



Constitution

LGBTIQ+ Health Australia

5 October 2022

A Public Company Limited by Guarantee



Contents

1	Defined terms and interpretation.....	9
1.1	Definitions in the Dictionary.....	9
1.2	Interpretation.....	9
2	Nature of company and liability	9
2.1	Nature of Company.....	9
2.2	Liability of each Member.....	9
3	Objects and activities of the Company	9
3.1	Objects of the Company	9
3.2	Activities of the Company.....	10
4	Legal capacity and powers of the Company.....	11
4.1	The Company has all of the powers of a natural person and of a body corporate, including those set out in the Corporations Act.....	11
4.2	Amending the constitution	11
5	Membership	11
5.1	Membership generally	11
5.2	Application	11
5.3	Classes of membership	12
5.4	Fees	12
5.5	Limits of liability.....	12
5.6	Form of application	12



5.7	Membership not transferable.....	13
6	Admission to membership	13
6.1	Consideration of application by the Board.....	13
6.2	Acceptance or rejection of membership application	13
6.3	Register of Members	13
6.4	Change of Member details.....	14
7	Cessation of membership	14
7.1	Resignation by Member	14
7.2	Termination by Board	14
7.3	Other cessation of membership.....	15
8	No profits for Members.....	15
8.1	Transfer of income or property	15
8.2	Payments, services and information.....	16
9	Dispute resolution and disciplinary procedures.....	16
9.1	Dispute resolution.....	16
9.2	Disciplining members	17
10	General meetings	18
10.1	Convening of meetings.....	18
10.2	Notice of Meetings.....	18
10.3	Cancellation of general meetings.....	19
10.4	Quorum at general meetings	19



10.5	Appointment of Chair.....	19
10.6	Chair's powers	20
10.7	Adjournment of meetings	20
10.8	Voting on show of hands.....	20
10.9	Demand for a poll	21
10.10	The demand for a poll may be withdrawn.....	21
10.11	Voting rights.....	21
10.12	Vote of the Chair at general meetings	21
10.13	Objections to voter qualification	21
10.14	Mode of calling and holding general meetings	22
10.14	Electronic Polling	22
11	Proxies and representatives.....	23
11.1	Proxies and representatives of Full Members.....	23
11.2	Appointment of proxies.....	23
11.3	Authority of proxies.....	23
11.4	Verification of proxies	23
11.5	Validity of proxies.....	24
11.6	Revocation of appointment of proxy	24
12	Appointment and retirement of directors.....	24
12.1	Initial directors.....	24
12.2	Number of Directors	24



12.3	Election and appointment of Directors	24
12.4	Additional powers of the Board to appoint Directors.....	28
12.5	Eligibility of Directors.....	28
12.6	Retirement of Directors at AGM	29
12.7	Voluntary retirement of Directors	29
12.8	Removal from office	29
12.9	Vacation of office	29
13	Chairperson	30
13.1	Appointment.....	30
13.2	Casual Vacancy.....	30
14	Directors' remuneration.....	30
14.1	Directors fees	30
14.2	Payment for services.....	30
14.3	Prior Approval by Directors.....	31
15	Powers of directors.....	31
15.1	General	31
15.2	Borrowing power	31
16	Duties of directors	31
16.1	Duties of directors.....	31
17	Proceedings of the board	32
17.1	Convening of Board meetings	32



17.2	Proceedings of the Board	32
17.3	Meetings by Technology.....	32
17.4	Quorum at Board meetings	33
17.5	Voting at Board meetings.....	33
17.6	Appointment of Chair at Board meetings.....	33
17.7	Director's contracts.....	33
17.8	Declarations of Interest.....	34
17.9	Alternate directors	35
17.10	Delegation of powers to committee	35
17.11	Proceedings of committees	35
17.12	Validity of acts of the Board	36
17.13	Minutes.....	36
17.14	Resolution in writing.....	36
18	Secretary	36
19	Indemnity and insurance.....	37
19.1	Indemnity.....	37
19.2	Limitation of Liability	37
19.3	Insurance.....	38
20	Execution of documents.....	38
20.1	Execution of documents.....	38
21	Surplus assets on winding up or dissolution	38



22	Accounts, audit and records	39
22.1	Accounts	39
22.2	Audit	39
22.3	Rights of Inspection	39
23	Gift fund	39
23.1	Gift Fund of the Company	39
23.2	Receipts for donations to the Gift Fund	39
23.3	Limits on the use of the Gift Fund	40
23.4	Bank account	40
23.5	Winding up	40
24	Inadvertent Omission	40
25	Rules	40
25.1	Power to formulate rules of the Company	40
25.2	Inconsistency	41
26	Notices	41
26.1	Persons authorised to give notices	41
26.2	Method of giving notices	41
26.3	Addresses for giving notices to Members	41
26.4	Address for giving notices to the Company	41
26.5	Time notice of meeting is given	42
26.6	Time other notices are given	42



26.7	Proof of giving notices	42
26.8	Persons entitled to notice of meeting	42
27	Replaceable rules and exercise of powers	43
27.1	Replaceable rules	43
27.2	Exercise of powers	43
Schedule 1 — Dictionary		44
1	Dictionary	44
2	Interpretation	45



1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has

the meaning given to it in the Corporations Act.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this Constitution.

2 Nature of company and liability

2.1 Nature of Company

The Company is a public company limited by guarantee.

2.2 Liability of each Member

- (a) The liability of each Member is limited and the liability of each class of Member is limited, depending upon the category of their membership, as provided in clauses 2.2(b) and 5 of this Constitution.
- (b) Each Member undertakes to contribute to the assets of the Company, if it is wound up while they are a Member, or within one year afterwards, an amount of money not exceeding the limit of liability of the relevant class of membership they hold and at the time of winding up the debts and liabilities of the Company exceed its assets.

3 Objects and activities of the Company

3.1 Objects of the Company

- (a) To promote the health and wellbeing of lesbian, gay, bisexual, transgender, intersex, queer and



other sexuality, sex and gender diverse people (collectively, LGBTIQ+).

