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# **CONSTITUTION OF OSTOMY NSW LIMITED**

**ACN 003 107 220**

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A Company Limited by Guarantee

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# CONSTITUTION OF OSTOMY NSW LIMITED

ACN 003 107 220

## 1. COMPANY'S NAME

The Company's name is Ostomy NSW Limited.

## 2. COMPANY'S STATUS

The Company is a company limited by guarantee.

## 3. DEFINITIONS AND INTERPRETATION

### 3.1. Definitions

In this Constitution unless the contrary intention appears:

“**Alternate Director**” means a person appointed as an alternate director under clause 31;

“**Appointer**” in relation to an Alternate Director, means the Director who appoints that Alternate Director;

“**ASIC**” means the Australian Securities and Investments Commission;

“**Auditor**” means the Company's auditor appointed under clause 40;

“**Board**” means the board of Directors of the Company;

“**business day**” means a day during which banks are open for general banking business in the state of New South Wales Australia;

“**Chair**” means the Director appointed as the chair pursuant to clause 34;

“**Class**” means a class of member listed at clause 7.2;

“**Company**” means Ostomy NSW Limited (being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 003 107 220);

“**Company Secretary**” will have the meaning ascribed to that term by the Law;

“**Constitution**” means this document as amended from time to time;

“**Deputy Chair**” means the Director appointed as the deputy chair pursuant to clause 34;

“**Director**” means any person occupying the position of director of the Company and includes any Alternate Director;

“**Directors**” means all or some of the Directors acting as a board;

“**Finance Committee**” means a committee of the Board established under clause 43;

“**Insolvency Event**” occurs where:

- (a) an order is made or a resolution is passed by creditors for the winding up, dissolution or external administration of the Member;
- (b) the Member enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them;
- (c) or a controller, receiver, receiver and manager, official manager or other external administrator is appointed to the Member;

“**Law**” means the *Corporations Act 2001* (Cth);

“**Member**” means a person described as a member of the Company in clause 7.1 and includes a Member present in person or by proxy;

“**Members Register**” means the register of Members required to be maintained under the Law;

“**Office**” means the Company’s registered office from time to time;

“**Officer**” means a person appointed by the Board to the position of President, Vice President, Company Secretary or Treasurer;

“**President**” means a person appointed by the Board to perform any of the duties of President of the Company;

“**Related Body Corporate**” has the same meaning it has in the Law.

“**remuneration**” includes expenses;

“**Seal**” means the Company’s common seal;

“**Security Interest**” will have the meaning ascribed to that term by the *Personal Property Security Act 2009* (Cth);

“**Treasurer**” means a person appointed by the Board to perform any of the duties of Treasurer of the Company; and

“**Vice President**” means a person appointed by the Board to perform any of the duties of Vice President of the Company.

## 3.2. Interpretation

- 3.2.1. Words importing the singular include the plural and vice versa.
- 3.2.2. Words importing any gender include the other genders.
- 3.2.3. Words or expressions defined in the Law have the same meaning unless the context requires otherwise.

- 3.2.4. Headings do not affect construction or interpretation. Headings are inserted for convenience and are not to affect the interpretation of this Constitution.
- 3.2.5. A reference to a person includes a body corporate and a body politic.
- 3.2.6. An expression in a clause that deals with a matter dealt with by a particular provision of the Law has the same meaning as in that provision of the Law.

### **3.3. Signing**

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

### **3.4. Corporations Act**

In this Constitution unless the contrary intention appears:

- 3.4.1. Expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;
- 3.4.2. “section” means a section of the Corporations Act; and
- 3.4.3. If the Company is a registered charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth):
  - 3.4.3.1. subject to clause 1.4(c)(ii), the provisions of the Corporations Act in Part 2G.2 and Part 2G.3 apply as if section 111L(1) of the Corporations Act was not enacted; and
  - 3.4.3.2. where a particular provision of the Corporations Act referred to in section 111L(1) includes a reference to ASIC including a reference to lodge any document with, or seek consent or approval from ASIC, that particular provision does not apply to the Company to the extent that section 111L(1) of the Corporations Act is in force.

### **3.5. Replaceable rules do not apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

## **4. COMPANY’S OBJECTS AND POWERS**

- 4.1. The Company’s objects are to:
  - 4.1.1. Supply surgical appliances and services under the Federal Government Stoma appliance Scheme to Company members with, or likely to have, surgical conditions known as an ileostomy, ileal conduit, urostomy,

