



Spiritual
Health
Association

CONSTITUTION OF THE Spiritual Health Association Limited

Australian Company Number (ACN) 632 346 439
Australian Business Number (ABN) 66 632 346 439

A COMPANY LIMITED BY GUARANTEE

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Preliminary

1. Name of the Company

The name of the Company is Spiritual Health Association Ltd (the **Company**).

2. Type of Company

The **Company** is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each Member must contribute an amount not more than \$10 (the guarantee) to the property of the **Company** if the **Company** is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

4.1 Debts and liabilities of the **Company** incurred before the Member stopped being a Member; or

4.2 Costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 66 and 68.

Charitable purposes and powers

6. Purpose

6.1 The Company's **purpose** is to advance health through advocacy for and promotion of compassionate, person-centred spiritual care in health services.

6.2 The Company will carry out this purpose by:

6.2.1 engaging with stakeholders to enable the provision of best practice spiritual care;

6.2.2 developing and promoting evidence-based spiritual care to improve health outcomes and patient experience;

6.2.3 enabling the development and availability of a skilled workforce to advance the delivery of spiritual care;

6.2.4 partnering with faith communities to provide quality spiritual care services;

6.2.5 doing all such things as are incidental or conducive to the attainment of the purpose of the **Company**.

6.3 Without limiting clause 6.2, the **Company** may pursue the purpose by:

6.3.1 raising money to further the purpose and secure sufficient funds to pursue the purpose; and

6.3.2 receiving any funds and applying those funds in a manner that best attains the purpose.

7. Powers

7.1 Subject to clause 8, the **Company** has the following powers, which may only be used to carry out its purpose set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the **Corporations Act**.

8. Benevolent, charitable and not-for-profit

8.1 The **Company** must be applied solely towards the purpose set out in clause 6 and must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 8.2 and 65.

8.2 Clause 8.1 does not stop the **Company** from paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **Company**, provided it is done in good faith.

9. Amending the constitution

9.1 Subject to clause 9.2, the Members may amend this constitution by passing a **special resolution**.

9.2 The Members must not pass a **special resolution** that amends this constitution if passing it causes the **Company** to no longer be a charity.

Membership

10. Membership

10.1 The Members of the **Company** are to be only eligible incorporated Organisations (**Eligible Incorporated Organisations**).

10.2 An Eligible Incorporated Organisation is an Organisation which:

- (a) supports the purpose of the **Company**;
- (b) provides as a component of their activities
 - i. spiritual care;
 - ii. related education;
 - iii. related research; or
 - iv. related service planning and coordination; and
- (c) a Member must belong to one of the following categories:
 - i. faith community;
 - ii. health service;
 - iii. education provider;

- iv. research organisation; or
 - v. any other organisation as determined from time to time by the Board.
- 10.3 Each Member may, by written notice to the **Company**, appoint and remove a representative to represent the Member under this constitution.
- 10.4 Membership categories will be determined by the Board at its discretion from time to time.

11. Form of Application

- 11.1 An application for membership that is submitted after the date the **Company** is registered must comply with the following requirements:
- 11.1.1 It must be signed by the applicant.
 - 11.1.2 It must be accompanied by the annual subscription fee (if any).
 - 11.1.3 It must be accompanied by such documents or evidence as to qualifications for membership as the Board may in its absolute discretion determine from time to time.

12. Admission to membership

- 12.1 Any Organisation that considers that it satisfies the eligibility criteria set out in clause 10.2 may apply for membership of the **Company**, in the manner prescribed by the Board from time to time.
- 12.2 The Board must consider an application for membership that is submitted in accordance with clause 12.1 as soon as practicable after its receipt and determine (with reference to the eligibility criteria set out in clause 10.2 but otherwise in the Board's absolute discretion) the admission or rejection of the applicant.
- 12.3 The Board does not have to give reasons for admitting or rejecting an applicant for membership.
- 12.4 If an application for membership is rejected, the Secretary must notify the applicant in writing of that fact within a reasonable period and refund to the applicant any fee paid by the applicant.
- 12.5 If an applicant is accepted for membership, the Secretary must notify the applicant of admission in such form as the Board may determine from time to time, and the name and details of the applicant must be entered in the Register.
- 12.6 An applicant that is accepted for membership becomes a Member when the applicant's name is entered in the Register.