- (b) To promote the prevention and control of disease among LGBTIQ+ people.
- (c) To reduce disadvantage and discrimination experienced by LGBTIQ+ people.
- (d) To eliminate disparities in health outcomes of LGBTIQ+ people and communities including differences that occur by sexual and/or gender orientation, identity and/or presentation, sex characteristics, gender, race/ethnicity, education or income, disability, nationality, geographic location, and/or age.
- (e) To increase availability of, access to, and quality of physical, mental and behavioural health and related services for LGBTIQ+ people.
- (f) To develop the capacity of Members to promote the health and wellbeing of LGBTIQ+ people, including the development of health intelligence, networking opportunities, financial resources and workforce development.
- (g) To provide information and training to health professionals, service providers, businesses, the LGBTIQ+ community and the general public on:
 - i. the promotion of health and wellbeing for LGBTIQ+ people; and
 - ii. the prevention and control of disease for LGBTIQ+ people.
- (h) To undertake, participate in, raise funds for and/or promote research that could contribute to:
 - i. the health and wellbeing of LGBTIQ+ people; and
 - ii. the prevention and control of disease in LGBTIQ+ people.
- (i) To engage and collaborate with those organisations, institutions or bodies, which in the opinion of the Company support and uphold the Company's Objects, to encourage initiatives, and assist in development of innovative programs aimed at promoting community awareness of LGBTIQ+ health issues.
- (j) To influence public and private sector policy and programs regarding LGBTIQ+ health and related issues.
- (k) To make known and further the Objects and activities of the Company by the publication and distribution of papers, journals, leaflets and other publications and by advertising in any medium or by any means thought desirable.
- (l) To pursue charitable purposes only and apply any income only for the purposes of pursuing those purposes.

3.2 Activities of the Company

Activities performed in furtherance of, or in carrying out the stated Objects of, the Company are



authorised activities of the Company.

4 Legal capacity and powers of the Company

4.1 The Company has all of the powers of a natural person and of a body corporate, including those set out in the Corporations Act.

4.2 Amending the constitution

- (a) Subject to clause 4.2b, the members may amend this constitution by passing a **special resolution**.
- (b) The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

5 Membership

5.1 Membership generally

The members are:

- (a) the persons who consent to be the initial members; and
- (b) any other persons the Directors admit to membership in accordance

with this constitution.

5.2 Application

- (a) Every applicant for membership of the company (except the initial members) must at the time of applying meet an eligibility criterion as outlined in the company's policy on membership and apply in the form and manner set out in the company's policy on membership as decided by the directors from time to time.
- (b) In applying, every applicant for membership agrees to support the purpose(s) of the company, and agrees to comply with the company's constitution, including paying the guarantee as set at the time.
- (c) After receipt of an application for membership, the directors (or a delegate approved by the directors) must consider the application within a reasonable time and not longer than 30 days and decide whether to admit or reject the admission of the applicant. The directors need not give any reason for rejecting an application.



5.3 Classes of membership

- (a) The membership of the Company may consist of classes of Membership and Supporters as determined by the Board from time to time set out in the company's policy on membership.
- (b) The Board may at any time and from time to time:
 - (i) create any new class of Member;
 - (ii) define limit, restrict or alter the rights, obligations and privileges attaching to Membership of any class; and
 - (iii) transfer any Member (with or without that member's consent) from Membership of one class to Membership of another class.

5.4 Fees

The Board may determine that an annual fee is payable in respect of a Member's membership, the amount and terms of such fee being determined by the Board from time to time (Annual Fee) and set out in the company's policy on membership

5.5 Limits of liability

The limits of liability of Members is set out in the company's policy on membership and on a winding up of the Company, the liability of Members shall not exceed the amounts stated in the company's policy on membership.

5.6 Form of application

Any person may apply in writing to be a member of the Company. A person's application for Membership must:

- (a) include (without limitation) the following information in respect of the applicant:
 - i. the full name of the applicant;
 - ii. the address, telephone and electronic mail address if any, of the applicant;
 - iii. details of the applicant's representative or other contact person, where applicable;
 - iv. a signed agreement to uphold the Constitution and support the purposes of the company; and
 - v. such other information relating to the applicant as the Board may require from time to time;
- (b) be signed by or on behalf of the applicant by its duly authorised representatives;
- (c) be accompanied by such documents or evidence as to eligibility in accordance with clause 6; and



(d) be in whatever form, including electronic form, as the Board may require from time to time.

5.7 Membership not transferable

No membership interest, benefit or right of any Member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to effect same.

6 Admission to membership

6.1 Consideration of application by the Board

- (a) If a person makes an application that complies with the terms and conditions set out under clause 5.2 and in line with the company's policy on membership as decided by the directors from time to time, and pays the requisite fee as determined under clause 5.4, the Board must consider that application for membership as soon as practicable after its receipt and determine, in their discretion, the acceptance or rejection of that application for membership.
- (b) In considering an application for membership, the determination of whether an entity "supports" (for the purposes of clauses 5.5, 5.6 and 5.7) the Objects of the Company is a decision for the Board of Directors of the Company in their absolute discretion.
- (c) A determination of the Board in relation to an application for membership must be ratified by way of ordinary resolution of the Board.

6.2 Acceptance or rejection of membership application

- (a) If an application for membership is accepted:
 - i. the Secretary must notify the applicant of admission; and
 - ii. the name and details of the applicant must be entered in the Register as the membership details of the applicant in accordance with clause 6.3(b).
- (b) If an application for membership is rejected the Secretary must notify the applicant that the application has been rejected.
- (c) The Directors do not have to give reasons for rejecting or accepting an application for membership.

6.3 Register of Members

- (a) A register of the Members of the Company must be kept in accordance with the Corporations Act.



- (b) The following must be entered in the Register in respect of each Member:
 - i. the full name of the Member;
 - ii. the address of the Member;
 - iii. the date of admission to and cessation of membership; and
 - iv. such other information as the Board may require
- (c) Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members and under the provisions set out Section 177 of the Corporations Act.
- (d) Use of information that is accessed from the register of members that is used for any purpose or manner that is not relevant to the interests or rights of members is in contravention of Section 177 of the Corporations Act and subject to the provisions set out therein.

6.4 Change of Member details

Each Member must notify the Secretary in writing of any change in that person's name, address, telephone, or electronic mail address (or those relevant details of their representative or other contact person, if applicable) within one month after the change.

7 Cessation of membership

7.1 Resignation by Member

- (a) Any Member may resign from the Company by giving notice in writing to the Secretary, subject to the payment of any monies which prior to the date of such resignation were owing by the member to the Company.
- (b) Where a Member has paid any monies to the Company in respect of any period subsequent to the date of resignation, the Company may retain such monies and shall not be liable to refund same.

