



## **Constitution of the Australian Society of Psychiatrists Limited**

**ACN: 692 082 983 / ABN: 25 692 082 983**

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# Constitution of Australian Society of Psychiatrists Limited

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## 1. PRELIMINARY

### 1.1. Replaceable rules

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this Constitution.

### 1.2. Definitions

The following expressions in this Constitution have the meaning below:

- (a) *Act* means the *Corporations Act 2001 (Cth)* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
- (b) *Auditor* means the auditor for the time being of the Company;
- (c) *Board* means the board of Directors of the Company;
- (d) *Chief Executive Officer* means the general manager of the Company, from time to time, appointed by the Directors under **rule 8**;
- (e) *Company* means Australian Society of Psychiatrists Limited;
- (f) *Constitution* means this constitution of the Company and any supplementary, substituted or amended constitution for the time being in force;
- (g) *Director* means any person formally and lawfully appointed as a director of the Company;

- (h) *Eligible Recipient* means an organisation which:
- (i) has charitable objects, purposes, or activities similar to the Charitable Purpose;
  - (ii) has a governing document which requires its income and property to be applied in promoting its objects or purposes and agrees to use any distribution provided to it by the company to further such objects or purposes;
  - (iii) is registered as a charity with the Australian Charities and Not-for-profits Commission;
  - (iv) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the company; and
  - (v) if the company is endorsed as a deductible gift recipient for the purpose of any Australian federal tax law, is similarly endorsed as a deductible gift recipient.
- (i) *Members* means persons who are members of the Company and whose names are entered in the Register as members, *Member* means any one of them and *Membership* has a corresponding meaning;
- (j) *Office* means the registered office from time to time of the Company;
- (k) *Register* means the register of Members of the Company to be kept in accordance with the Act; and
- (l) *Secretary* means any person appointed to perform the duties of a secretary of the Company.

### **1.3. Interpretation**

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.

- (c) Words or expressions defined in the Act have those meanings.
- (d) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) Headings are for convenience only, and do not affect interpretation
- (f) A reference to:
  - (i) a party includes its administrators, successors, substitutes by novation, and assigns;
  - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
  - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
  - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.



## **2. COMPANY**

### **2.1. Company limited by guarantee**

The Company is a company limited by guarantee pursuant to the Act.

### **2.2. Restriction on shares**

The Company does not have the power to issue or allot shares or securities of any kind.

### **2.3. Non-profit**

- (a) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (b) The Company is a non-profit organisation and must not carry on business for the purpose of profit or gain to its Members. Further, no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Directors, or their relatives, except as provided by this Constitution.
- (c) Nothing in this Constitution prevents:
  - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Company, or to any Member or the Board of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
  - (ii) the payment of interest at the rate not exceeding interest at the minimum rate for the time being charged by the Company's bankers for overdrawn accounts of a similar amount on money borrowed from a Director or a Member; or
  - (iii) payment of reasonable and proper rent for premises let by any Director or Member to the Company.

#### **2.4. No distribution of profits to Members on winding up**

- (a) Before the Company is wound up, it must first wind up each of the deductible gift recipient endorsed funds it operates (if any), in accordance with each fund's winding up requirements.
- (b) If upon the winding up or dissolution of the Company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (Surplus Assets), such Surplus Assets must only be given or distributed to one or more Eligible Recipients.
- (c) The decision about which Eligible Recipient is (or which Eligible Recipients are) to be given the Surplus Assets under **rule 2.4(b)** is to be determined:
  - (i) by a resolution of the Directors at or before the winding up or dissolution of the Company; or
  - (ii) if no such resolution is passed, by the Supreme Court.

#### **2.5. Loss of deductible gift recipient endorsement**

- (a) If the Company is endorsed as a deductible gift recipient and this endorsement is revoked, then the Company must ensure the following assets remaining after the payment of all liabilities are distributed to one or more Eligible Recipients:
  - (i) deductible gifts of money or property received for the Charitable Purpose;
  - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Charitable Purpose; and
  - (iii) money received by the Company because of such deductible gifts and contributions.
- (b) The decision about which Eligible Recipients are to receive the funds distributed in accordance with **rule 2.5(a)** is to be determined by a resolution of the directors.

