



Constitution

Disability Advocacy Network Australia
(DANA) Limited

ABN 53 136 792 884

Date

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Constitution of Disability Advocacy Network Australia (DANA) Limited

Disability Advocacy Network Australia (DANA) Limited
ABN 53 136 792 884

1. Preliminary

1.1 Company Limited by Guarantee

The Company is limited by guarantee and the liability of Members is limited as provided in this constitution.

1.2 Purpose of the Company

The Company is formed for the purpose of strengthening and supporting independent disability advocacy organisations across Australia to advocate for and with people with disabilities so that they are valued and included members of the community, their fundamental needs are met and their human rights are respected.

The Company will do this by:

- (a) promoting the role and value of independent advocacy;
- (b) providing a collective voice for Members;
- (c) facilitating communication and information sharing between disability advocacy organisations;
- (d) facilitating support and development for members, staff, and volunteers of disability advocacy organisations;
- (e) promoting or undertaking research relevant to the Company's purpose;
- (f) promoting the human rights, fundamental needs and value of people with disabilities; and
- (g) doing all such other lawful things as are conducive or incidental to the attainment of any of the above.

1.3 Application of Income and Property

The Company must apply its income and property solely towards promoting the purpose of the Company as stated in **rule 1.2**. No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to any of its Members.

1.4 Certain Payments Allowed

Rule 1.3 does not prevent the payment of reasonable remuneration in good faith to any officer or employee of the Company or to any Member of the Company or other person in return for service rendered to the Company. In addition, **rule 1.3** does not prevent the Company paying to a Member:

- (a) interest on money lent by the Member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (b) reasonable remuneration for goods supplied by the Member to the Company in the ordinary course of business; and
- (c) reasonable rent for premises lent by the Member to the Company.

1.5 Replaceable Rules

The provisions of this constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.

1.6 Definitions

The following definitions apply in this constitution.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*.

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

Alternate means an alternate Director appointed under **rule 11**.

Appointor in relation to an Alternate, means the Director who appointed the Alternate.

Associate Member means an organisation or individual that is a non-voting Member of the Company appointed in accordance with **rule 2.3**.

Board means the Directors acting collectively under this constitution.

Chairperson means the chairperson of a general meeting (including an annual general meeting) who shall be the person appointed in accordance with **rule 6.4(a)**.

Company means the Disability Advocacy Network Australia (DANA) Limited.

Director means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

Financial Year means the financial year of the Company ending on 30 June.

Independent Advocate, in relation to a person with disability, means a person who:

- (a) is independent of the Agency, the Commission and any NDIS providers providing supports or services to the person with disability; and
- (b) provides independent advocacy for the person with disability, to assist the person with disability to exercise choice and control and to have their voice heard in matters that affect them; and
- (c) acts at the direction of the person with disability, reflecting the person with disability's expressed wishes, will, preferences and rights; and

(d) is free of relevant conflict of interest.

Independent Director means a Director who:

- (a) is not an employee or office holder of a Member nor the Company; and
- (b) is free of relevant conflict of interest.

Member means a member of the Company in accordance with **rule 2.1** and includes an Associate Member unless otherwise specified.

Member Nominated Director means a Director who is an employee or office holder of a Member (other than an Associate Member).

Membership Fee means the fees for Members and Associate Members referred to in **rule 2.4**.

ordinary resolution means a resolution passed at a general meeting by a majority of the votes cast by Members entitled to vote on the resolution.

Register means the register of Members kept as required by the Act.

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

Secretary means a person appointed as a secretary of the Company in accordance with this constitution.

Special Resolution means a resolution:

- (a) of which at least 21 days' notice has been given to each Member; and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

1.7 Interpretation of this constitution

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it.
 - (ii) 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.
 - (iii) a person includes any type of entity or body of persons, whether it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

- (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in **rule 1.6**) which is defined by the Act has the same meaning in this constitution where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

2. Membership

2.1 Membership

Subject to **rules 2.2, 2.6** and **2.7**, the Members of the Company are:

- (a) the initial Members named in the application for the Company's registration; and
- (b) any other organisation (or individual, if an Associate Member) the Board, by resolution, admits as a Member,

whose name is entered in the Register as a current Member.