7.2 Termination by Board

- (a) If the membership fee of a Member remains unpaid for a period of one calendar month after notice of the default has been sent to the Member, the Board may by resolution terminate the membership of such Member and thereupon its name shall be removed from the Company's register. Notice of the default shall not be despatched until the subscription remains unpaid for a period of 3 months.
- (b) Subject to this Constitution and the Corporations Act, the Board may at any time and from time



to time remove the name of any Member from the Register:

- i. if the Member ceases to be eligible for membership of the Company;
 - ii. if the Member being a company or corporation resigns or goes into liquidation whether voluntarily or compulsory except for the purposes of reconstruction or amalgamation;
 - iii. if control of the Member by a person whose interests or whose primary business is, in the absolute opinion of the Board, contrary to the interests of the Company or its Members; or
 - iv. if the Board is of the opinion that such Member has wilfully and persistently refused to perform its obligations towards the Company or conducted itself so as to bring discredit on the Company or to disrupt the activities of the Company and to make continued membership undesirable in the interest of the other Members,
- (c) and in the case of (i), (iii) and (iv), the Board shall not deliberate upon any motion for the expulsion of a Member until at least 7 days after the Member has been notified of the complaint against it. The Member shall be entitled to answer the complaint either in writing delivered to the Secretary prior to the date on which the Board is to deliberate on such motion or by appearing before the Board at the appropriate time.
- (d) Upon the termination of membership of any member the name of such Member shall be removed from the Register and it shall thereupon cease to have the rights and privileges of membership.
- (e) A Member whose membership has been cancelled shall not be eligible for membership at any later date unless the Board so resolves.

7.3 Other cessation of membership

A person ceases to be a Member on any Termination Event occurring in respect of the Member. The Secretary must amend the Register accordingly as soon as practical after that event.

8 No profits for Members

8.1 Transfer of income or property

- (a) Subject to the operation of clauses 8.2 and 23, the assets and income of the Company shall be applied solely in furtherance of the objectives of the Company and in the performance of the Authorised Activities of the Company and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly to any Member, except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.
- (b) Notwithstanding (a), from time to time Full Members may be contracted to conduct or render certain services for or on behalf of the Company for which they will be entitled to fair and



reasonable compensation from the assets and income of the Company.

8.2 Payments, services and information

Nothing in clause 8.1 prevents the payment in good faith of:

- (a) remuneration to any officers or employees of the Company for services actually rendered to the Company;
- (b) an amount to any Member in return for any services actually rendered to the Company (whether by the Member or any corporation or partnership in which the Member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
- (c) reasonable and proper interest on money borrowed from any Member; or
- (d) reasonable and proper rent for premises let by any Member to the Company.

9 Dispute resolution and disciplinary procedures

9.1 Dispute resolution

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
 - (b) one or more members
 - (c) one or more directors, or
 - (d) the company.
- (e) A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 9.2 until the disciplinary procedure is completed.
- (f) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (g) If those involved in the dispute do not resolve it under clause (f), they must within 10 days:
 - i. tell the directors about the dispute in writing
 - ii. agree or request that a mediator be appointed, and
 - iii. attempt in good faith to settle the dispute by mediation.
- (h) The mediator must:
 - i. be chosen by agreement of those involved, or
 - ii. where those involved do not agree:



- a. for disputes between members, a person chosen by the directors, or
 - b. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- (i) A mediator chosen by the directors under clause 9.1 (h):
 - i. may be a member or former member of the **company**
 - ii. must not have a personal interest in the dispute, and
 - iii. must not be biased towards or against anyone involved in the dispute.
- (j) When conducting the mediation, the mediator must:
 - i. allow those involved a reasonable chance to be heard
 - ii. allow those involved a reasonable chance to review any written statements
 - iii. ensure that those involved are given natural justice, and
 - iv. not make a decision on the dispute.

9.2 Disciplining members

- (a) In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:
 - i. the member has breached this constitution, or
 - ii. the member's behaviour is causing, has caused, or is likely to cause harm to the **company**.
- (b) At least 14 days before the directors' meeting at which a resolution under clause ((a) will be considered, the secretary must notify the member in writing:
 - i. that the directors are considering a resolution to warn, suspend or expel the member
 - ii. that this resolution will be considered at a directors' meeting and the date of that meeting
 - iii. what the member is said to have done or not done
 - iv. the nature of the resolution that has been proposed, and
 - v. that the member may provide an explanation to the directors, and details of how to do so.
- (c) Before the directors pass any resolution under clause (a), the member must be given a chance to explain or defend themselves by:
 - i. sending the directors a written explanation before that directors' meeting, and/or
 - ii. speaking at the meeting.



- (d) After considering any explanation under clause (c), the directors may:
 - i. take no further action
 - ii. warn the member
 - iii. suspend the member's rights as a member for a period of no more than 12 months
 - iv. expel the member
 - v. refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - vi. require the matter to be determined at a **general meeting**.
- (e) The directors cannot fine a member.
- (f) The secretary must give written notice to the member of the decision under clause (d) as soon as possible.
- (g) Disciplinary procedures must be completed as soon as reasonably practical.
- (h) There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

10 General meetings

10.1 Convening of meetings

- (a) AGMs of the Company shall be held in accordance with the provisions of the Corporations Act and the ACNC Act.
- (b) General meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Act.
- (c) If a meeting is held, an ordinary resolution must be passed by a majority of the votes cast by members entitled to vote on the resolution at the meeting in person or by proxy. A special resolution must be passed by at least 75% of the votes cast by members entitled to vote on the resolution and who vote at the meeting in person or by proxy (if proxies are allowed).

10.2 Notice of Meetings

- (a) Subject to the provisions of the Corporations Act relating to special resolutions and consent to short notice, at least 21 days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting, the nature of any general or special business to be



conducted at the meeting, shall be given to persons entitled to receive such notices from the Company.

- (b) For the purposes of **clause 10.2(a)**, all business that is transacted at a general meeting or an AGM, with the exception of the consideration of accounts, financial statements and the reports of the Board and auditors, shall be special business.
- (c) Accidental omission to give notice of a general meeting or an AGM by the Company to, or the non-receipt of notice of a meeting by, any Member shall not invalidate proceedings at a general meeting or an AGM.