### **3. GUARANTEE OF MEMBERS**

In the event that the Company is wound up, each Member undertakes to contribute a maximum of \$10 to the Company for payment of:

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

while the Member is a Member or within 1 year after the Member ceases to be a Member.

## **4. PURPOSE AND ACTIVITIES OF THE COMPANY**

### **4.1. Purpose**

The purpose of the Company is to promote the prevention and effective treatment of mental health conditions including severe and complex mental illness (Charitable Purpose).

### **4.2. Activities**

The activities of the Company must be conducted in the furtherance of its Charitable Purpose and may include:

- (a) designing, delivering and evaluating public health promotion, prevention and early intervention programs, campaigns and initiatives (including stigma reduction and help seeking campaigns);
- (b) facilitating translation of research and clinical evidence into practice, including developing and promoting best practice models of care for severe and complex mental illness;
- (c) collaborating with health services, peak bodies, community and lived experience organisations, and other partners to scale prevention and control initiatives and improve pathways to care;
- (d) advocating for policies, funding models and systems reforms that improve access to diagnosis, treatment and support for people with mental health conditions;
- (e) Improving public awareness and understanding of the science and practice of psychiatry for effective mental health care delivery; and
- (f) any other activities ancillary to or necessary for the fulfilment of the Charitable Purpose.

## 5. LEGAL SCOPE OF THE COMPANY'S POWERS

Subject to **rules 2, 3, and 4**, in pursuing the purposes and activities of the Company, the Company has, both within Australia and outside Australia, the legal capacity of a natural person and all the powers provided by the Act.

## **6. MEMBERSHIP**

### **6.1. Number of members**

- (a) There must be at least one (1) Member.
- (b) The number of Members is unlimited.

### **6.2. Admission to Membership**

- (a) Any person who is admitted to Membership of the Company by the Directors will be Members of the Company and will be deemed to be bound by this Constitution.
- (b) Any person becoming a Member of the Company must pay to the Company the then current subscription fee (if any).
- (c) Applications for Membership of the Company must be made in writing and be signed by the applicant.
- (d) The Board will consider each application for Membership at the next Board meeting after the application is received.
- (e) As soon as practicable following acceptance of an application for Membership, the Secretary will send the applicant written notice of the acceptance. An applicant for Membership becomes a Member upon such acceptance.

### **6.3. Board may establish categories of Members**

- (a) The Board may:
  - (i) establish different categories of Membership; and
  - (ii) prescribe the qualifications, rights and privileges and subscription fees (if any) of persons to become a Member of a class of Membership.

(b) The initial membership of the Company shall be divided into the following member classes:

- (i) Psychiatrist Member;
- (ii) Psychiatry Trainee Member;
- (iii) Retired Psychiatrist Member;
- (iv) Associate Member; and
- (v) Honorary Member.

(c) An applicant for membership as a Psychiatrist, shall at the time of their nomination and election be registered as a medical practitioner and:

- (i) hold 'Specialist' registration in psychiatry (or equivalent); or
- (ii) be a Specialist International Medical Graduate (SIMG) who holds a specialist medical qualification obtained outside Australia and is registered as being on the 'Expedited Specialist pathway' (or equivalent);

with the applicable medical registration authority in Australia or New Zealand.

(d) An applicant for membership as a Psychiatry Trainee Member shall at the time of their nomination and election be registered as a medical practitioner within Australia or New Zealand and:

- (i) be an accredited trainee of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) (or equivalent); or
- (ii) be enrolled as a Specialist International Medical Graduate (SIMG) working towards Fellowship of the RANZCP (or equivalent).