2.2 Member Eligibility

The Board may only appoint as a Member (other than an Associate Member), independent advocacy organisations, with objects or purposes that are consistent with those of the Company and that have paid any Membership Fees owing under **rule 2.4**.

2.3 Associate Membership

- (a) The Board may appoint as an Associate Member an organisation or individual that:

- (i) in the opinion of the Board, is supportive of the purposes of the Company; and
 - (ii) has paid any Membership Fees owing under **rule 2.4**.
- (b) Associate Members are ineligible to stand for election as office bearer or otherwise participate in the management of the Company's affairs.
- (c) Associate Members have the right to receive notices of and to attend and be heard at any general meeting but are not entitled to vote in relation to any resolution on a show of hands or a poll.

2.4 Membership Fee

- (a) The Board may, by resolution:
- (i) make it a condition of appointment as a Member that the prospective Member first pay to the Company an initial Membership Fee in the amount determined by the Board from time to time; and
 - (ii) require each Member to pay to the Company an annual Membership Fee in the amount determined by the Board from time to time. The Board must provide each Member 30 days' written notice of when any such Membership Fee falls due.
- (b) The Board may, by resolution, determine initial and annual Membership Fees to apply to Associate Members in the same way as set out in **rule 2.4** above.

2.5 Limited Liability of Members

If the Company is wound up each Member undertakes to contribute to the assets of the Company up to an amount not exceeding \$10 (ten dollars) for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after an organisation ceases to be a member.

2.6 Cessation of Membership

A Member ceases to be a member of the Company if the Member:

- (a) resigns from the Company by giving at least 30 days' written notice to the Board;
- (b) is wound up or otherwise dissolved or deregistered; or
- (c) is expelled from the Company in accordance with **rule 2.7**.

2.7 Expelling a Member

- (a) The Board may, by resolution, expel from the Company any Member:
- (i) that does not comply with this constitution or any by-laws, rules or regulations of the Company,
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company, or

- (iii) that fails to pay any Membership Fees owing under **rule 2.4** within 3 months of the due date for payment;

and remove that Member's name from the Register.

- (b) At least 21 days before the Board holds a meeting to expel a Member, the Board must give a written notice to the Member which states:
 - (i) the allegations against the Member.
 - (ii) the proposed resolution for the Member's expulsion; and
 - (iii) that the Member has an opportunity at the meeting to address the allegations either orally or in writing.
- (c) A Member expelled from the Company does not have any claim on the Company, its funds or property.

3. Register of Members

- (a) The Company must set up and maintain a Register of Members.
- (b) In accordance with the Act, the Register must contain the following information:
 - (i) the name and address of each Member;
 - (ii) the date on which the entry of the Member's name in the Register is made;
 - (iii) whether or not the Member is an Associate Member;
 - (iv) the name and details of each organisation that ceased to be a Member within the last seven years;
 - (v) the date on which the organisation ceased to be a Member; and
 - (vi) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

4. Members' Rights

- (a) Members of the Company will be entitled to:
 - (i) Subject to **rule 2.3(c)**, receive notice of and attend and vote at general meetings of the Company; and
 - (ii) receive annual reports of the Company including financial reports in relation to each Financial Year.
- (b) All other rights, privileges and obligations of Members are in accordance with the Act.

5. General meetings

5.1 Calling of general meetings

A general meeting:

- (a) may be convened at any time by the Board or a Director in accordance with the provisions of the Act; and
- (b) must be convened by the Board on the request of Members with at least 5% of the votes that may be cast at a general meeting.