- colostomy or other medical condition requiring the use of an external pouch system
- 4.1.2. Provide for the delivery and holding of lectures, displays, public meetings and conferences calculated to directly or indirectly advance and promote the rehabilitation and welfare of members.
  - 4.1.3. Co-operate with medical, surgical and related groups and organisations in the exchange of information and provision of instructional guidance and research assistance as considered appropriate and necessary from time to time in the satisfaction and attainment of the Company's objectives.
  - 4.1.4. Subscribe to, become a member of and co-operate with, any other association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company, provided that the Company will not subscribe to or support with its funds any association or organisation which does not prohibit the distribution of its income and property among its members.
  - 4.1.5. Buy, sell and deal in all kinds of apparatus, literature and other items required by the members of the Company or persons frequenting the Company's premises.
  - 4.1.6. Purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company, provided that in case the Company will take or hold any property which may be subject to any trusts, the Company will only deal with the same in such manner as is allowed by law having regard to such trusts.
  - 4.1.7. Enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise that may seem conducive to the Company's objects or any of them; and to obtain from any such Government or authority any rights, privileges and concessions which the Company think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
  - 4.1.8. Appoint, employ, remove or suspend such managers, staff, volunteers, workmen and other persons as may be necessary or convenient for the purposes of the Company.
  - 4.1.9. Establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependants or connections of any such persons and to:
    - 4.1.9.1. grant pensions and allowances;
    - 4.1.9.2. make payments towards insurance;

- 4.1.9.3. subscribe or guarantee money for charitable or benevolent objects; and/or
  - 4.1.9.4. for any public, general or useful object.
  - 4.1.10. Improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Company's interests, and to contribute to, subsidise or otherwise assist and take part in construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof.
  - 4.1.11. Invest and deal with the money of the Company not immediately required in such manner as may be permitted by law for the investment of trust funds.
  - 4.1.12. Borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures, Security Interest(s) perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off any such securities.
  - 4.1.13. Make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
  - 4.1.14. Take or hold mortgages, Security Interest(s), liens and/or charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatsoever kind sold by the Company, or any money due to the Company from purchasers and others.
  - 4.1.15. Take any gift of property whether subject to any special trust or not, for any one or more of the objects of the Company but subject always to the proviso in sub-clause 4.1.7 of this clause 4.
  - 4.1.16. Take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purposes of procuring contributions to the funds of the Company, in the shape of donations, annual subscriptions or otherwise.
  - 4.1.17. Print and publish any newspapers, newsletters, periodicals, books or leaflets that the Company may think desirable for the promotion of its objects.
  - 4.1.18. Make donations for patriotic or charitable purposes.
  - 4.1.19. Do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.
- 4.2. In furtherance of the objects of the Company to:

- 4.2.1. Sell, improve, manage, develop, exchange, lease dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.
- 4.2.2. Amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which will prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon the Company under or by virtue of clause 4.1 of this Constitution.
- 4.2.3. Purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- 4.2.4. Transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- 4.3. The Company has the powers set out in the Law but only to do all things that are necessary, convenient or incidental to carry out the objects set out in clause 4.1.
- 4.4. The Company has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Law.

## 5. APPLICATION OF COMPANY'S PROPERTY

- 5.1. Subject to this clause, all the Company's income and property, however derived, must be applied solely towards the promotion of the Company's objects contained in clause 4 and must not be paid or transferred to the Members, in whole or in part, either directly or indirectly, by way of dividend, bonus or otherwise .
- 5.2. Clause 5.1 does not prevent the payment in good faith to the Member of:
  - 5.2.1. reasonable fees and proper remuneration to an officer of the Company or a Member in return for goods or services supplied to the Company by that officer or Member;
  - 5.2.2. reasonable out of pocket expenses incurred by an officer of the Company or a Member in carrying out business on behalf of the Company; and/or;
    - 5.2.2.1. for goods supplied in the ordinary course of business by a Member;
    - 5.2.2.2. of fair and reasonable interest on money borrowed from a Member;
    - 5.2.2.3. of reasonable rent for premises let by a Member;

5.2.3. interest, at a rate not exceeding a normal commercial rate, on any money lent to the Company by a Member.

5.3. Furthermore, in furtherance of the objects, clause 5.1 does not prevent the appointment of any officer or any director to any salaried office of the Company or any office of the Company paid by fees or remuneration.

## 6. LIABILITY OF MEMBERS

Each Member's liability is limited except as set out in clause 44.

## 7. IDENTIFICATION OF MEMBERS

7.1. The Members of the Company will include the initial members, and other persons admitted as members of the Company in accordance with clause 8 are to be recorded in the Members Register, who have not ceased to be a member of the Company pursuant to clause 9.

7.2. The Members may, for the purposes of clause 21, be characterised as belonging to a membership class, in accordance with the following table:

Class	Members Belonging to the Class
Full	Anyone who is not a Concession, Associate or DVA class of Member
Concession	Anyone who qualifies for an age or disability pension and can provide documentary evidence of their eligibility for such a pension.
Associate	Anyone who is not a Full, Concession or DVA Member and who once was a Member under one of the other Member Classes or is a parent, partner or child of Member of one of the other classes, or is a clinician working the field of Ostomy care, such as a Stomal Therapy Nurse.
DVA	Anyone whose annual membership fees and cost of supplies is provided by the Department of Veteran's Affairs and who is not classed as a Full, Concession or Associate Member.