(e) An applicant for membership as a retired Psychiatrist must have been registered as a medical practitioner at the time of their retirement, and on such conditions of admission and rights in relation to membership the Board may from time to time determine.

- (f) An applicant for membership as an Associate Member may not necessarily hold registration as a medical practitioner but be identified or defined by the Board as appropriate for Associate Membership and approved as such.
- (g) An applicant for membership as an Honorary Member may be any person of distinguished eminence in the training or practice of Psychiatry or related sciences or branches of medicine or any person who has rendered significant service to the Company. Honorary members will not be required to pay subscription fees and will hold no voting rights.

#### **6.4. Address of Member**

- (a) Each Member is required to provide to the Company details of an address in Australia where the Company can send notices.
- (b) If a Member fails to provide an address in accordance with **rule 6.4(a)**, the address of the Member is deemed to be the Office.

#### **6.5. Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being a Member of the Company:

- (a) Each is not capable of being transferred or transmitted to another person; and
- (b) subject to the Act and this Constitution, terminates on cessation of the person's Membership.

#### **6.6. Cessation of Membership**

A Member ceases to be a Member if they:

- (a) die;
- (b) resign in writing;



- (c) cease to be registered as a medical practitioner in Australia or New Zealand, unless he/she holds a retired Psychiatrist membership;
- (d) fails for a period of not less than six months after an account has been sent to pay any monies due to the Company and the Board determines therefore the Member will cease to be a member;
- (e) become of unsound mind or become liable to be dealt with in any way under the law relating to incapacity;
- (f) are convicted of an indictable offence; or
- (g) if they are a corporate entity, have a receiver or a receiver and manager, administrator, liquidator or equivalent person appointed in relation to its assets or
- (h) part of its assets or a resolution is passed or it takes or has taken against it any action having the effect of its winding up.

#### **6.7. Non-payment of subscription**

If any subscription or other membership fee of a Member remains unpaid, the Member will be debarred from all privileges of membership. The Directors may, if they think fit, reinstate the Member on payment of all arrears.

#### **6.8. Effect of cessation**

A Member who ceases to be a Member continues to be liable for:

- (a) any subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Company; and
- (c) the guarantee set out in **rule 3**.

## **7. RIGHTS AND OBLIGATIONS OF MEMBERS**

### **7.1. Amount of fees and subscriptions payable**

- (a) Annual subscription fees for the various categories of Membership (if any), sponsorship payments and other periodical payments due from Members will be in such amounts and due at such times as the Board determines.
- (b) Annual subscription fees shall be payable:
  - (i) In the case of Members admitted to membership during a financial year of the Company upon the date of their admission to membership; and
  - (ii) In the case of all Members other than those referred to in **rule 7.1(b)(i)**.
- (c) The Board may strike a levy on Members for any purpose as the Board determines.

### **7.2. Variation of rights of Members**

The rights attached to any specific category of Membership (if any) may, whether or not the Company is being wound up, be varied only by resolution of the Board in accordance with **rule 6.3(a)(ii)**. The Board may not impose any liability on Members except by resolution of the relevant Membership category.

## **8. CHIEF EXECUTIVE OFFICER**

### **8.1. Appointment of Chief Executive Officer**

- (a) There must be a Chief Executive Officer of the Company, appointed by the Board either for a specified term or without specifying a term.
- (b) The Board may at any time resolve to change the official title for the position of the Chief Executive Officer.

### **8.2. Powers of Chief Executive Officer**

The Board may delegate any of the powers of the Board to the Chief Executive Officer:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time. This rule does not limit **rule 5**.

### **8.3. Termination of appointment of Chief Executive Officer**

The appointment of a Chief Executive Officer terminates if the Board by resolution removes the Chief Executive Officer (which, subject to any contract between the Company and the General Manager, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

### **8.4. Other salaried officers**

The Board has the power to appoint officers and employees at any time and on such terms as it thinks fits and may, subject to any contract between the Company and such officers and employees, remove the officer or employee at any time.