5.2 Annual General Meeting

- (a) An annual general meeting must be held:
 - (i) within 18 months after registration of the Company; and
 - (ii) after the first annual general meeting, at least once in every calendar year and within 5 months of the end of the Company's Financial Year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
 - (i) a review of the Company's activities;
 - (ii) a review of the Company's finances;
 - (iii) any auditor's report;
 - (iv) the election of Directors; and
 - (v) the appointment and payment of auditors, if any.
- (c) Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.
- (d) The Chairperson of the annual general meeting must give Members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

5.3 Notice of General Meetings

- (a) Subject to **rule 5.4**, at least 30 days' written notice of a general meeting must be given to:
 - (i) each Member (whether or not the Member is entitled to vote at the meeting);
 - (ii) each Director (other than an Alternate); and
 - (iii) to the auditor.
- (b) Notice of a general meeting must include:

- (i) the place, date and time for the meeting (and if the meeting is to be held in 2 or more venues, the subject to **rule 5.8**, the technology that will be used to facilitate this);
- (ii) the general nature of the meeting's business;
- (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
- (iv) any other information required under the Act.

5.4 Short Notice

- (a) Subject to **rule 5.4(b)**, notice of a meeting may be provided less than 21 days before the meeting if:
 - (i) for an annual general meeting, all the Members entitled to attend and vote agree beforehand; or
 - (ii) for any other general meeting, Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree beforehand.
- (b) Notice of a general meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a Director;
 - (ii) appoint a Director in order to replace a Director who was removed; or
 - (iii) remove an auditor.

5.5 Accidental Omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a general meeting.

5.6 Postponement or Cancellation

Where any general meeting is cancelled or postponed or the venue for the same is changed,

- (a) the Board must endeavour to notify in writing each Member of the cancellation, the change of venue or the postponement of the meeting by any means permitted under this constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (b) any accidental failure to notify in writing a Member or failure of a Member to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

5.7 Fresh Notice

If a general meeting is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

5.8 Technology

The Company may hold a general meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

6. Proceedings at General Meetings

6.1 Member present at general meeting

If a Member has appointed a proxy or a representative to act at a general meeting, that Member is taken to be present at a meeting at which the proxy, attorney or representative is present.

6.2 Quorum

- (a) No business may be transacted at any general meeting unless a quorum of Members entitled to vote are present at all times during the meeting.
- (b) With regard to **rules 6.2(c) and (d)**, the quorum for a general meeting is:
 - (i) if there are less than 20 Members, five Members;
 - (ii) if there are at least 20 Members but less than 36 Members, at least 25% of the Members; or
 - (iii) if there are 36 or more Members, 10 Members.
- (c) Associate Members are not counted towards a quorum.
- (d) Each individual present may only be counted once toward a quorum. If a Member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

6.3 Quorum not present

If a quorum is not present within 15 minutes after the time for which a general meeting is called:

- (a) if called as a result of a request of Members under **rule 5.1(b)**, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is cancelled.

6.4 Chairing General Meetings

- (a) If the Board has appointed a Director to chair Board meetings, that Director may also chair general meetings (**Chairperson**).
- (b) If:
 - (i) there is no Director who the Board has appointed to chair Board meetings for the time being; or
 - (ii) the Director appointed to chair Board meetings is not present within 30 minutes after time appointed for the holding of the meeting or is not willing to chair the meeting,

the Members present who are entitled to vote at the meeting must elect a Member (other than an Associate Member) or Director present to chair the meeting.

6.5 Attendance at Meetings of Members

- (a) Every Member has the right to attend all meetings of Members.
- (b) Every Director has the right to attend and speak at all meetings of Members.
- (c) The auditor has the right to attend any general meeting and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

6.6 Adjournment

Subject to **rule 5.7**, the Chairperson of a general meeting at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place as determined by the Chairperson.

6.7 Business at Adjourned Meetings

- (a) The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.
- (b) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (c) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

7. Proxies, Attorneys and Representatives

7.1 Appointment of Proxies

- (a) A Member may appoint a proxy to attend and act for the Member at a general meeting.
- (b) An appointment of proxy must be made by written notice to the Company and is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
 - (i) the name and address of the Member;
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.

