMPLAINTS**

The Board may, if it considers necessary or appropriate in order to assist in dealing with a Complaint and/or to determine a Complaint, refer a Complaint to:

- (a) a sub-committee or an external person to investigate and report on the matter; or
- (b) a sub-committee, an arbitral tribunal, or an external person to investigate and make a decision on the matter; or
- (c) any type of consensual dispute resolution process (including mediation, facilitation, or a tikanga-based practice), provided that all parties to the Complaint consent to such referral.