## **9. FINANCIAL REPORTS AND AUDIT**

### **9.1. Company must keep financial records**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited, and must allow a Director and the Auditor to inspect those records at all reasonable times.

### **9.2. Financial reporting**

The Board must cause the Company to prepare a financial report and a directors' report that comply with the Act and must report to Members in accordance with the Act no later than the deadline set by the Act.

### **9.3. Audit**

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the Auditor are regulated by the Act.

### **9.4. Conclusive reports**

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

#### **9.5. Inspection of financial records and books**

A Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or as specified in the Act.

## **10. GENERAL MEETINGS**

### **10.1. Annual General Meetings**

An annual general meeting of the Company must be held in accordance with the provisions of the Act.

### **10.2. Convening of meetings by Directors**

A Director may convene a general meeting at any time.

### **10.3. Convening of meetings by Members**

- (a) The Directors must call and arrange to hold a general meeting upon the requisition of the Members, if required to do so under the Act.
- (b) The Directors must call and arrange to hold a general meeting on the request of:
  - (i) at least 5% of the votes that may be cast at the general meeting; or
  - (ii) at least 100 Members who are entitled to vote at the general meeting.
- (c) The request must:
  - (i) be in writing;
  - (ii) state any resolution to be proposed at the meeting;
  - (iii) be signed by the Members making the request; and
  - (iv) be given to the Company.
- (d) Separate copies of a document setting out the request may be used for signing by the Members if the wording of the request is identical in each copy.
- (e) The percentage of votes that Members have is to be worked out the midnight before the request is given to the Company.

- (f) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.
- (g) If the Directors fail to call and arrange to hold a general meeting under conditions set out in **rule 10.3(c)**, the following shall apply:
  - (i) Members with more than 50% of the votes of all the Members who make a request under **rule 10.3(c)** may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.
  - (ii) The meeting must be called in the same way, so far as possible, in which general meetings of the Company may be called. The meeting must be held not later than 3 months after the request is given to the Company.
  - (iii) To call the meeting the Members requesting the meeting may ask the Company for a copy of the register of Members.
  - (iv) The Company must pay reasonable expenses the Members incurred because the Directors failed to call and arrange to hold the meeting.
  - (v) Directors are liable for such expenses unless they took all reasonable steps to cause the Directors to comply with **rule 10.3(c)**.

#### **10.4. Notice of general meeting**

- (a) The Secretary must give notice of a general meeting, at least 21 days before the date fixed for the holding of a general meeting.
- (b) A notice of a general meeting may be given by any form of communication permitted by the Act. The notice must specify the place, the day and the hour of meeting and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.

- (c) The accidental omission to give notice of any general meeting to, or the non- receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

#### **10.5. Quorum at general meetings**

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise set out in this Constitution, the lesser of 25 members or 10% of Members plus 1 present in person, or by videoconference, or by proxy or representative, is a quorum.
- (b) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the Chairperson, one of the following procedures must be followed:
  - (i) if the meeting was convened on the requisition of Members – it must be dissolved;
  - (ii) if the meeting is convened otherwise – it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.
- (c) If a meeting has been adjourned to another time and place determined by the Directors, not less than 7 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.
- (d) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

#### **10.6. Appointment of Chairperson**

- (a) The Members shall elect one of the Directors as a Chairperson by simple majority at a general meeting.
- (b) The Directors present at a general meeting must elect one of their number as Acting Chairperson of the meeting in any of the following circumstances:



- (i) if a Director has not been elected by the Members as the Chairperson of Directors' meetings;
  - (ii) if the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting; or
  - (iii) if the Chairperson is unwilling or unable to act.
- (c) The Chief Executive Officer cannot be appointed as the Chairperson or Acting Chairperson.

#### **10.7. Chairperson's powers**

Subject to the terms of this Constitution dealing with adjournment of meetings, rulings of the Chairperson on all matters relating to the order of business, procedure and conduct of the general meeting are final and no motion of dissent from a ruling of the Chairperson may be accepted.