7.2 Member's Attorney

- (a) A Member may appoint an attorney to act, or to appoint a proxy to act, at a general meeting.
- (b) A Member who is entitled to vote at a general meeting may appoint an Associate Member as their attorney or proxy under **rule 7.2(a)**.

7.3 Proxy Documents

- (a) An instrument appointing:
 - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Company's registered office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Directors may allow) before the time appointed for the holding of the meeting or adjourned meeting, as the case may be, at which the proxy named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this rule it will be sufficient that any proxy document required to be lodged be received in legible form by email if the notice of meeting so permits at the email address and in the form specified in the notice and the document shall be regarded as received at the time of receipt of the email transmission by the Company.

7.4 Corporate Representatives

A Member may appoint an individual to act as its representative at general meetings as permitted by section 250D.

7.5 Appointment for particular meeting, standing appointment and revocation

A Member may appoint a proxy, attorney or representative to act at a particular general meeting or make a standing appointment. A proxy, attorney or representative may, but need not, be a Member. An instrument of proxy may be revoked at any time by the appointing Member or by the proxy, attorney or representative, by notice in writing to the Company.

7.6 Suspension of Proxy or Attorney's Powers if Member Present

A proxy or attorney has no power to act for a Member at a meeting at which the Member is present by representative.

A proxy has no power to act for a Member at a meeting at which the Member is present by attorney.

7.7 Priority of Conflicting Appointments of Attorney or Representative

If more than one attorney or representative appointed by a Member is present at a general meeting and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to **rule 7.7(a)**, an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

7.8 More Than One Current Proxy Appointments

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than one proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

7.9 Continuing Authority

An act done at a general meeting by a proxy, attorney or representative is valid even if, before the act is done, the appointing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

8. Entitlement to Vote

8.1 Number of Votes That Can Be Cast

- (a) Each Member (other than an Associate Member) has one vote on a show of hands or a poll.
- (b) A Member who is present and entitled to vote and is also a proxy, attorney or representative of another Member has one vote on a show of hands.

8.2 Number of Votes Required to Pass a Resolution

A matter is decided in the affirmative:

- (a) in relation to any amendment or repealing of constitution, or a provision of this constitution, if passed by Special Resolution;
- (b) in relation to the voluntary winding up of the Company, if passed by Special Resolution; and
- (c) for all other matters, if more than fifty percent of votes are cast for an ordinary resolution.

8.3 Casting Vote of Chairperson

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

8.4 Voting Restrictions

- (a) A Member is not entitled to vote on a resolution if, under the Act:
 - (i) the Member must not vote or must abstain from voting on the resolution; or
 - (ii) a vote on the resolution by the Member must be disregarded for any purposes.
- (b) If the Member or the proxy, attorney or representative of the Member purports to vote on that resolution, the vote is invalid and the Company must not count it.

8.5 Decision on Right to Vote

A Member (other than an Associate Member) or Director may challenge a person's right to vote at a general meeting. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the Chairperson, whose decision is final.

9. How Voting is Carried Out

9.1 Method of Voting

A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under **rule 9.2** either before or on declaration of the result of the vote on a show of hands. Unless a poll is

demanded, the Chairperson's declaration of a decision on a show of hands is final.

9.2 Demand for a Poll

A poll may be demanded on any resolution (except a resolution concerning the election of the Chairperson) by:

- (a) at least 25 per cent of the Members present and entitled to vote on the resolution; or
- (b) the Chairperson.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

9.3 When and How Polls Must Be Taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately, in the manner that the Chairperson directs;
- (b) in all other cases, the poll must be taken at the time and place and in the manner that the Chairperson directs;
- (c) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (d) the result of the poll is the resolution of the meeting at which the poll was demanded.