## 8. BECOMING A MEMBER

8.1. Every applicant for membership of the Company must be either a person with or likely to have or has had surgical conditions known as ileostomy, ileal conduit, urostomy and/or colostomy or a parent, partner, child or nurse of a person with or likely to have or has had surgical conditions known as ileostomy, ileal conduit, urostomy and/or colostomy.

8.2. No application for membership may be rejected without approval of the Board, which is not required to give any reason for the rejection of an applicant.

8.3. An applicant can only be accepted for membership upon receipt of all relevant documentation required for membership and payment of the prescribed annual fee applicable to the class of membership to which the applicant will belong,

provided nevertheless that if such payment is not made within 2 calendar months after the date of receipt of the application for membership, the Board may in its discretion cancel acceptance of the applicant for membership.

- 8.4. The annual membership fee payable by Members will be determined by the Board from time to time.
- 8.5. All annual membership fees will become due and payable on the 1st day of July in every calendar year.

## 9. CEASING TO BE A MEMBER

- 9.1. A Member can resign at any time by giving written notice to the Company Secretary and, although effective immediately, the individual remains liable for any membership fees and all other monies outstanding at the date of resignation. If only a single Member remains, the Member ceases to be a Member on it passing a resolution to admit another person as a Member in its place, subject to that person:
  - 9.1.1. consenting to become a Member; and
  - 9.1.2. having their name entered on the Register.
- 9.2. The Board reserves the right to terminate the membership of any Member who:
  - 9.2.1. Fails to pay their annual membership fee and any arrears and penalties due, after they have been given the relevant number of reminders to pay such fees;
  - 9.2.2. is subject to an Insolvency Event;
  - 9.2.3. Refuses or willfully neglects to comply with the provisions of this Constitution, after having been requested by the Board to comply; and/or
  - 9.2.4. Is guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interest of the Company.
- 9.3. In relation to clause 9.2:
  - 9.3.1. a Member has the right to make any submissions or representations to the Board within a reasonable timeframe to be determined by the Board giving reasons why their membership should not be terminated, before a decision to terminate is made by the Board; and
  - 9.3.2. the Directors are entitled to admit another person as a replacement Member for any terminated Member, subject to that person:
    - 9.3.2.1. consenting to become a Member; and
    - 9.3.2.2. having its name entered on the Register.
- 9.4. Alternatively, a member may elect to have the proposal to terminate their membership considered by the Board at a general meeting called for the purpose and which must pass a majority resolution of at least two thirds of those present by ballot to terminate the membership.

## 10. CONVENING A GENERAL MEETING

- 10.1. Annual general meetings of the Company must be held in accordance with the Law.
- 10.2. A Member can only convene a general meeting in accordance with the Law.
- 10.3. The Directors of the Company may convene a meeting giving the notice in accordance with the Law.

## 11. NOTICE OF GENERAL MEETING

- 11.1. A notice convening a general meeting must:
  - 11.1.1. specify the place, date and hour of the meeting; and
  - 11.1.2. state the general nature of the business to be transacted at the meeting.
- 11.2. The Directors can postpone or cancel any general meeting whenever they think fit (other than a general meeting convened under clause 10.2).
- 11.3. The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- 11.4. The accidental omission to send a notice of a general meeting to a Member or the non-receipt of a notice of a notice by a Member does not invalidate the proceedings at or any resolution passed at that general meeting.
- 11.5. The service of notices on Members will be issued to the address of that Member as set out in the Members' Register.
- 11.6. Notice of every general meeting must be given to:
  - 11.6.1. every Director and Alternate Director;
  - 11.6.2. every Member; and
  - 11.6.3. the Auditor.
- 11.7. No other person is entitled to receive notice of a general meeting.

## 12. QUORUM OF MEMBERS

- 12.1. No business can be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 12.2. A quorum will consist of three (3) Members present in person or by proxy.
- 12.3. If a quorum is not present within thirty (30) minutes after the time appointed for a meeting:
  - 12.3.1. if the meeting was convened under clause 10.2, it is automatically dissolved; or
  - 12.3.2. in any other case:

12.3.2.1. it stands adjourned to the same time and place not more than twenty one (21) days after the meeting, or to another day, time and place determined by the Directors; and

12.3.2.2. if at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting it is automatically dissolved.

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

### **13. CHAIR OF GENERAL MEETING**

13.1. Subject to this clause, the Chair will be the chair at every general meeting or, in his or her absence, the Deputy Chair is the chair and can exercise all the powers and authorities of the Chair.

13.2. If:

13.2.1. the Chair is either unwilling to act as chair of the general meeting or is not present at the general meeting within ten (10) minutes of the time appointed for the commencement of the general meeting, the Deputy Chair may chair the general meeting; and

13.2.2. the Deputy Chair is either unwilling to act as chair of the general meeting or is not present at the general meeting within ten (10) minutes of the time appointed for the commencement of the general meeting, then the Directors present at the meeting can elect one of their number to be the chair for the purpose of the general meeting.