#### **10.8. Adjournment of meetings**

- (a) The Chairperson 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.

### **10.9. 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 Chairperson 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.

### **10.10. Demand for a poll**

- (a) A poll may be demanded by any of the following:
  - (i) the Chairperson;
  - (ii) at least 5 Members entitled to vote on the resolution; or
  - (iii) any Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) The demand for a poll may be withdrawn.
- (c) 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.
- (d) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a Chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the Chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (e) A poll demanded on the election of the Chairperson or on a question of adjournment must be taken immediately.

#### **10.11. Voting rights of Members**

- (a) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a show of hands every Member present or who represents a Member has one vote.
- (b) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a poll every Member present in person or by proxy, attorney or representative has one vote.

#### **10.12. Chairperson's vote at general meetings**

The Chairperson of a general meeting does not have a casting vote.

#### **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. An objection to the qualification of a voter must be referred to the Chairperson, whose decision is final.
- (b) A vote not disallowed according to an objection as provided in this Constitution is valid for all purposes.

## **11. PROXIES AND REPRESENTATIVES**

### **11.1. Proxies and representatives of Members**

At meetings of Members or categories of Members (if any), each Member entitled to vote may vote by a proxy, or by an attorney, and may appoint an individual as its representative. Except as expressly provided by the terms of their appointment, a person attending as a proxy, or as the attorney or representative of a Member has all the powers of a Member, except where expressly stated to the contrary in this Constitution.

### **11.2. Appointment of proxies**

A Member may appoint either 1 or 2 persons as their proxy to attend and vote instead of the Member. A document appointing a proxy must be in writing in any form permitted by the Act and signed by the Member making the appointment.

### **11.3. Authority of proxies**

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. Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting.

### **11.4. Verification of proxies**

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, all of the following documents 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) Those documents must be received at the Office, at a fax number at the Office or at another place, at a fax number, email address or other form of electronic document transmission specified for that purpose in the notice convening the meeting not less than 48 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 48 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 or a vote being taken as required by this Constitution.

#### **11.6. Revocation of appointment of proxy**

A vote given in accordance with the terms of a proxy document, power of attorney or otherwise is valid, if no intimation in writing of the revocation of the instrument or of the authority under which the instrument was executed has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used.

## 12. POSTAL BALLOT

- (a) In respect of any business which may be validly considered at a general meeting (including an annual general meeting), the Board may, in lieu of a meeting, conduct a Postal Ballot of Members.
- (b) At least 30 days prior to the closing date of a Postal Ballot, the Board shall send to all Members entitled to vote ballot papers, giving particulars of the business in relation to which the Postal Ballot is conducted, an explanation of the method of voting and a voting form, and shall give all Members notice of the closing date of the Postal Ballot.
- (c) The Secretary shall receive all voting forms received from Members in respect of a Postal Ballot and shall promptly advise the Board of the result of the Postal Ballot. Any voting form received at the Office after 5.00pm on the closing date of a Postal Ballot shall be invalid and not counted.
- (d) In the event of an equal number of votes in respect of any business for which the Postal Ballot is conducted, the Chairperson (or in the absence of the Chairperson, the Acting Chairperson) shall not have a second or casting vote.
- (e) In all other respects, subject to this Constitution, the Board shall determine any other procedures or matters in relation to the conduct of any Postal Ballot and shall have power to make rules for that purpose.
- (f) In the event of a dispute by any Member in relation to the validity or conduct of any Postal Ballot, such Member shall within 30 days of the closing date of such Postal Ballot, give notice in writing to the Board stating the grounds of his or her complaint. The Board may investigate the complaint or may appoint a committee for that purpose. After hearing the complaint the Board shall determine the matter and its decision shall be final.
- (g) In lieu of these arrangements, a Postal Ballot may be conducted electronically or by any Internet based system or other lawful method as approved by the Board.

