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Constitution of Down Syndrome Australia

ACN 150 209 224

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1 Introduction

Down syndrome is a genetic condition caused by the occurrence of an extra chromosome, which results in a range of physical characteristics, health and development indications and some level of intellectual disability.

People with Down syndrome are not fundamentally different from anyone else. They have the same needs and aspirations in life that we all do, including somewhere to live, meaningful employment, the opportunity to enjoy the company of friends and family, intimacy and having a role in their community. However, the path to achieving these goals can be more complex than for most people, and most people with Down syndrome are likely to need some level of support to help them achieve the kind of life that most people take for granted.

Down Syndrome Australia is the peak national body which supports people with Down syndrome and their families.

2 Name of Corporation

- (a) The name of the company is Down Syndrome Australia.
- (b) The Company is a company limited by guarantee under the Corporations Act.

3 Status of the Constitution

- (a) This is the constitution of the Company.
- (b) This Constitution displaces the Replaceable Rules. Accordingly, none of the Replaceable Rules apply.

4 Interpretation

4.1 Definitions

In this Constitution:

Auditor means the person appointed for the time being as the auditor of the Company.

Board means the Directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in any capital city in any State or Territory in Australia.

Company means Down Syndrome Australia.

Constitution means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.

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

Director means a person who is a director for the time being of the Company and **Directors** means more than one Director, and in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include alternates.

Managing Director means any person appointed for the time being as a managing director (or an equivalent position) of the Company.

Member means a person who is, or who is registered as, a member of the Company and **Members** means more than one Member.

Members Guarantee Amount means \$10.00.

Membership means being a Member of the Company.

Register of Members means the register of Members maintained pursuant to the Corporations Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

Seal means the common seal for the time being of the Company.

Secretary means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

4.2 Interpretation

In this Constitution:

- (a) the words "including", "include" and "includes" are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a "person" includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act when used in this Constitution.

5 Objects and purpose

5.1 Objects and purposes

The object of the Company is to provide support, resources and information to Australians with Down syndrome and their families, including:

- (a) supporting the development and implementation of policies and programs to ensure people with Down syndrome have every opportunity to reach their full potential and enjoy an improved quality of life;
- (b) providing support and information to people with Down syndrome and their families;
- (c) advocating and promoting the inclusion of people with Down syndrome in the social, economic and cultural life of the community;
- (d) representing the needs of people with Down syndrome and their families to every level of government and the community;
- (e) supporting all relevant research relating to Down syndrome; and
- (f) doing all other things which are necessary or expedient to further the objects of the Company.

5.2 Charitable purpose

The Company may only pursue charitable purposes, and must do so predominantly in Australia.

5.3 Application of income and property for objects only

The profits (if any), other income and property of the Company, however derived, must be applied solely toward the promotion of the objects of the Company as set out in **clause 5.1**.

5.4 No dividend, bonus, distribution or profit paid to Members

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus, distribution or otherwise.

5.5 Payments by Company in good faith

With the approval of the Board, **clause 5.4** does not prevent payment in good faith to an officer of the Company or a Member (as applicable):

- (a) of remuneration for services provided by that officer to the Company;
- (b) for expenses reasonably incurred by that officer or Member in the performance of their duties, if such payment is approved by the Board and the amount payable is not more than an amount that would be reasonable for the expenses; or
- (c) for goods supplied in the ordinary course of business.

6 Powers of the Company

The Company has all the powers conferred on it by section 124(1) of the Corporations Act, and, without limiting the foregoing, the power to:

- (a) acquire, by way of purchase, lease, transfer or otherwise, real property;
- (b) dispose of any real property;
- (c) provide security for the payment of money;
- (d) apply for and accept, grants or loans from any federal, state or local government or authority;
- (e) enter into contracts and joint ventures with any public or private entity;
and
- (f) do anything incidental to or in furtherance of its objects.

7 Modification or repeal of this Constitution

7.1 Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.

7.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

8 Member's liability

8.1 Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

8.2 Limited liability

The amount that each Member or past Member is liable to contribute under **clause 8.1** is limited to the amount of the Member's Guarantee Amount.

9 Members

9.1 Number of Members

The Company must have at least one Member.

9.2 Becoming a Member

- (a) The Directors may admit as a Member any person who:
 - (i) agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by any Directors from time to time; and
 - (ii) agrees to assume the liability to pay the Member's Guarantee Amount.
- (b) Subject to the Corporations Act, a person becomes a Member on the registration of that person's name in the Register of Members.