10. Directors

10.1 Number of Directors

The Board of Directors must have at least five Directors and, until otherwise decided by ordinary resolution, not more than ten Directors in total, consisting of:

- (a) up to eight Member Nominated Directors; and
- (b) up to two Independent Directors.

10.2 Election of Directors

- (a) Subject to this constitution and the maximum number of Directors referred to in **rule 10.1** not being exceeded, the Company must at each annual general meeting hold an election to elect Directors.
- (b) An election of Directors must be held at each annual general meeting.
- (c) A Director is elected under this rule by ordinary resolution.
- (d) The Company must notify Members of every candidate for election as a Director at least five business days before the relevant annual general

meeting. The Company cannot validly elect a person as a Director that does not satisfy the criteria in **rule 10.3**.

10.3 Eligible Candidates

To be eligible to be elected as a Director a person must:

- (a) in the case of Member Nominated Directors only, be an employee or office holder of a Member (other than an Associate Member) and be nominated in accordance with **rule 10.4**;
- (b) not be the auditor of the Company or a partner, director or employee of the auditor;
- (c) not have retired or been removed or ceased to hold office as a Director during the term immediately preceding the election;
- (d) not be ineligible to be a Director under the Act or the ACNC Act;
- (e) not be serving a second consecutive term as a Director during the term immediately preceding the relevant election.

10.4 Nomination of Candidates

For a person to be nominated for election as a Director, the Company must receive, at least 14 days (or any other period fixed by the Board) before the date of the meeting at which the election is to occur, both:

- (a) a nomination of the person by 2 Members (who are not Associate Members), which may, in the case of a Member Nominated Director, include the Member that nominated that person under **rule 10.3(a)**; and
- (b) a consent to act as a Director signed by the person.

10.5 Vacancies on the Board

- (a) For the purposes of this **rule**, **casual vacancy** means a vacancy on the Board for any reason.
- (b) The Board may, at any time, appoint a person to the Board to fill a casual vacancy if:
 - (i) in respect to a vacancy of a Member Nominated Director position, that person must be an employee or office holder of a Member (other than an Associate Member); or
 - (ii) in respect to a vacancy of an Independent Director position, that person must not be an employee or office holder of a Member, having regard to the maximum number of Directors referred to in **rule 10.1**.
- (c) Any Director appointed as a casual vacancy in accordance with **rule 10.5(b)** will hold office until the next annual general meeting of the Company.

10.6 Director's Term of Appointment

There is no restriction on the total number of terms a person may serve as a Director, but a Director must not serve more than three consecutive terms. Each term must not extend beyond the second annual general meeting after the Director was elected or last re-elected.

10.7 Retirement of Directors

- (a) Subject to **rule 10.7(b)**, a Director must retire from office at the second annual general meeting after that Director was elected or last re-elected.
- (b) Any Director appointed to fill a casual vacancy must retire at the next annual general meeting after their appointment.
- (c) A Director may elect to retire during their term by notifying the Board at least 14 days (or any other period as the Board may determine) before the retirement is to take effect. If the Director gives such a notice, the Director will have ceased to be a Director from the day specified in the notice. If the notice does not specify a date that the retirement is to take effect, the retirement takes effect at the end of the next annual general meeting.
- (d) Neither **rule 10.7(a)** nor **rule 10.7(c)** applies to an Alternate.
- (e) Subject to **rules 10.3** and **10.5**, a Director who retires under this **rule 10.7** is eligible to be subsequently elected or appointed as a Director.

10.8 Time of Retirement

A Director's retirement under **rule 10.7**, subject to **rule 10.7(c)**, takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

10.9 Cessation of Director's Appointment

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

- (a) is not permitted by the Act or the ACNC Act (or an order made under the Act or the ACNC Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend (either personally or by an Alternate) three consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under **rule 10.10**;

- (g) in relation to Member Nominated Directors, ceases to be an employee or office holder of a Member; or
- (h) ceases to be eligible to act as a Director under **rule 10.3**.