## 13. DIRECTORS

### 13.1. Number of Directors

- (a) The number of Directors must be at least 3 and a maximum of 12.
- (b) The Board shall be comprised of the Directors of the Company.
- (c) Any variation to the number of Directors can only be determined by Members by resolution at a general meeting.

### 13.2. Qualification

- (a) A Director must be a Member.
- (b) Neither the Auditor of the Company for the time being nor any partner or employee of the Auditor is eligible to act as a Director.

### 13.3. Chief Executive Officer appointment as Executive Director

- (a) The Chief Executive Officer appointed by the Board in accordance with **rule 8.1** shall also be appointed as an Executive Director.
- (b) The Chief Executive Officer shall relinquish their appointment as an Executive Director under **rule 13.3(a)** if the Board terminates the appointment of the Chief Executive Officer in accordance with **rule 8.3**.
- (c) The Executive Director will not have voting rights in relation to the business of the Board.

### 13.4. Appointment by the Board

Subject to the Constitution and the Act, the Board may appoint a person to be a Director where a vacancy exists at any time except during a general meeting. Any Director so appointed:

- (a) automatically retires at the next annual general meeting and is eligible for re-election by that general meeting; and
- (b) is not taken into account in deciding the rotation or retirement of Directors or the number of them to retire under **rule 13.7** at that general meeting.

### **13.5. Election by general meeting**

Subject to this Constitution and the Act, the Members may elect Directors by ordinary resolution. A Director appointed to replace one removed from office under **rule 13.11** must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

### **13.6. Eligible candidates**

The Company during a general meeting cannot validly elect a person as a Director unless:

- (a) the person retires under **rules 13.4, 13.5** or **13.7** and seeks re-election;
- (b) the Board recommends the appointment; or
- (c) at least 30 business days before the meeting at which the relevant resolution will be considered, the Company receives both:
  - (i) a nomination of the person by at least 2 Members (other than the person); and
  - (ii) a consent to act as a director signed by the person.

The Company must notify Members of every candidate for election as a Director at least 7 days before the relevant general meeting.

### **13.7. One third of Directors retire annually**

- (a) At each annual general meeting one-third (or if that is not a whole number, the whole number nearest to one-third) of the Directors who are not:
  - (i) appointed, and required to retire, under **rule 13.4**, or;



- (ii) Directors who vacate Office under the Act, or;
- (iii) The Chief Executive Officer;

must retire from office.

- (b) A retiring Director, if recommended by the Chairman and supported by a majority of the Board, will be eligible for re-election for a further term.

### **13.8. Selection of Directors to retire**

Subject to **rule 13.5**, the Directors who retire under **rules 13.4 or 13.7** are those who have held office the longest since last being elected or appointed. If 2 or more Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

### **13.9. Time of retirement**

A Director's retirement under **rule 13.7** takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

### **13.10. Cessation of Director's appointment**

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under the Act and is not given permission or leave to manage the Company under the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings for a continuous period of 6 months without leave of absence from the Board;

(e) resigns by notice in writing to the Company; or

(f) is removed from office under **rule 13.11**.

#### **13.11. Removal from office**

(a) Whether or not a Director's appointment was expressed to be for a specified period, the Members may remove a Director other than Chief Executive Officer from office by ordinary resolution.

(b) Only the Board can remove the Chief Executive Officer in accordance with **rule 8.3**.

#### **13.12. Too few Directors**

If the number of Directors is reduced below the minimum required by **rule 13.1**, the continuing Directors may act as the Board only:

(a) to appoint Directors up to that minimum number;

(b) convene a meeting of Members; and

(c) in emergencies.