13.3. If an election is required under clause 0 but is not made:

13.3.1. the Members present at the meeting can elect one of the Directors present at the meeting to be the chair of the meeting; and

13.3.2. if no Director is present at the meeting or willing to act as chair of the meeting, the Members present at the meeting can elect one of their number to be the chair of the meeting.

13.4. If there is a dispute at a general meeting about a question of procedure, the chair of the meeting may determine the question.

### **14. ADJOURNMENT OF GENERAL MEETING**

14.1. The chair of a general meeting at which a quorum is present:

14.1.1. can adjourn a general meeting with the meeting's consent; and

14.1.2. must adjourn a general meeting if the meeting directs the chair to do so.

14.2. An adjourned general meeting can take place at different venue to the initial meeting.

- 14.3. The only business that can be transacted at an adjourned general meeting is the unfinished business of the original general meeting.
- 14.4. If a general meeting is adjourned for more than 21 days, notice of the adjourned general meeting must be given in the same manner as in the case of the original general meeting.
- 14.5. If a general meeting is adjourned for less than 21 days, no notice of the adjourned general meeting needs to be given.

## **15. DECISION OF QUESTIONS**

- 15.1. Subject to the Law concerning special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 15.2. A resolution put to the vote of a general meeting is decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by:
  - 15.2.1. the chair of the general meeting; or
  - 15.2.2. at least 3 Members who have the right to vote at the general meeting.
- 15.3. Unless a poll is demanded:
  - 15.3.1. a declaration by the chair of the general meeting that a resolution has been carried, has been carried by a specified majority, or lost; and
  - 15.3.2. an entry to that effect in the minutes of the general meeting,is conclusive evidence of the fact without proof of the proportion of the votes in favour of or against the resolution.
- 15.4. A demand for a poll can be withdrawn.

## **16. TAKING A POLL AT GENERAL MEETING**

- 16.1. Subject to clause 16.5, a poll is taken at the time and in the manner that the chair of the meeting directs.
- 16.2. The result of the poll is the resolution of the general meeting at which the poll was demanded.
- 16.3. The chair of the general meeting can determine any dispute about the admission or rejection of a vote on a poll.
- 16.4. The chair's determination under clause 16.3, if made in good faith, is final and conclusive.
- 16.5. A poll demanded on the adjournment of a general meeting must be taken immediately.
- 16.6. After a poll has been demanded at a general meeting, the meeting can continue for the transaction of business other than the question on which the poll was demanded.

## 17. ENTITLEMENT TO VOTE AT GENERAL MEETING

- 17.1. Members will have one vote each.
- 17.2. No Member will be entitled to vote if their annual membership fees have not been paid for the current year and are more than one month in arrears at the date of the general meeting.
- 17.3. In the case of an equality of votes, the chair of the meeting both on a show of hands and on a poll may exercise a second or casting vote.
- 17.4. The Company is not bound to recognise anyone claiming a right to vote except where that person is a Member recorded in the Members' Register or is appointed as the proxy of a Member in accordance with clause 18.

## 18. INSTRUMENT APPOINTING PROXY

- 18.1. An instrument appointing a proxy must be in writing and executed by the Member appointing the proxy or by the Member's attorney duly authorised in writing or, if the Member is a corporation, either under the seal of the Member or under the hand of a duly authorised officer or attorney of the Member.
- 18.2. An instrument appointing a proxy is deemed to confer authority on the proxy to demand or join in demanding a poll.
- 18.3. If an instrument appointing a proxy specifies the manner in which the proxy can vote in relation to a particular resolution the proxy is not entitled to vote on that resolution except as specified in the instrument.
- 18.4. Subject to this clause, an instrument appointing a proxy must be in the following form or in another form approved by the Directors:

### Step 1 – Appoint a Proxy

I, being a Member of Ostomy NSW Limited (**ONL**) and eligible to vote at the AGM hereby appoint:

the Chair of  
the general meeting

OR

or failing the individual named, or if no individual is named, the chair of the general meeting, as my proxy to act generally at the meeting on my behalf and to vote in accordance with the following directions (or if not directions have been given, as the proxy sees fit) at the annual general meeting of Ostomy NSW Limited to be held at [.....] at [.....] [am/pm] and at any adjournment of that meeting.

### Step 2 – Voting Directions

#### Ordinary Resolutions

1a

For

Against

Abstain

	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Special Resolutions</b>			
2a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2b	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Step 3 – Sign and Lodge			
Member No.	Name	Signature	Date

***For your proxy to be effective, it must be received at the ONL offices not later than the time and date nominated in the Explanatory Memorandum attached to the Notice of annual general meeting. You can use one of the following methods to lodge your proxy:***

-  Post to PO Box 3068, Kirrawee DC, NSW 2232
-  Fax to 02 9542 1400
-  e-mail to [info@ostomynsw.org.au](mailto:info@ostomynsw.org.au)

## 19. LODGEMENT OF PROXY

- 19.1. In order to be valid, an instrument appointing a proxy must be deposited in original form, by facsimile or such other means as the Directors may determine, at the Company's office, or such other address nominated in the notice convening the meeting, not less than 14 days prior to the meeting.
- 19.2. If an instrument appointing a proxy is executed under a power of attorney or other authority, then the power of attorney or authority (or a copy of it certified by a notary), must be deposited with the instrument in accordance with clause 19.1.