10.3 Cancellation of general meetings

- (a) The Board may cancel a general meeting, other than a general meeting which the Board is required to convene and hold under the Corporations Act.
- (b) A meeting may only be cancelled in accordance with this clause if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least 2 business days prior to the time of the meeting as specified in notice of meeting.

10.4 Quorum at general meetings

- (a) Business may not be transacted at a general meeting unless a quorum of Full Members is present.
- (b) A quorum is the presence in person or by proxy or attorney of 10% of the total number of Full Members presently on the register, or 20 Full Members, whichever is less.
- (c) If a quorum is not present within half an hour from the time appointed for the meeting, or a longer period allowed by the Chair, the meeting is adjourned until such time as determined by the Chair.

10.5 Appointment of Chair

- (a) If the Board have elected one of the Directors as Chair of its meetings, that person is entitled to preside as Chair at every general meeting.
- (b) The Directors present at a general meeting must elect one of their number to chair the meeting if:
 - i. a Director has not been elected to chair Board meetings; or
 - ii. the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.
- (c) The Full Members present at a general meeting must elect one of their number to chair the meeting if:
 - i. there are no Directors present within fifteen minutes after the time appointed for the



holding of the meeting; or

- ii. no Director present is willing to take the chair.

10.6 Chair's powers

- (a) The ruling of the Chair on all matters relating to the order of business, procedure and conduct of a general meeting shall be final and no motion of dissent from a ruling of the Chair may be accepted.
- (b) The Chair, in their discretion may expel any Member or Director from a general meeting if the Chair reasonably considers that the Member's or Director's conduct is inappropriate behaviour. The following conduct may be considered inappropriate in a general meeting:
 - i. the use of offensive or abusive language or behaviour which is directed to any person, object or thing;
 - ii. attendance at the meeting while under the influence of alcohol or other drugs; or
 - iii. the use or consumption of any illegal drug by a person at the meeting.

10.7 Adjournment of meetings

- (a) 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 to another time and place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

10.8 Voting on show of hands

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- (b) If a poll is not duly demanded, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact, without proof, of the number or proportion of the votes recorded in favour of or against the resolution.



10.9 Demand for a poll

A poll may be demanded by:

- (a) the Chair; or
- (b) by any 2 Full Members, whether present in person, by proxy or attorney.

10.10 The demand for a poll may be withdrawn

- (a) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- (b) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a Chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the Chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (c) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

10.11 Voting rights

Full Members have the following voting rights:

- (a) on a show of hands, every Full Member present has one vote; and
- (b) on a poll, every Full Member present in person or by proxy or attorney has one vote.

10.12 Vote of the Chair at general meetings

- (a) The Chair of a general meeting is entitled to a second or casting vote which may be retained for use by the Chair only in matters of urgency or crisis, where resolution is required for the common good of the company and not to promote personal interests;
- (b) the Chair does not have unfettered discretion to use the second vote.
- (c) The Chair must act in good faith using the casting vote only to resolve disputes where time is of the essence and the proposed resolution cannot be amended and re-presented to bring about a definitive majority outcome.

10.13 Objections to voter qualification

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a voter must be referred to the Chair, whose decision will be



final.

- (c) A vote which is not disallowed by the Chair pursuant to this Constitution is valid for all purposes.

10.14 Mode of calling and holding general meetings

A general meeting may be:

- (a) called using any mode of communication which gives a Member written notice of the meeting, including electronic mail; and
- (b) held using any technology that gives the Members as a whole a reasonable opportunity to participate.

10.14 Electronic Polling

(a) Electronic Polling

- i. The Board may permit a resolution to be decided partly or wholly by electronic polling.
- ii. Electronic polling includes online surveys, email voting or any other method approved by the Board. In addition, the notice of a meeting at which a resolution(s) will be decided partly or wholly by electronic polling must specify:
 - a. the resolution(s) for which electronic polling will be permitted;
 - b. the method of electronic polling approved by the Board;
 - c. the means by which Members may cast their vote (whether by following a link to an online survey, responding to a nominated email address or some other means);
- i. the deadline for voting by electronic polling; and
- ii. that members who cast a vote by electronic polling will be deemed to have voted in advance and accordingly will not be permitted to vote on that resolution at the meeting of the Company's Members.
- iii. Members who do not vote by electronic polling by the deadline may vote in person at the meeting of the Company's Member's
- iv. Members who vote by electronic polling will be deemed to have voted in advance and accordingly will not be permitted to vote on that resolution at the meeting of the Company's Members.
- v. The effective date of a resolution decided partly or wholly by electronic polling is the date of the subsequent Member's meeting (even if a sufficient votes are cast prior to the meeting).

(b) Limitations to Electronic Polling



- i. Electronic polling may only be permitted for decisions that are required to be made by special resolution with the approval of a two thirds majority of the Board.
- ii. A proxy cannot be appointed for electronic polling.

11 Proxies and representatives

11.1 Proxies and representatives of Full Members

- (a) Except in relation to the election of Directors by Full Members, at meetings of Members each Full Member may vote in person or by proxy or by attorney.
- (b) Subject to the terms of the appointment, a person attending as a proxy, or as the attorney of a Full Member, has all the powers of a Full Member.

11.2 Appointment of proxies

- (a) A Full Member may appoint another person as the Full Member's proxy to attend and vote (if allowed) instead of the Full Member, provided that a person must not act as a proxy for more than two members. A proxy need not be a Member.
- (b) A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed or otherwise authenticated in a manner allowed by the Corporations Regulations by the Full Member making the appointment.

11.3 Authority of proxies

- (a) A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- (b) Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Full Member can do in respect of a general meeting, except that the proxy is not entitled to vote on a show of hands.

11.4 Verification of proxies

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, there must be deposited with the Company:
 - i. the document appointing the proxy; and
 - ii. if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- (b) The documents referred to in paragraph (a) must be received at the Office, at a fax number at



the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting, not less than 24 hours before the time for holding the meeting.

- (c) If a general meeting has been adjourned, an appointment and any authority received by the Company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

11.5 Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting in accordance with clause 11.4.

11.6 Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed.

12 Appointment and retirement of directors

12.1 Initial directors

The initial Directors of the Company will be the individuals named as such in the application to register the Company (**Initial Directors**).

12.2 Number of Directors

The number of Directors must be not more than the maximum fixed from time to time by the Board and until fixed, not more than 12, unless otherwise unanimously agreed by the Board.