9.3 Eligibility for Membership

Any person is eligible to become a Member provided that the person satisfies any other criteria for Membership that may from time to time be determined by the Board.

9.4 Application for Membership

- (a) Only a person satisfying the eligibility requirements for Membership referred to in **clause 9.4** may apply for Membership.
- (b) The Board may prescribe the form of the application for Membership.
- (c) An application for Membership must be:
 - (i) in writing signed by the applicant; and
 - (ii) if the Board has prescribed the form of the application for Membership, be in that prescribed form.
- (d) At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept, accept subject to conditions or reject the application. The Board may only accept, or accept subject to conditions, an application for Membership by resolution passed by at least two-thirds of Directors entitled to vote on the resolution.
- (e) If the Board accepts an application for Membership, as soon as practicable, the Board must register the name of the person in the Register of Members and record any conditions imposed on that person's Membership.

9.5 Rights of Members are non-transferable

The rights and obligations of a Member are personal and are not transferable.

9.6 Cessation of Membership

A person ceases to be a Member:

- (a) if the person resigns as a Member in accordance with this Constitution;
- (b) if the person ceases to satisfy the eligibility requirements for Membership under this Constitution;
- (c) if the person is expelled as a Member in accordance with this Constitution;
- (d) in the case of a natural person:
 - (i) if the person dies;
 - (ii) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Member;
 - (iii) if the Board resolves that the person should cease to be a Member; or
 - (iv) if the person becomes a bankrupt; and
- (e) in the case of a body corporate, if the body corporate
 - (i) is dissolved or otherwise ceases to exist;
 - (ii) becomes insolvent;
 - (iii) is placed under external administration or makes any composition or arrangement with its creditors; or
 - (iv) is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

9.7 Resignation of Member

A Member may resign from the Company by giving the Board at least 30 days' notice.

9.8 Expulsion of Member

If the Board resolves that it is not in the best interests of the Company for a person to remain as a Member, that person is automatically expelled as a Member.

9.9 Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) any conditions imposed on a Member's Membership; and
- (d) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

9.10 Inspection of Register of Members

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of Members. No amount may be charged for inspection.

10 General meetings

10.1 Annual general meetings

- (a) The Company must hold its first annual general meeting within 18 months after its incorporation.
- (b) The Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year (or at such other intervals as required by the Corporations Act from time to time).

10.2 Director convening a general meeting

Any Director or the Directors may convene a general meeting when they think fit and must do so if required under the Corporations Act.

10.3 Meetings requested by Members

- (a) If the Board receives a request from a Member or Members with at least five percent of the votes that may be cast at any general meeting or (where this is more than one Member) at least 5 Members who are entitled to vote at that general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

10.4 Use of technology

- (a) A general meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within 14 days before a general meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a general meeting and that general meeting is quorate. The rules relating to general meetings apply to each such general meeting.
- (c) A Director participating at a general meeting using technology consented to by all Directors is treated as being present in person at the general meeting.

- (d) A general meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the general meeting.

10.5 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

10.6 Shorter notice of general meeting

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting,

and accordingly, any such general meeting will be treated as having been duly convened.

10.7 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

10.8 Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

10.9 Notice of change, postponement or cancellation of meeting

- (a) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.

- (b) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (c) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

10.10 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

10.11 Quorum

A quorum at a general meeting is three quarters of the Members present or the next whole number greater than three-quarters of the Members present in person or by proxy. The quorum must be present at all times during the general meeting.

10.12 Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting shall be adjourned to be resumed on a day, time and place (or places) as the Directors or Director at the meeting may determine.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

10.13 Chairing general meetings

- (a) At the first general meeting of the Company, a Director will be elected as chair. The person elected as chair may chair each subsequent general meeting. At any subsequent general meeting a new chair may be elected. On the election of a new chair, the new chair will chair each subsequent general meeting.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members

present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

10.14 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

10.15 Adjournment

- (a) The chair of a general meeting at which a quorum is present may adjourn the general meeting.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business left unfinished at the adjourned or postponed general meeting.

11 Proxy

11.1 Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) Subject to the Corporations Act, a Member may appoint one proxy only at any given time.
- (c) A proxy may be, but does not have to be, a Member.
- (d) An appointment of a proxy may be a standing one.
- (e) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.