## 20. VALIDITY

- 20.1. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the Member appointing the proxy or attorney, or the revocation of the instrument (or of the authority under which the instrument was executed) unless written notice of the death, unsoundness of mind or revocation is received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## 21. APPOINTMENT AND REMOVAL OF DIRECTORS

- 21.1. The Board will comprise of a minimum of 3 Directors and a maximum of 11 Directors. The Directors will be appointed as follows:

- 21.1.1. up to 9 Directors will be appointed from within the nominees of the Classes of Members in accordance with clause 7.2; and
- 21.1.2. up to 2 Directors may be appointed by the Board.
- 21.2. If the Board decides to appoint officers from the Directors, the officers of the Company may consist of a President, up to two Vice-Presidents, an Honorary Treasurer and a Company Secretary or persons holding such other titles or no titles as the Committee will determine from time to time.
- 21.3. Directors referred to in sub-clause 21.1.1 will be elected by the Company Members at an annual general meeting of the Company, unless the provisions of clause 21.7 apply.
- 21.4. Directors referred to in sub-clause 21.1.2 may be appointed at any time by the Board.
- 21.5. The election of Directors as referred to in sub-clause 21.1.1 will take place in the following manner:
  - 21.5.1. any two Members of the Company will be eligible to nominate a candidate for election as a Director;
  - 21.5.2. the nomination must be in writing and signed by the Members as a proposer and seconder and may be lodged with the Company Secretary at any time, but not later than fourteen (14) days before the annual general meeting at which the election is to take place;
  - 21.5.3. a list of the candidates' names in alphabetical order, with the proposers and seconds names, will be posted in a conspicuous place in the registered office of the Company for at least seven (7) days immediately preceding the annual general meeting;
  - 21.5.4. balloting lists will be prepared (if necessary) containing the names of the candidates only in alphabetical order, and each member present at the Annual general meeting will be entitled to vote for any number of such candidates not exceeding the number of vacancies; and
  - 21.5.5. if sufficient numbers of candidates are not nominated, the existing Directors may fill up the remaining vacancy or vacancies.
- 21.6. The Members may from time to time by ordinary resolution increase or reduce the maximum and or minimum number of Directors.
- 21.7. If a casual vacancy on the Board should occur, or if the provisions of sub-clause 21.1.2 apply, the Board has power to appoint a person as a Director at any time, provided that the total number of Directors does not at any time exceed the number fixed by clause 21.1.2. Any Director so appointed may only hold office until the next following annual general meeting, at which time they must retire, but can stand for re-election.
- 21.8. The Company may by ordinary resolution remove Director before the expiration of their period of office, and may by an ordinary resolution appoint another person in their stead. Any Director so appointed may only hold office until the next

following annual general meeting, at which time they must retire, but can stand for re-election.

## **22. PERIOD OF OFFICE**

22.1. A Director elected at an annual general meeting is appointed from the date of that annual general meeting until the close of the second annual general meeting, following the annual general meeting at which he or she was appointed, at which meeting he or she must retire, but are eligible to stand for re-election.

22.2. A Director appointed by any other means only holds office until the next annual general meeting.

## **23. VACATION OF OFFICE**

23.1. Subject to the Law and this Constitution, the office of a Director becomes vacant if the Director:

23.1.1. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

23.1.2. resigns by notice in writing to the Company;

23.1.3. is absent without the consent of the Directors from three consecutive meetings of the Directors, unless represented by an Alternate Director;

23.1.4. the Director is disqualified from managing a corporation under Part 2D.6 of the Law; and/or

23.1.5. is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Law.

23.2. In clause 23.1.5, a reference to a contract or proposed contract with the Company includes, but is not limited to, the provision of a financial benefit by the Company.

## **24. REMUNERATION OF DIRECTORS**

24.1. The Board may set the remuneration for Directors, subject to the approval of an ordinary resolution of the Members.

24.2. A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee of Directors or when otherwise engaged in the business of the Company.

24.3. Any payment to a Director must be approved by the Directors.

## **25. MANAGEMENT OF COMPANY**

25.1. Subject to the Law and this Constitution, the Company's business is managed by the Directors, who can pay all expenses incurred in promoting and forming the Company and can exercise all the Company's powers and do all such acts and

things as may the Company, except where such powers are reserved for the Company in general meeting either by the Law or this Constitution.

- 25.2. Without limiting the generality of clause 25.1, the Directors can exercise all the Company's powers to borrow or raise money, to charge any of the Company's property or business and to issue debenture or give any other security for a debt, liability of obligation of the Company or any other person.
- 25.3. The Directors can, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- 25.4. A power of attorney issued under clause 25.3 can contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and can also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.
- 25.5. All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed in such other manner as the Directors determine.
- 25.6. The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Law, required to be exercised by the Company in general meeting.
- 25.7. Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter rules for the management and conduct of the business of the Company, but such rules may be altered or revoked by the Members.