12.3 Election and appointment of Directors

Election of Directors may occur either by election by the Members, or appointment by the Board.

- (a) Election by Members
 - i. Number of Directors



- a. 8 Directors shall be appointed by election of the Members in accordance with this clause 12.3(a).
 - b. The intention is that of the 8 Directors elected by the Members, one Director is to be elected from each state and territory of Australia, where each Director must act in the best interests of the organisation and not as a representative of the particular state or territory constituency.
 - c. Each Full Member may only nominate 1 candidate to be a Director and only Full Members may nominate.
 - d. Each nominee for Director must NOT be ineligible to be a Director under the Corporations Act or the ACNC Act.
 - e. Each nominee for Director must give the company their signed consent in writing to act as a director of the company.
- ii. State-based nominations
 - a. Each Member's nominee for Director is only a nominee for the state or territory in which the principal business of the nominating Member is undertaken (or for an individual Member, the state or territory in which that Member ordinarily resides).
 - b. Where a Member's core business is undertaken in more than one state or territory, or the Member's principal state or territory of business (or for an individual Member, the state or territory in which they ordinarily reside) is otherwise unclear, this will be determined by the Board in its discretion.
 - c. Provided that the condition in 11.3(a)(ii)(a) above is fulfilled, a nominee for Director may represent any state or territory, regardless of the state or territory of their residence.
- iii. Timing and method for nominations
 - a. Nominations for Directors will occur before the AGM of the Company each year and the appointment and retirement of Directors will be announced at each AGM.
 - b. At least 21 Business Days before the notice of AGM is sent to Members, the Secretary must send a notice to Members, calling for nominations for Directors to be appointed. The notice must provide a period of no less than 10 Business Days during which the relevant Full Members may nominate candidates for election as Directors. The notice must provide a date that nominations are to reach the Secretary at the Registered Office, either by post or facsimile.
 - c. Nominations and elections of Directors will only be required for those Directors (and therefore, for those state or territories) due for retirement at the following AGM.



- d. In order to be valid, nominations must:
 - be in writing;
 - be signed by the nominee indicating their consent to nomination; and
 - contain the personal details of the candidate which are required by the Corporations Act and the ACNC Act.
- iv. Process for election
 - a. Election of Directors by Full Members must occur by ballot. Elections may be held electronically:
 - i. in accordance with the terms and conditions set out in Clause 12.3 (a)
 - ii. with an independent service company conducting and guaranteeing the integrity of the ballot.
 - b. Within 10 Business Days after the close of the period for acceptance of nominations, the Secretary must arrange for the preparation of ballot papers containing for each candidate, the personal details of the candidate which are required by the Corporations Act and the ACNC Act, as well as any biographical information the candidate wishes to include, although such information should not exceed 250 words.
 - c. Separate ballot papers should be prepared for each state and territory of Australia for which there will be an election of Directors, indicating only the nominees for Director for that state or territory, and sent to the relevant Full Member.
 - d. Ballot papers must be sent to Full Members electronically, at least 21 days before the AGM, unless 95% of Full Members approve a shorter period.
 - e. The ballot papers must provide a period of no less than 10 Business Days during which the relevant Full Members may vote for the named candidates for election as Directors.
 - f. A Full Member votes by indicating their choice for Director in the manner prescribed on the ballot paper and may only vote for one candidate.
 - g. A Full Member entitled to vote on the election of a Director shall be Full Member who resides in the state or territory of Australia that the proposed Director candidate is intended to represent, such that the Full Members from that state or territory shall represent a separate class entitled to vote on the resolution by ballot by simple majority.
 - h. The ballot is to close 3 Business Days prior to the AGM and all ballot papers must be received by the Secretary at the Registered Office by that date.



- i. The Secretary shall be responsible for retaining full and verifiable records such that the number of ballot papers distributed to Full Members can be reasonably reconciled with the number of ballot papers sent and the number of ballot papers retained.
- j. Following the close of the ballot and prior to the AGM the Secretary must appoint 2 scrutineers (not being candidates in the election) who, together with the Secretary, are to count the votes cast. If any question arises as to a Full Member's entitlement to vote, or as to the propriety of any vote, this question will be determined by the Secretary.
- k. If there is only one candidate for Director for a particular state or territory, that person will be appointed as the Director for that state or territory, with no ballot required.
- l. If there are no candidates nominated for a particular state or territory, or no valid ballots received for a particular state or territory, the existing Board may appoint as a casual vacancy under clause 12.4.
- m. If a candidate dies or withdraws from the ballot after ballot papers have been issued to Full Members, then the ballot shall proceed and all votes for that candidate shall be disregarded.
- n. If a candidate dies or withdraws from the ballot before ballot papers have been issued to Full Members, the ballot must proceed with reissued ballot papers deleting the name of the deceased or withdrawn candidate, unless the number of remaining candidates is equal to or less than the number required to be elected, in which case the remaining candidates are to be declared elected unopposed.
- v. Declaration of result
 - a. Following completion of counting of votes the Secretary must make a written return of the election, showing the number of votes cast for each candidate and must forward a copy of the return to the Board and to each candidate and must arrange notification of the result at the AGM.
 - b. If more than one candidate receives the same number of votes, the Chair must decide by lot in the presence of 2 scrutineers which of the candidates is to be elected.
 - c. The results of the election will be announced at the AGM, at which time the appointment takes effect.
- vi. Term
 - a. A Director appointed under this clause 12.3 shall serve for a term of 2 years (unless



they leave or are removed from office in accordance with this constitution) and must step down from their position 2 years following their appointment at the AGM.

- b. Each Director may serve for 3 consecutive terms of 2 years upon reappointment or re-election for each term, before retiring.
- c. No retired Director is eligible for renomination or appointment as a Director for at least 2 years after retirement unless agreed otherwise by a unanimous vote of the Board.

(b) Appointment by the Board

- i. The Board has the power to appoint Directors to fill casual vacancies.
- ii. A Director appointed by the Board in accordance with this clause:
 - a. is appointed to fill a casual vacancy of a Director appointed under 12.3(a).
 - b. must only serve for the remaining term of office of the Director they are replacing, that is, until the AGM at which that Director is due to retire; and
 - c. should represent the same state or territory as the Director they are replacing.