## 14. OFFICE BEARERS

- (a) The office bearers of the Company shall be the Chairperson, two additional directors, and a Secretary.
- (b) Office Bearers of the Company other than the Chairperson shall be appointed by the Board at the annual general meeting.
- (c) Any casual vacancy among the office bearers of the Company other than the Chairperson shall be appointed by the Board, but any office bearer so appointed shall hold office until such time only as the office bearer in whose place they appointed would have held the same.
- (d) If a casual vacancy arises in the office of Chairperson, the Directors must call a general meeting within one calendar month of that casual vacancy arising to allow Members to elect a new Chairperson in accordance with **rule 10.6(a)**. Any Chairperson appointed under this rule shall hold office until such time as the Chairperson whose office was vacated would have held office.

## **15. POWERS AND PROCEEDINGS OF DIRECTORS**

### **15.1. Powers of Directors**

Subject to this Constitution, the Directors may exercise all those powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

### **15.2. Convening of Directors' meetings**

A Director may at any time, and a Secretary must on the requisition of a Director, convene a meeting of the Directors. Reasonable notice of the proposed meeting must be given.

### **15.3. Mode of meeting for Directors**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

### **15.4. Quorum at Directors' meetings**

- (a) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is a majority of the Directors unless another number is determined by the Directors.
- (b) If the number of Directors is reduced below the number necessary for a quorum of Directors, 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.

### **15.5. Voting at Directors' meetings**

Questions arising at a meeting of Directors must be decided by a simple majority of votes of Directors present and voting. A decision of the majority is for all purposes a decision of the Directors.

### **15.6. Appointment of Chair of Directors' Meetings**

The Chairperson will chair all Directors' meetings. If at any meeting the Chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling or unable to act, the Directors present will elect one of their number to be the Acting Chairperson for that meeting.

### **15.7. Chair's vote at Directors meetings**

Subject to the Act, in case of an equality of votes on a resolution at a meeting of Directors, the Chair of that meeting has a casting vote on that resolution in addition to any vote the Chair has in their capacity as a Director in respect of that resolution.

### **15.8. Director not in breach if acts in matters relating to Director's interests**

- (a) This **rule 15.8** applies if:
  - (i) a Director has an interest or duty in relation to a matter that is not a material personal interest; or
  - (ii) a Director with a material personal interest in relation to the Company's affairs complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs before acting in a matter that relates to the interest and may be present and vote on the matter under the Act.
- (b) The Director is not in breach of his or her duties to the Company merely because he or she acts in matters that relate to the Director's interest.
- (c) The Director may vote on matters that relate to the Director's interest.
- (d) In relation to any transactions that relate to the Director's interest:
  - (i) the transactions may proceed;
  - (ii) the Company cannot avoid the transactions merely because of the Director's interest; and

- (iii) the Director may retain benefits under the transactions despite the Director's interest.

#### **15.9. Director not in breach if does not act in matters relating to Director's interests**

- (a) This **rule 15.9** applies if a Director with a material personal interest in relation to a matter:
  - (i) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs; but
  - (ii) must not be present and vote on the matter under the Act.
- (b) The Director is not in breach of duty to the Company merely because he or she does not act in relation to the matter.
- (c) The Directors may vote on matters that relate to the Director's interest in the Director's absence.
- (d) In relation to any transactions that relate to the Director's interest:
  - (i) the transactions may proceed;
  - (ii) the Company cannot avoid the transactions merely because of the Director's interest; and
  - (iii) the Director may retain benefits under the transactions despite the Director's interest.

#### **15.10. Execution of instruments**

A Director may participate in the execution of an instrument for the Company, regardless of any interest or duty that the Director may have:

- (a) whether or not the Director has complied with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs; and
- (b) whether or not the Director may be present and vote in relation to the execution of the instrument under the Act.

**15.11. Delegation of powers to committee**

- (a) The Directors may delegate any of their powers to committees consisting of Directors or other persons as they think fit. 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 Directors. In the exercise of any powers delegated to it, a committee formed by the Directors must conform to the directions of the Directors.
- (b) The Directors may establish either or both of the following:
  - (i) Committees with powers delegated by the Directors (Board Committees); and
  - (ii) Advisory committees, with no delegated powers, to advise the Directors on specific matters (Advisory Committees).
- (c) Board Committee members and Advisory Committee Members will be appointed by the Directors.
- (d) At least one member of each Board Committee must be a Director.
- (e) The Chairperson of any Board Committee must be a Director.
- (f) Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each Board Committee or Advisory Committee member was a Director.