11.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and

- (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.
- (d) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:
 - (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
 - (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

11.3 Proxy to be received by Company

The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office;
- (b) a facsimile number at the registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

11.4 Power to demand poll

A proxy may demand, or join in demanding, a poll.

11.5 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

11.6 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

11.7 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

12 Body corporate representative

12.1 Appointment of corporate representative

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

12.2 Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

12.3 Instrument to be received by Company

- (a) An instrument purporting to appoint the corporate representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.

- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
 - (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

12.4 Revocation and appointment of corporate representative

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

12.5 Validity of votes of corporate representative

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member; or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative; or
 - (ii) the appointment of a new corporate representative.

12.6 No liability

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

13 Voting

13.1 Entitlement to vote

Each Member entitled to vote at a general meeting may vote in person or by proxy. Each Member has one vote, whether on a show of hands, or on a poll.

13.2 Casting vote

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair has a casting vote.

13.3 Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

13.4 Voting on resolution

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.

13.5 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

13.6 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document. The document may be sent or circulated by facsimile or electronic transmission.

13.7 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting ; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books. No amount may be charged for inspection.

13.8 Disputes to be resolved by chair

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

13.9 Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

13.10 Right to demand poll

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least five percent of the votes that may be cast on the resolution on a poll.

13.11 Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a chair or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.

14 Directors

14.1 Number of Directors

The Company must have at least three Directors (not counting alternates). At least two Directors must reside ordinarily in Australia.

14.2 Appointment of Directors

- (a) Subject to this Constitution, the Board may by resolution at a Board meeting appoint a natural person as a Director, as an additional Director

or to fill the office of a Director vacated when a Director ceases to be a Director.

- (b) A resolution by the Board to appoint a Director under **clause 14.2(a)** must be passed by at least two-thirds of Directors entitled to vote on the resolution.
- (c) Notwithstanding anything to the contrary in this Constitution, a Director appointed under this **clause 14.2** shall be subject to such conditions and restrictions as the Board in its discretion may determine, including any restriction on the power of the Director to vote (in person or by proxy) at any Board meeting or general meeting of the Company.
- (d) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

14.3 Confirmation of appointment

If a person is appointed as a Director by the Board, the Company must confirm the appointment at the next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

14.4 Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) Notice of an intention to move a resolution to remove a Director at a general meeting must be given to the Company at least two months before the meeting is to be held.
- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, a Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

14.5 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act;
- (f) without the consent of the Company in general meeting, holds an office of profit under the Company otherwise than as an officer or employee of the Company;
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of such interest as required by the Corporations Act; or
- (h) is absent from three (3) consecutive Board meetings without leave of absence from the Board and the Board does not resolve that the Director should not cease to be a Director.

14.6 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

14.7 Remuneration of Director

The Company must not pay and a Director is not entitled to receive any fee (or other remuneration) from the Company for services performed as a Director.

14.8 Reimbursement of expenses

Subject to **clause 5**, Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

15 Powers and duties of Board

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.

- (c) The powers of the Board include the power to:
 - (i) appoint sub-committees and advisory committees as it thinks fit, and prescribe the functions of and delegate powers to such committees and sub-committees;
 - (ii) borrow or otherwise raise money;
 - (iii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
 - (iv) issue debentures and other securities, and any instrument (including any bond).
- (d) The Board may delegate any of its powers to:
 - (i) a Director;
 - (ii) a committee of Directors;
 - (iii) an employee of the Company; or
 - (iv) any other person.

16 Managing Director

- (a) The Board may appoint one or more of the Directors to the office of Managing Director for such period, and on such terms, as the Board determines.
- (b) The Board may confer on a Managing Director any of the powers that the Board may exercise.
- (c) The Board may vary or revoke a conferral of any power on the Managing Director.
- (d) The Board may at any time vary or revoke an appointment of a Managing Director.
- (e) A person ceases to be a Managing Director if they cease to be a Director.

17 Alternate Directors

17.1 Appointment and terms of appointment

- (a) If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
 - (i) the name, experience and qualifications of the person;
 - (ii) the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms of the notified; and

- (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend.
- (b) The appointment of an alternate will take effect immediately.
- (c) An alternate is not an agent of the Director appointing the alternate.

17.2 No liability

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

17.3 Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

17.4 Notice and attendance at Board meetings

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate. An alternate may not attend any board meeting at which the Director who appointed the alternate is present, except where the alternate is appointed by more than one Director and the alternate is attending that Board meeting in respect of a Director who is not present.