12.4 Additional powers of the Board to appoint Directors

- (a) Subject to clauses 12.2, 12.5(a) and 12.5(b), the Board has the additional power, by written notice signed by all of them, to appoint up to 4 further Directors.
- (b) Any Director appointed under this clause 12.4 shall serve for a term of 12 months (unless they leave or are removed from office in accordance with this constitution), at which time they must automatically retire.
- (c) A Director appointed under this clause 12.4 may reside in any state or territory of Australia.
- (d) Only the Board has the power to appoint Directors under this clause.
- (e) Directors appointed under this clause 12.4 are eligible for re-appointment by the Board under this clause 11.4 and are eligible for election by Full Members under clause 12.3(a).

12.5 Eligibility of Directors

A person seeking to be elected as a Director must:

- (a) be eligible under the Corporations Act and under the ACNC Act to be a Director;
- (b) have consented in writing to be a Director; and
- (c) been nominated by at least 1 Full Member.



12.6 Retirement of Directors at AGM

- (a) Subject to paragraphs (b) and (c), half of the total number of elected Directors (other than those Directors appointed pursuant to clause 12.4 above) must step-down at each AGM of the Company and may offer themselves for re-election.
- (b) The Directors that must step-down from their position will be determined according to which Directors have held the position for the longest period. If 2 or more Directors were appointed on the same day, those Directors must draw lots to determine the order in which those Directors will step-down under this paragraph.
- (c) Notwithstanding any other provision of this constitution:
 - i. half of the number of Initial Directors, randomly selected, must step-down at the first AGM and may offer themselves for re-election; and
 - ii. the other Initial Directors must retire at the second AGM and may offer themselves for re-election, despite the fact that the term served by them may not be 2 years.

12.7 Voluntary retirement of Directors

A Director may retire from office by leaving at the Office a notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of:

- (a) the time of leaving the notice at the Office; or
- (b) the expiration of the period, if any, specified in the notice.

12.8 Removal from office

The Company may by ordinary resolution of a general meeting remove a Director from office and may by ordinary resolution appoint another person as a replacement in accordance with the procedure set out in the Corporations Act.

12.9 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this Constitution, the office of Director becomes vacant if:

- (a) the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act or the ACNC Act; or
- (b) all other Directors (aside from the Director for whom the vacation of office is proposed) unanimously resolve that, due to performance reasons, or a significant change in circumstances, that that Director should resign.



13 Chairperson

13.1 Appointment

The Board may appoint a person to hold the position of Chairperson. The appointment of a Chairperson may be for the period and on the terms determined by the Board provided that:

- (a) the term of appointment of the Chairperson does not exceed a period of 2 years;
- (b) the Chairperson does not hold that position for more than 2 consecutive terms; and
- (c) the Chairperson is an existing member of the Board, unless the Board resolves otherwise.

13.2 Casual Vacancy

In the event of a casual vacancy in the position of Chairperson, the Board may elect one of their members to hold that position for the remainder of the term of the previous Chairperson, and that person may then stand for re-election.

14 Directors' remuneration

14.1 Directors fees

- (a) Subject to clause 14.2, the Directors are not entitled to any fees for their services as Directors.
- (b) Each Director is entitled to reimbursement of their reasonable out-of-pocket expenses incurred in performing the duties as a Director provided such expenses are approved by the Board.

14.2 Payment for services

- (a) Subject to clause 8, a Director who is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company in a professional or technical capacity, or otherwise beyond or outside of the Director's ordinary duties or is engaged to provide any other service, may be paid a reasonable sum by the Company for those services, exertions or work, provided the provision of that service has the prior approval of the Board and the amount payable is approved by resolution of the Board and is on reasonable commercial terms.
- (b) Any amount referred to in clause 14.2(a) may be paid either by fixed sum or as otherwise determined by the Board.
- (c) Nothing in clause 14 prevents the payment in good faith to any employee of the Company, where the terms of employment have been approved by a resolution of the Board.



14.3 Prior Approval by Directors

Notwithstanding anything else in this Constitution no payment of any kind which is permitted to be paid to a Director by this Constitution can be made by the Company to a Director until that payment is approved by a majority of the Directors.

15 Powers of directors

15.1 General

The business, affairs and property of the Company shall be managed by the Board, and the Board may exercise all those powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

15.2 Borrowing power

The Board may exercise all the power of the Company to borrow money and to mortgage or charge its undertaking or assets and to issue debentures, debenture stock and other securities whether outright or as a security for any debt, contract, guarantee, engagement, obligation or liability of the Company and on such terms and conditions as the Board thinks fit.

16 Duties of directors

16.1 Duties of directors

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 charitable purpose(s) of the **company** set out in clause 3.1.
- (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 17.8.



- (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.

17 Proceedings of the board

17.1 Convening of Board meetings

A Director may at any time, and the Secretary must upon the request of a Director, convene a meeting of the Directors.

17.2 Proceedings of the Board

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

17.3 Meetings by Technology

- (a) If:
 - i. the Directors confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications;
 - ii. all the Directors who for the time being are entitled to receive notice of a meeting of the Directors receive notice of the conference and have access to the means by which the conference is to take place (whether or not they use the access); and
 - iii. each of the Directors taking part in the conference is able to hear each of the other Directors taking part in the conference,

then all the provisions of this Constitution relating to meetings of the Board shall apply to the conference as if such conference were a meeting of the Board and as if the Directors taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

- (b) The fact that a Director is taking part in the conference shall be made known to all the other Directors taking part, and no Director may disconnect or cease to have access to their means of communication or otherwise cease to take part in the conference unless they make known to all other Directors taking part that they are ceasing to take part in the conference. Until a Director makes it known that they are ceasing to take part in the conference they shall be deemed to continue to be present and to continue to form part of the quorum.



17.4 Quorum at Board meetings

- (a) At a meeting of the Board, the number of Directors whose presence is necessary to constitute a quorum is 4 or such other number determined by the Board from time to time.
- (b) If the number of Directors is reduced below the number necessary for a quorum of the Board, the continuing Director or Directors may act only to appoint additional Directors to the number necessary for a quorum or to convene a general meeting of the Company. This power of appointing additional directors is in addition to the power conferred on Members by clause 12.3.