#### **15.12. Proceedings of committees**

Except as provided in a direction of the Directors, the meetings and proceedings of a committee formed by the Directors must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Directors.

#### **15.13. Validity of acts of Directors**

All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director 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.

#### **15.14. Minutes**

The Directors must cause minutes of all proceedings of general meetings, of meetings of the Directors and of committees formed by the Directors to be entered in books kept for the purpose. The Directors must cause all minutes to be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.

#### **15.15. Resolutions in writing**

- (a) 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 Directors passed at a meeting of the Directors duly convened and held.
- (b) 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.
- (c) A document generated by electronic means which purports to be a fax of a resolution of Directors is to be treated as a resolution in writing.
- (d) A document bearing a facsimile of a signature is to be treated as signed.



## 16. DIRECTORS' REMUNERATION

### 16.1. Directors' fees

- (a) The Directors may be paid by way of fees for their services the amounts, if any, determined from time to time by the Company in general meeting. Directors' fees accrue from day to day.
- (b) Notwithstanding anything else in this constitution, no payment of any kind can be made by the Company to a Director unless that payment is approved by:
  - (i) the directors; or
  - (ii) such other person or persons to whom the directors may have delegated such authority in a way consistent with **rule 8.2** or **rule 15.12**.

### 16.2. Payment for extra services

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 beyond the Director's ordinary duties may be paid additional fees for those services, exertions or work.

### 16.3. Travel expenses for Directors

The Company may pay in good faith reasonable travelling and other expenses properly incurred by any Director of the Company:

- (a) in attending and returning from:
  - (i) meetings of the Directors;
  - (ii) meetings of any committee of the Directors; or
  - (iii) general meetings of the Company,

in accordance with any travel guidelines the Board may establish; or otherwise in connection with the business of the Company.

## **17. INDEMNITY**

### **17.1. Definitions**

For the purposes of this Constitution:

- (a) *Officer* means a Director, a Secretary, an officer as defined by the Act, or the Chief Executive Officer; and
- (b) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company.

### **17.2. Indemnity**

Every Officer and past Officer (with the exception of any auditor) of the Company is hereby indemnified by the Company to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

### **17.3. Insurance premiums**

The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by law.

### **17.4. Indemnity to employees**

Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:

- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

## **18. NOTICES**

### **18.1. Notices by the Company**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (iii) sent by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

### **18.2. Members outside of Australia**

A Member whose registered address is not in Australia may notify the Company in writing of:

- (a) an address in Australia; or
- (b) a fax number; or
- (c) an electronic address

to which notices may be delivered.

### 18.3. When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
  - (i) by 5pm (local time in the place of receipt) on a business day – on that day; or
  - (ii) after 5pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
- (b) if it is sent by mail:
  - (i) within Australia – 3 business days after posting; or
  - (ii) to a place outside Australia – 7 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

### 18.4. Notices to lost members

If:

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under **rule 18.2**,

the Company may give effective notice to that Member by exhibiting the notice at the Company's Office for at least 48 hours. This rule ceases to apply if the Member gives the Company notice of a new address.

## **19. WINDING UP**

### **19.1. Contributions of Members**

If the Company is wound up, each:

- (a) Member; and
- (b) person who has ceased to be a Member in the preceding year

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to **rule 19.1(b)**, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of such Members and former Members amongst themselves, such amount as may be required, not exceeding \$10.

### **19.2. Surplus assets**

If the Company is wound up, any surplus assets remaining after the payment of the debts and liabilities of the Company will not be divided amongst Members pursuant to rule 2.4.

## **20. AMENDMENT TO CONSTITUTION**

This Constitution cannot be amended, varied or replaced without a special resolution of the Members.