## **26. DIRECTORS' COMMITTEES**

- 26.1. The Directors can delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- 26.2. A Director's committee must exercise its powers in accordance with any directions of the Directors and a power so exercised is deemed to have been exercised by the Directors.
- 26.3. The Directors forming a Directors' committee may elect one of their number to act as chair of their meetings.
- 26.4. If, a meeting of a Director's committee is held and:
  - 26.4.1. a chair has not been elected under clause 26.3; or
  - 26.4.2. the chair is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act,then the Directors present may elect one of their number to be chair of the meeting.

- 26.5. A Directors' committee can meet and adjourn as it thinks proper.
- 26.6. Questions arising at a meeting of a Directors' committee are determined by a majority of votes of the Directors present and voting.
- 26.7. In the case of an equality of votes, the chair of the relevant Directors' committee, in addition to his or her deliberative vote (if any), has a casting vote.
- 26.8. A quorum of members of a Director's committee requires a majority of the total number of members of that Directors' committee.
- 26.9. No business can be transacted at a meeting of a Director's committee unless a quorum is present at the meeting.
- 26.10. Meetings of a committee are governed by the provisions of these clauses which deal with Directors' meetings in so far as they are applicable and are not inconsistent with this clause.

## **27. MINUTES AND REGISTERS**

- 27.1. The Directors must cause minutes to be made of:
  - 27.1.1. the names and the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
  - 27.1.2. all resolutions and proceedings of general meetings, Directors' meetings and Directors' committee meetings;
  - 27.1.3. all orders made by the Directors and Directors' committees;
  - 27.1.4. all disclosures of interests by Directors made under the Law; and
  - 27.1.5. all appointments of officers and servants.
- 27.2. Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.
- 27.3. The Company must keep all registers required by this Constitution and the Law.

## **28. PROCEEDINGS OF DIRECTORS**

- 28.1. Subject to this clause 28, the Directors can meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 28.2. The Board must meet at least four (4) times in each calendar year.
- 28.3. A Director can at any time, and a Company Secretary must on the requisition of a Director, convene a meeting of Directors.
- 28.4. In order to reduce costs, the Directors (and a Director or Company Secretary convening meetings under clause 28.3) must consider making appropriate use of communications technology in relation to the holding of meetings.
- 28.5. A Board meeting and any Director's committee meeting can be held using technological means by which each Director present is able to simultaneously

hear each other Director and to participate throughout the discussion without all the Directors necessarily being physically in the same place.

- 28.6. A Director who participates in a meeting held in accordance with clause 28.5 is deemed to be present and entitled to vote at the meeting.

## **29. NOTICE OF DIRECTORS' MEETINGS**

- 29.1. Notice of every Board meeting must be given to each Director and Alternative Director.

- 29.2. A notice convening a Board meeting must be in writing and given by:

29.2.1. delivering it in person;

29.2.2. sending it by pre-paid post to the address of the Director or Alternate Director being served as set out in the Register of Directors;

29.2.3. sending it by facsimile to the machine situated at the address of the Director or Alternate Director being served as set out in the Register of Directors; or

29.2.4. sending it by electronic transmission to such electronic address, as the Director or Alternate Director has supplied to the Company for giving of notices.

- 29.3. A notice convening a Director's meeting is given or deemed to be given:

29.3.1. if delivered personally, upon delivery;

29.3.2. if sent by pre-paid post, on the second business day after the date of posting;

29.3.3. if sent by facsimile, upon the production of a transmission report by the machine from which the notice was sent which indicates the notice was sent in its entirety to the facsimile number referred to in clause 29.2.3; or

29.3.4. if sent by electronic transmission, upon the production of a delivery report from the computer from which the notice was sent which indicates the notice was sent in its entirety to the electronic address referred to in clause 29.2.4.

## **30. QUORUM OF DIRECTORS FOR BOARD MEETING**

- 30.1. No business can be transacted at a Board meeting unless a quorum of Directors is present at the meeting.

- 30.2. The quorum necessary for the transaction of business is 3 Directors or Alternate Directors, or such greater number as may be fixed by the Board from time to time.

## **31. ALTERNATE DIRECTORS**

- 31.1. A Director, with the approval of the Board, can appoint a person (other than a Director) to be his or her Alternate Director.

- 31.2. An Alternate Director is entitled to notice of each Board meeting during his or her appointment and is entitled to attend and vote instead of his or her appointer if that appointer is not present at the meeting.
- 31.3. An Alternate Director can exercise any powers that his or her appointer can exercise and the exercise of a power by an Alternate Director is deemed to be the exercise of the power by his or her appointer.
- 31.4. The appointment of an Alternate Director can be terminated at any time by his or her appointer, notwithstanding that the period of the appointment of the Alternate Director has not expired.
- 31.5. The appointment of an Alternate Director automatically terminates if his or her appointer ceased to be a Director.
- 31.6. A Director must notify the Company in writing of the appointment, or the termination of the appointment, or an Alternate Director appointed by that Director. Until this notice is received an Alternate Director cannot act or does not cease to act whatever the case may be.