17.5 Voting at Board meetings

- (a) Questions arising at a meeting of the Board must be decided by a majority of votes of Directors present and voting.
- (b) A decision of the majority is for all purposes a decision of the Board.
- (c) Each Director shall have one vote., except as set out in Clause 10.12(a) where the Chair of a general meeting is entitled to a second or casting vote which may be retained for use by the Chair only in matters of urgency or crisis, where resolution is required for the common good of the company and not to promote personal interests.
- (d) Where matters are decided by electronic vote via circular motion outside of standard Board meetings, all resolutions are to be noted as decided by electronic vote, at the subsequent Board meeting.

17.6 Appointment of Chair at Board meetings

If a Chair has not been elected, or if at any meeting the Chair is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the Board may choose another Director to chair the meeting.

17.7 Director's contracts

- (a) If a Director is interested in a contract or proposed contract with the Company and the financial benefit to the Director under the contract is not prohibited by the Corporations Act or the ACNC Act:
 - i. the Director is not disqualified by holding office as Director from contracting or entering into any arrangement with the Company, whether as vendor, purchaser or otherwise;
 - ii. a contract or arrangement entered into by or on behalf of the Company in which the Director is in any way, whether directly or indirectly, interested, is not liable to be avoided; and
 - iii. the Director is not liable to account to the Company for a profit realised from that contract



or arrangement by reason of the Director holding that office.

- (b) A Director and a firm in which the Director is interested may act in a professional capacity for the Company. The Director and that firm are entitled to remuneration for professional services as if the Director was not a Director of the Company.
- (c) Nothing in this clause authorises a Director or a firm in which the Director is interested to act as auditor of the Company.

17.8 Declarations of Interest

- (a) A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
 - i. to the other directors, or
 - ii. 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.
- (b) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- (c) Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not:
 - i. be present at the meeting while the matter is being discussed, or
 - ii. vote on the matter.
- (d) A director may still be present and vote if:
 - i. their interest arises because they are a member of the company, and the other members have the same interest
 - ii. 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
 - iii. their interest relates to a payment by the company or any contract relating to an indemnity that is allowed under the Corporations Act
 - iv. the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - v. the directors who do not have a material personal interest in the matter pass a resolution that:
 - a. 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



- b. says that those directors are satisfied that the interest should not stop the director from voting or being present.
- (e) A Director may not be counted in any quorum considering any contract or proposed contract with the Company in which they are interested nor vote in respect of any such contract or proposed contract.
- (f) In addition to the requirements of clause 17.8(a), if a Director has a material personal interest in a matter being considered by the Board, the requirements of the Corporations Act and the ACNC Act must be satisfied.

17.9 Alternate directors

- (a) With the prior approval of the Board any Director may appoint:
 - i. any person or another Director to be an alternate or substitute director in their place during such period as they think fit; and
 - ii. a second person or Director to be an alternate or substitute director to replace the first appointed alternate or substitute director if they are unable or unwilling to act.
- (b) Any alternate or substitute director shall be entitled to notice of meetings of Directors, to attend and vote at such meetings and to exercise all the powers of the appointor in their place. An alternate or substitute director immediately vacates office if the appointor vacates or is removed from office. Any appointment or removal under this clause shall be effected by notice in writing signed by the appointor and left at the Office.
- (c) An alternate director who is also a Director in their own right shall be entitled to vote in their own capacity as Director and again for each alternate directorship held.
- (d) An alternate director of a Director who is the Chair is by that reason alone entitled to act as Chair.

17.10 Delegation of powers to committee

- (a) The Board may delegate any of their powers to committees consisting of Directors or other persons as it thinks fit to act in Australia or elsewhere.
- (b) The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Board.
- (c) In the exercise of any powers delegated to it, a committee formed by the Board must conform to the directions of the Board.

17.11 Proceedings of committees

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed



by the Board is governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee were meetings and proceedings of the Board.

17.12 Validity of acts of the Board

All acts done by a meeting of the Board or of a committee of Directors or other persons are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

17.13 Minutes

- (a) The Board must cause minutes of all proceedings of general meetings, of meetings of the Board and of committees formed by the Board, to be entered after the relevant meeting is held, in books kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.

17.14 Resolution in writing

A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- (b) In relation to a resolution in writing:
 - i. a document generated by electronic means which purports to be a facsimile of a resolution of the Board is to be treated as a resolution in writing; and
 - ii. a document bearing a facsimile of a signature is to be treated as signed.

18 Secretary

- (a) The Board may appoint one or more Secretaries and may at any time terminate the appointment or appointments. The Board may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this Constitution, the Corporations Act or by other statute that may be carried out by the Secretary of the Company.



- (b) any other statute to be carried out by the Secretary of the Company.
- (c) The duties of the Secretary include, but are not limited to, the following:
 - i. to ensure that the necessary registers required to be kept by Corporations Act are established and properly maintained;
 - ii. to ensure that all returns required to be lodged with the Australian Securities and Investments Commission and the ACNC are prepared and filed within appropriate time limits;
 - iii. to organise and attend meetings of the Members and the Board, including the sending out of notices, the preparation of agenda and the compilation of minutes;
 - iv. to supervise the preparation of the Company's tax returns; and
 - v. to carry out any other administrative functions that are necessary for the running of the Company.

19 Indemnity and insurance

19.1 Indemnity

Every person who is or has been a director of the Company or a Secretary of the Company is entitled to be indemnified out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all 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 person becomes involved because of that capacity,

unless the Company is forbidden by statute to indemnify the person against the liability or legal costs or an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

19.2 Limitation of Liability

No Director, officer or employee of the Company shall be liable for:

- (a) the act, receipt, neglect or default of any other Director, officer or employee;
- (b) any loss or expense arising through the insufficiency of title of any property acquired by order of the Board for or on behalf of the Company;
- (c) the insufficiency or deficiency of any security in or upon which any of the moneys of the Company



shall be invested;

- (d) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited;
- (e) any loss occasioned by any error of judgment, omission, default or oversight on his part; or
- (f) any other loss damage or misfortune whatsoever unless caused through his own negligence, default, breach of duty or breach of trust.

19.3 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a director or secretary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

20 Execution of documents

20.1 Execution of documents

The Company may execute a document without the use of a seal if the document is signed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) a Director and some other person appointed by the Board for the purpose.