17.5 Voting of alternate

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

17.6 Termination of appointment of alternate

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

17.7 Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

18 Board meetings

18.1 Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

18.2 Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

18.3 Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

18.4 Use of technology

- (a) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within 14 days before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.

18.5 Quorum at meetings

A quorum at a Board meeting is at least three quarters of the Members present or the next whole number greater than three-quarters of the number of

Directors present in person (not by alternate). The quorum must be present at all times during the Board meeting.

18.6 Chair of meetings

- (a) At the first Board meeting a chair will be elected from the Directors present in person (not by alternate). The person that has been elected as chair may chair each subsequent Board meeting. At any subsequent Board meeting, a new chair may be elected. On the election of the new chair, the new chair will chair subsequent Board meetings. The Directors may elect a Director to chair a Board meeting by a majority vote.
- (b) If the chair is not present within 15 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

18.7 Passing resolutions at meetings

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person or by alternate at a Board Meeting is entitled to vote and has one vote.

18.8 Casting vote

If on any resolution an equal number of votes is cast for and against a resolution, the chair has a casting vote.

18.9 Conduct of meetings

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

18.10 Written resolutions

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document. The resolution is passed when the last Director signs. The document may be sent or circulated by facsimile or electronic transmission.

18.11 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes within one month after the meeting.

- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

18.12 Committee meetings

The rules of this Constitution relating to meetings (including resolutions and minutes) and proceedings of the Board with any necessary modifications apply to the meeting of any committee of the Board except that a quorum for a meeting of any committee is from time to time to be determined by the Board.

19 Director's interests

19.1 Declaration of interest

- (a) Where a Director:
 - (i) has a material personal interest in a contract or proposed contract of the Company;
 - (ii) holds any office; or
 - (iii) owns any property,such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, that Director must, as soon as practicable, give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.

19.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

20 Secretary

- (a) The Company must have at least one Secretary. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

21 Auditor

21.1 Remuneration of Auditor

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

21.2 Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

21.3 Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

22 Seal

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).
- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the Seal, the fixing of the Seal must be witnessed by two Directors or a Director and Secretary.

23 Financial records

23.1 Member's access to financial records

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company may be inspected by Members.

23.2 Directors' access to financial records

Any Director may at any time access and inspect any financial and any other record of the Company.

23.3 Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

24 Notices

24.1 General

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

24.2 How to give a communication

- (a) In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:
 - (i) personally delivered;
 - (ii) left at the person's current address as recorded in the Register of Members;
 - (iii) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
 - (iv) sent by fax to the person's current fax number for notices; or
 - (v) sent by email to the person's current email address for notices.

24.3 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

24.4 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

24.5 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

24.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

25 Indemnity and insurance

25.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each current or former officer, Director and Secretary of the Company out of the assets of the Company against any liability, loss, damage, cost or expense incurred or to be incurred by the officer, Director or Secretary in or arising out of the conduct of any activity of the Company or in or arising out of the proper performance of the officer's, Director's or Secretary's duties including any liability, loss, damage, cost, charge and expense incurred by that officer, Director or Secretary in defending any proceedings, whether civil or criminal, which relate to anything done or omitted to be done or alleged to have been done or omitted to be done by the officer, Director or Secretary, in which judgment is given in the officer's, Director's or Secretary's favour or in which the officer, Director or Secretary is acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the court to the officer, Director or Secretary.
- (b) This indemnity is not intended to indemnify any officer, Director or Secretary in respect of any liability in respect of which the Company must not give an indemnity, and should be construed and, if necessary, read down accordingly.

25.2 Documenting indemnity

The Company must enter into an agreement containing an indemnity in favour of any officer Director or Secretary. The Board will determine the terms of the indemnity contained in the agreement.

25.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must pay any premium in respect of a contract of insurance between an insurer and an officer, Director or Secretary or any person who has been an officer, Director or Secretary of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer, Director or Secretary of any duty.
- (b) If the Board determines, the Company must execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

26 Winding up

In the event of the winding up of the Company or the revocation of its endorsement as a deductible gift recipient for income tax law, any property whatsoever remaining after satisfaction of all debts and liabilities of the Company must not be paid to or distributed among the Members, but must be given or transferred to some (one or more) other fund, authority or institution in Australia:

- (a) to which income tax deductible gifts can be made;
- (b) having objects and purposes, being charitable, similar to those of the Company; and
- (c) which prohibits the distribution of its or their income among its members to an extent at least as great as is imposed on this Company under or by virtue of **clause 5**.