## **32. DECISION OF QUESTIONS**

- 32.1. Subject to these clauses, questions arising at a Board meeting are decided by a simple majority of votes of the Directors present and eligible to vote and any such decision is for all purposes deemed to be a decision of the Board.
- 32.2. In case of an equality of votes, the Chair, in addition to his or her deliberative vote (if any), may exercise a second or casting vote.

## **33. VACANCIES**

- 33.1. If a Director's office is vacant, the remaining Directors can act but only if the number of remaining Directors is sufficient to constitute a quorum.
- 33.2. If the total number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, the Directors present and entitled to vote may act only for the purpose of increasing the number of Directors in accordance with and subject to clause 21.1.2 to a number sufficient to constitute a quorum, or for the purpose of convening a general meeting of the Company.

## **34. CHAIR AND DEPUTY CHAIR**

- 34.1. Subject to this clause, the Chair is the person appointed to the position of President.
- 34.2. The Chair can resign as Chair by written notice to the Company.
- 34.3. The Director appointed as the Chair will cease to hold that position if he or she ceases to be a Director, or if he or she is removed from that position by a resolution of the Directors.
- 34.4. The Directors can appoint a Director as Deputy Chair.

- 34.5. Subject to clauses 34.6 and 34.7, a Deputy Chair holds office for such terms as determined by the Directors.
- 34.6. A Deputy Chair can resign as Deputy Chair by written notice to the Company.
- 34.7. A Deputy Chair ceases to hold that position if he or she ceases to be a Director, or if he or she is removed from the position by a resolution of the Directors.
- 34.8. Subject to clause 34.9, the Chair will be the chair at every Board meeting or, in the absence of the Chair, the Deputy Chair is the chair and can exercise all the powers and authorities of the Chair.
- 34.9. If:
- 34.9.1. the Chair is either unwilling to act as chair of the Board meeting or is not present at the Board meeting within ten (10) minutes of the time appointed for the commencement of the Board meeting, the Deputy Chair may chair the Board meeting; and
  - 34.9.2. the Chair and the Deputy Chair are both either unwilling to act as chair of the Board meeting or are not present at the Board meeting within ten (10) minutes of the time appointed for the commencement of the Board meeting,
- then the Directors present at the Board meeting can elect one of their number to be the chair for the purpose of that Board meeting.

## **35. WRITTEN RESOLUTIONS**

- 35.1. If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was signed by the last Director required to give effect to the written resolution.
- 35.2. For the purposes of clause 35.1, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors is together deemed to constitute one document containing a statement in those terms signed by those Directors on the days on which they signed the separate documents.

## **36. VALIDITY OF ACTS OF DIRECTORS**

- 36.1. If it is discovered that:
- 36.1.1. there is a defect in the appointment of a person as a Director or Alternate Director; or
  - 36.1.2. a person appointed to one of those positions was disqualified,

then all acts of the Directors before the discovery was made are as valid as if the person had been duly appointed or was not disqualified.

### **37. COMPANY SECRETARY**

- 37.1. A Company Secretary may be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any Company Secretary so appointed may be removed by the Board.
- 37.2. Nothing herein will prevent the Committee from appointing a Member of the Company as Honorary Secretary or Minutes Secretary and any Member so appointed will forthwith become an officer of the Company and, if not already a Member of the Board, ex officio a member of the Board.
- 37.3. An Honorary Secretary holds office on such terms and conditions as the Board determine.

### **38. COMMON SEAL**

- 38.1. The Board will elect whether the Company will have a Seal.
- 38.2. Subject to clause 38.1, the Board must provide for the safe custody of the Seal.
- 38.3. Subject to clause 38.1, the Seal must only be used by the authority of the Directors and every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, a Company Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

### **39. COMPANY TO KEEP ACCOUNTS**

- 39.1. The Directors must cause the Company to keep accounts of the Company's business in accordance with the Law and the applicable accounting standards.
- 39.2. The Directors must cause the Company's accounts to be audited in accordance with the Law.
- 39.3. Company accounts are to be made available to Members in accordance with the Law.

### **40. AUDITOR**

A properly qualified Auditor or Auditors must be appointed or elected and may be removed and their duties will be regulated in accordance with the Law.