10.10 Removal from Office

The Company by ordinary resolution may remove a Director from office.

10.11 Too Few Directors

If the number of Directors is reduced below the minimum required by **rule 10.1**, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of Members; and
- (c) in emergencies.

11. Alternate Directors

11.1 Appointment of Alternates

Subject to **rule 10.3**, a Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

11.2 Notice of Board Meetings

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. For the avoidance of doubt, unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

11.3 Obligations and Entitlements of Alternates

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than one Appointor, has a separate right to vote in place of each Appointor;
- (d) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and
- (e) with the approval of the Board, is entitled to reasonable expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

11.4 Termination of Appointment

The Appointor may at any time revoke the appointment of a person as an Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) The Appointor revokes the appointment of the Alternate;
- (b) the Appointor ceases to be a Director; or
- (c) an event occurs which would cause the Alternate to cease to be a Director under **rule 10.9** if the Alternate were a Director.

11.5 Appointments and Revocations in Writing

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

12. Powers of the Board

12.1 Powers Generally

Except as otherwise required by the Act, any other applicable law or this constitution, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

12.2 Exercise of Powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with **rule 18**; or
- (b) in accordance with a delegation of the power under **rule 14**.

13. Executing Negotiable Instruments

The Board must decide the manner (including the use of electronic signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

14. Delegation of Board Powers

14.1 Power to Delegate

- (a) The Board may delegate any of its powers and functions to a committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate, on

such terms and conditions and with such restrictions as it may think expedient.

- (b) The delegation must be recorded in the Company's minute book.

14.2 Power to Revoke Delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

14.3 Terms of Delegation

A delegation of powers under **rule 14.1** may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

14.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

15. Directors' Duties and Interests

15.1 Compliance with Duties under the Act

Each Director must comply with their duties under legislation and common law and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in **rule 1.2**;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

15.2 Director Can Hold Other Offices etc

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

15.3 Disclosure of Interests

- (a) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting:
 - (i) to the other Directors; or
 - (ii) if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter that is being considered at a Board meeting must not, except as provided under **rule 15.3(d)**:
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (d) A Director may still be present and vote if:
 - (i) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company;
 - (ii) their interest relates to an indemnity payment by the Company or any contract relating to an indemnity that is allowed under the Act;
 - (iii) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
 - (iv) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and

- (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

15.4 Agreements with Third Parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

15.5 Obligation of Secrecy

- (a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
 - (i) in the course of duties as an officer of the Company;
 - (ii) by the Board or the Company in general meeting; or
 - (iii) by law.
- (b) The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

16. Directors' Remuneration

16.1 Restrictions on Payments to Directors

Subject to **rule 16.2** and **rule 17** the Company must not pay fees or other remuneration to a Director.

16.2 Payments to Directors with Board Approval

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered by the Director to the Company;
- (c) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and

- (f) reasonable rent for premises leased by the Director to the Company.

17. Officers' Indemnity and Insurance

17.1 Indemnity

Subject to and so far as permitted by Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

17.2 Insurance

Subject to the Act and any other applicable law, the Company may enter into and pay premiums on, a contract of insurance in respect of any person.

17.3 Former Officers

The indemnity in favour of officers under **rule 17.1** is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

17.4 Deeds

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this **rule 17**, enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this **rule 17** on any terms and conditions that the Board thinks fit.

18. Board Meetings

18.1 Convening Board Meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

18.2 Notice of Board Meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to:
 - (i) each Director who is in Australia; and
 - (ii) each Alternate in respect of whom the Appointor has given notice under **rule 11.2** requiring notice of Board meetings to be given to that Alternate or whose Appointor is not given notice due to being outside Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

18.3 Use of Technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Board Chair is located.

18.4 Chairing Board Meetings

The Board may elect a Director to chair its meetings (**Board Chair**) and decide the period for which that Director holds that office. If there is no Board Chair or the Board Chair is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

18.5 Quorum for Board Meetings

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is:
 - (i) three Directors; or
 - (ii) fifty percent of Directors,
 whichever is the greater number, and a quorum must be present for the whole meeting.
- (b) An Alternate who is also a Director or a person who is an Alternate for more than one Appointor may only be counted once toward a quorum.
- (c) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way, the Board must resolve the basis on which Directors are treated as present.