21 Surplus assets on winding up or dissolution

Upon the winding up or dissolution of the Company, any assets remaining after satisfaction of all of the Company's debts and liabilities, will not be paid to or distributed among the Members, but will be transferred to some other organisation determined by the Board at or before the time of winding up or dissolution of the Company and, in default of any determination, by the Supreme Court of New South Wales, Australia which:

- (a) has objectives similar to the objectives of the Company;
- (b) whose constituent documents prohibit the distribution of its income and property among its Members on terms substantially to the effect of clause 8; and
- (c) which is a public benevolent institution for the purposes of any Commonwealth taxation law.



22 Accounts, audit and records

22.1 Accounts

The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act. The Board must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act.

22.2 Audit

A registered company auditor of the Company must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

22.3 Rights of Inspection

Subject to the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members (other than Directors) and a Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or the Company in general meeting.

23 Gift fund

23.1 Gift Fund of the Company

The Company must maintain for the carrying out of the Objects and Authorised Activities a gift fund (**Gift Fund**):

- (a) to which gifts of money or property are to be made;
- (b) to which any money received by the Company because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

23.2 Receipts for donations to the Gift Fund

Any receipt given by the Company for a gift made to the Gift Fund must be issued in the name of the Company and include the Australian Business Number of the Company.



23.3 Limits on the use of the Gift Fund

The Company must use the following only for the Objects and Authorised Activities of the Company:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of those gifts.

23.4 Bank account

The Company must maintain a separate bank account for the Gift Fund.

23.5 Winding up

For the avoidance of doubt, in the event of the winding up of the Company, or the Company ceasing to be endorsed as a deductible gift recipient under Division 30 of the Tax Act, any surplus assets of the Gift Fund after payment of the liabilities of the Company must be transferred to an organisation in Australia that is a public benevolent institution under any Commonwealth taxation Act as the Board decides.

24 Inadvertent Omission

If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate any resolution, act, matter or thing which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission is contrary to the interests of the Company as a whole, oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Member or Members. The decision of the Board is final and binding on all Members.

25 Rules

25.1 Power to formulate rules of the Company

Without limiting the Board's powers under this Constitution, the Board may from time to time pass resolutions to make regulations and rules relating to;

- (a) the qualifications of Members and applicants for membership;
- (b) the procedure and timing of an application for admission;
- (c) procedure for nomination of Directors;
- (d) the delegation by the Board of its powers to committees;



- (e) the powers, role and function of any committee members, executive or Directors;
- (f) any other matter not being inconsistent with this Constitution which relates to the operations or conduct of the Company.

25.2 Inconsistency

In the event of any inconsistency between rules or regulations formulated pursuant to clause 25.1 and the provisions of this Constitution, the latter shall prevail.

26 Notices

26.1 Persons authorised to give notices

- (a) A notice by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, Director or company secretary of the Company or Member.
- (b) The signature of a person on a notice given by the Company may be written, printed or stamped.

26.2 Method of giving notices

In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given to the addressee by:

- (a) delivering it to a street address of the addressee; or
- (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee; or
- (c) sending it by facsimile or email to the facsimile number or e-mail address of the addressee.

26.3 Addresses for giving notices to Members

- (a) The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- (b) The facsimile number or email address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or email address to which notices may be sent to the Member.

26.4 Address for giving notices to the Company

- (a) The street and postal address of the Company is the Office.



- (b) The facsimile number or email address of the Company is the number which the Company may specify for the time being by written notice to the Members as the facsimile number or email address to which notices may be sent to the Company.

26.5 Time notice of meeting is given

A notice of meeting given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery;

or

- (b) if it is sent by post to the street or postal address of the addressee, on the business day after posting; or
- (c) if sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

26.6 Time other notices are given

A notice given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery; or
- (b) if it is sent by post to the street or postal address of the addressee, on the second (fifth if outside Australia) business day after posting; or
- (c) if sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

26.7 Proof of giving notices

The sending of a notice by facsimile or email and the time of completion of transmission may be proved conclusively by production of;

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of a sent version of the email.

26.8 Persons entitled to notice of meeting

Notice of every general meeting must be given by a method authorised by this Constitution to:



- (a) every Member entitled to such notice;
- (b) every Director;
- (c) the auditor for the time being of the Company, (if any).

No other person is entitled to receive notices of general meetings.

27 Replaceable rules and exercise of powers

27.1 Replaceable rules

Each of the provisions of the Corporations Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to the Company.

27.2 Exercise of powers

Except as specifically contemplated to the contrary in this Constitution, the Company may, in any manner permitted by the Corporations Act:

- (a) exercise any power;
- (b) take any action; or
- (c) engage in any conduct or procedure,

which under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its Constitution.



Schedule 1 — Dictionary

1 Dictionary

In this Constitution:

Authorised Activities means the activities set out in Clause 3.

Board means the board of Directors of the Company.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, New South Wales.

Chair or Chairperson (as appropriate) means:

- (a) in respect of a general meeting of Member, the person duly appointed as the chairperson of that meeting in accordance with clause 10.5; and
- (b) in respect of the Board, means the person duly appointed as the Chairperson of the Board in accordance with clause 13.

Company means LGBTIQ+ Health Australia.

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

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

Director means a person appointed for the time being to perform the duties of a director of the Company, whilst ever the person is holding the office of director.

LGBTIQ+ means lesbian, gay, bisexual, transgender, intersex, queer and other sexuality, sex and/or gender diverse people .

Full Member has the meaning given in the Membership Policy.

Member means a person whose name is entered from time to time in the Register as a member of the Company.

Objects has the meaning given in clause 3.1.



Office means the registered office of the Company from time to time.

Register means the register of Members kept by the Company in accordance with the Corporations Act.

Seal means, if the Company has one, the common seal of the Company.

Secretary means a person appointed for the time being to perform the duties of a secretary of the Company.

Tax Act means the *Income Tax Assessment Act 1997* (Cth) (as amended from time to time).

Termination Event means the death or bankruptcy of the Member concerned or the Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health.

2 Interpretation

In this Constitution the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include all genders;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - i. a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - ii. a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - iii. a party includes its successors and permitted assigns;
 - iv. a document includes all amendments or supplements to that document;
 - v. a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Constitution;
 - vi. this Constitution means this Constitution as amended from time to time and includes all schedules and attachments to it;



- vii. a law includes a Constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
- viii. an agreement other than this Constitution includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
- ix. a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally];
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) in determining the time of day, where relevant to this Constitution, the relevant time of day is:
 - i. for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - ii. for any other purpose under this Constitution, the time of day in the place where the party required to perform an obligation is located; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it.