### **41. INDEMNITY AND INSURANCE**

- 41.1. Every person who is or has been a Director, Company Secretary, Auditor or executive officer of the Company or of a Related Body Corporate of the Company is indemnified, to the maximum extent permitted by law, out of the Company's property against any liabilities and for costs and expenses incurred by that person (including but not limited to legal costs):

- 41.1.1. in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
  - 41.1.2. in connection with any administrative proceedings relating to that person's position with the Company, except proceedings which give rise to civil or criminal proceedings against that person in which judgement is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving lack of good faith; or
  - 41.1.3. in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which the relief is granted to that person under the Law by the court.
- 41.2. Every person who is or has been a Director, Company Secretary or executive officer of the Company is indemnified, to the extent permitted by law, out of the Company's property against any liability to another person (other than the Company or its related bodies corporate) as such an officer unless the liability arises out of conduct involving a lack of good faith.
- 41.3. The Company may pay a premium for a contract insuring a person who is or has been a Director, Company Secretary or executive office of the Company or its related bodies corporate against:
- 41.3.1. any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Law; and
  - 41.3.2. any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome.
- 41.4. The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Company Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability arising out of conduct by the person in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:
- 41.4.1. the Company is forbidden by legislation to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the legislation applies in the particular case); or
  - 41.4.2. the contract would, if the Company paid the premium, be made void by legislation.

## **42. INTERESTED DIRECTORS**

- 42.1. In addition to any requirement in the Law, a Director must not vote in respect of any contract or proposed contract with the Company in which he or she is in any way, whether directly or indirectly, interested or in respect of any matter arising out of or in connection with such a contract or proposed contract.
- 42.2. A vote by a Director in contravention of clause 42.1 is of no effect and is not counted.
- 42.3. Each Director must disclose his or her interest in any matter to the Company in accordance with the Law and the Company Secretary must record all such disclosures in the minutes of the relevant Directors' meeting.
- 42.4. In clause 42.1, a reference to a contract or proposed contract with the Company includes but is not limited to the provision of a financial benefit by the Company.

## **43. FINANCE COMMITTEE**

- 43.1. The Directors must establish and maintain a Finance Committee as a Directors' committee in accordance with clause 26 and with functions that include:
  - 43.1.1. helping the Company and the Directors to comply with obligations under this Constitution and the Law; and
  - 43.1.2. providing a forum for communication between the Directors, the senior managers of the Company and the internal and external auditors of the Company.

## **44. WINDING UP**

- 44.1. Each Member undertakes to contribute the required amount (not exceeding \$10) to the Company's property if the Company is wound up while that person is a Member (or within one year after he or she ceases to be a Member) for payment of the Company's debts and liabilities (contracted before the person ceased to be a Member) and the costs and expenses of the winding up.
- 44.2. The contribution under clause 44.1 is for:
  - 44.2.1. payment of the Company's debts and liabilities contracted before they ceased to be a Member; and
  - 44.2.2. the costs of winding up.

## **45. SURPLUS ASSETS**

- 45.1. If the Company is wound up or dissolved and after satisfaction of all its debts and liabilities there is any property remaining, this property must only be paid or distributed to another institution:
  - 45.1.1. which has similar objects to those contained in clause 4; and

- 45.1.2. whose governing documents prohibit the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution and at least to the extent set out in clause 5.
- 45.2. The identity of the institution referred to in clause 45.1 will be determined by the Members by ordinary resolution at or before the time of the winding up or dissolution of the Company.
- 45.3. Where the Company has been endorsed as a deductible gift recipient, either under Subdivision 30-BA of the Income Tax Assessment Act as an entity or in relation to a fund or an institution it operates, then where:
- 45.3.1. the Company is wound up;
- 45.3.2. the fund or institution is wound up; or
- 45.3.3. the endorsement of the Company or the fund under Subdivision 30-BA of the Income Tax Assessment Act is revoked,
- any surplus assets of the Company, fund or institution (whichever is relevant) remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 5.2 and are deductible gift recipients.
- 45.4. Where the Company operates more than one fund or institution for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked only in relation to one of those funds, or institutions then it may transfer any surplus assets of that fund or institution after payment of all liabilities to any other fund or institution for which it is endorsed as a deductible gift recipient.

## **46. CONFLICTS OF INTEREST**

### **46.1. Disclosure of conflict of interest**

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- 46.1.1. to the Directors; or
- 46.1.2. if all of the Directors have the same conflict of interest, to the Member as soon as reasonably practicable.

### **46.2. Disclosure recorded in minutes**

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

### **46.3. Material personal interest**

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 46.4:

- 46.3.1. be present at the meeting while the matter is being discussed; or

46.3.2. vote on the matter.

#### **46.4. Present and voting**

A Director with a material personal interest in a matter may still be present and vote if:

46.4.1. their interest arises because they are a Member of the Company and the other Members have the same interest;

46.4.2. 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 (see clause 41);

46.4.3. their interest relates to a payment by the Company under clause 41, or any contract relating to an indemnity that is allowed under the Corporations Act;

46.4.4. ASIC makes an order allowing the Director to vote on the matter; or

46.4.5. the Directors who do not have material personal interest in the matter pass a resolution that:

46.4.5.1. identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Company; and

46.4.5.2. says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

#### **47. AMENDMENT TO CONSTITUTION**

47.1. Subject to clause 47.3, this Constitution may only be amended by resolution of the Member.

47.2. IF the Company is a registered charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth), the Member must not pass a resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

47.3. Any modification of this Constitution takes effect on the date the resolution is recorded and signed, or any later date specified, or provided for, in the resolution.