18.6 Voting at Board meetings

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Directors.
- (b) Each Director (including Independent Directors) shall have one vote.
- (c) The Board Chair does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

18.7 Procedural Rules

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

18.8 Written Resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

18.9 Additional Provisions Concerning Written Resolutions

For the purpose of **rule 18.8**:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
- (d) an electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

18.10 Valid Proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or

- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

19. Secretary

19.1 Appointment of Secretary

The Board:

- (a) must appoint at least one individual; and
- (b) may appoint more than one individual,

to be a Secretary either for a specified term or without specifying a term.

19.2 Terms and Conditions of Office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

19.3 Cessation of Secretary's Appointment

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) dies or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under **rule 19.4**.

19.4 Removal from Office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

20. Minutes

- (a) The Company must make and keep the following records:
 - (i) minutes of proceedings and resolutions of general meetings;
 - (ii) a copy of a notice of each general meeting.
- (b) The Company must make and keep minutes of proceedings and resolutions of Board meetings (including meetings of a committee of the Board).

- (c) To allow Members to inspect the Company's records:
 - (i) the Company must give a Member reasonable access to the records set out in **rule 20(a)**; and
 - (ii) the Directors may authorise a Member to inspect other records of the Company, including records referred to in **rule 20(b)**.
- (d) The Directors must ensure that minutes of a general meeting or a Board meeting are signed within a reasonable time after the meeting by:
 - (i) the Chairperson of Board Chair of the meeting (as the case may be); or
 - (iii) the Chairperson or the Board Chair of the next meeting (as the case may be).
- (e) The Company must allow Members to inspect, and provide copies of, the minute books for general meetings.

21. Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 127 of the Act, the Company may execute any agreement, deed or other document by:
 - (i) 2 Directors signing the same; or
 - (ii) One Director and one Secretary signing the same.
- (b) Nothing in this constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

22. Financial Reports and Audit

22.1 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.

22.2 Financial Reporting

The Board must cause the Company to prepare a financial report and a directors' report and must distribute copies of the financial report and director's report to Members in accordance with the requirements of the Act.

22.3 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report.

22.4 Conclusive Reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within three 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.

22.5 Inspection of Financial Records and Books

Subject to **rule 20(e)**, 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 by ordinary resolution.

23. Revocation and/or Winding Up

If the Company is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another similar organisation to which income tax deductible gifts can be made:

- (a) gifts of money or property for the principal purpose of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (c) money received by the Company because of such gifts and contributions.

24. Notices

24.1 Notices by 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 prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by electronic message to the electronic address (if any) nominated by that person.

24.2 Overseas Members

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

24.3 When Notice is Given

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

- (a) if it is delivered personally:
 - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5.00 pm (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;
- (b) if it is sent by electronic means, to the electronic address supplied by the person:
 - (i) by 5.00 pm (local time in the place from which it is sent or given) on a business day - on that day; or
 - (ii) after 5.00 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day - on the next business day; and
- (c) if it is sent by mail:
 - (i) within Australia - one business day after posting; or
 - (ii) to a place outside Australia - three 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.

24.4 Business Days

For the purposes of **rule 24.3**, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

24.5 Counting Days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

24.6 Notices to "Lost" Members

If:

- (a) on two 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 24.2**,

the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the Member gives the Company notice of a new address.

25. Amending the constitution

The Members (other than Associate Members) may amend this constitution by passing a Special Resolution at a general meeting. Any changes to the constitution passed by Special Resolution will take effect immediately.