13. Register of Members

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

13.2 The following details must be entered in the Register in respect of each Member:

13.2.1 The full name of the Member

13.2.2 The registered address of the Member

13.2.3 The date on which the entry of the Member's name in the Register is made.

13.3 The Register must also show the following information, which may be kept separately from the rest of the Register:

13.3.1 The name and details of each entity which stopped being a Member within the last seven years.

13.3.2 The date on which each such entity stopped being a Member.

13.4 The **Company** may also keep further registers recording other information about Members that is not required to be kept under the Corporations Act, for example:

13.4.1 The telephone number, facsimile number and email address (as applicable) of the Member.

13.4.2 The full name, address, telephone number, facsimile number and email address (as applicable) of the Member's representative.

13.4.3 Such other information as the Board may require.

13.5 Each Member must notify the Secretary in writing of any change in that Member's name, address, telephone or facsimile number or email address within one month after the change.

14. Annual Subscription

14.1 The annual subscription payable by a Member is such sum as the Board may prescribe from time to time. For the avoidance of doubt, the annual subscription may be different for different Members and may be nil.

14.2 Where the Board has prescribed that an annual subscription is payable, all annual subscriptions are due and payable in advance by no later than 30 June in each year.

14.3 If an Organisation applies for membership after 1 July in any year, the Board may reduce the annual subscription payable by the applicant in such manner as the Board considers fit.

14.4 The Board may prescribe that the annual fee payable by a Member prior to the first Annual General Meeting occurring will represent full payment of their subscription for the period ending on 30 June in the following year, even if that period is longer or shorter than 12 months.

14.5 **Unpaid annual subscriptions**

A Member ceases to be entitled to any of the rights or privileges of membership if any annual subscription payable by the Member in accordance with this clause 14 remains unpaid for two months after it becomes payable and a notice of default is given to the Member pursuant to a resolution of the Board. However, the rights or privileges of membership may be reinstated on payment of all arrears if the Board (in its absolute discretion) so resolves.

15. Removal and cessation of membership

- 15.1 A Member may resign from membership of the **Company** by giving written notice to the Secretary.
- 15.2 Without limiting clause 15.11, the resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.
- 15.3 Without limiting clause 15.11, a Member ceases to be a Member immediately upon the determination of the Board due to any Termination Event occurring in respect of the Member.
- 15.4 If a Member has not paid all arrears of annual subscriptions in accordance with clause 14.2 or, if paid, the Member's rights and privileges are not reinstated by the Board in accordance with clause 14.5, all of the following apply in respect of that Member:
 - 15.4.1 The Member remains liable for all the obligations and liabilities of membership for six months after the date of notification under clause 15.2;
 - 15.4.2 Without limiting clause 15.11, the Member ceases to be a Member and the Member's name must be removed from the Register at the end of the six-month period.
- 15.5 The Board may convene a meeting of Members to consider and vote on the removal of a Member from the Register if the Board in its absolute discretion resolves that the Member is no longer considered suitable for membership of the **Company** including where (in the Board's opinion):
 - 15.5.1 The Member no longer satisfies the eligibility criteria set out in clause 10.2; or
 - 15.5.2 The Member has committed any act or omission which is unbecoming of a Member or which has adversely affected the **Company's** interests or has the potential to do so.
- 15.6 The Board must provide at least two month's written notice to any Member of any intention to remove the Member from the Register including the grounds on which the proposed removal is based, so as to enable the Member to provide any written representations to the **Company**.

- 15.7 Where a Member referred to in clause 15.6 makes any written representations and the Member requests that the representations be notified to Members of the **Company**, the **Company** must do both of the following:
- 15.7.1 State that the representations have been made in any notice of the resolution given to Members of the **Company**.
- 15.7.2 Send a copy of the representations to every Member of the **Company** to whom the notice of the meeting has been or is sent.
- 15.8 The requirements in clause 15.7 do not apply to the **Company** if the **Company** receives the representations too late for it to satisfy those requirements:
- 15.8.1 If a copy of the representations is not so sent because they were received too late or because of the **Company's** default, the Member referred to in clause 15.6 may, without affecting any right to be heard orally, require the representations be read out at the meeting.
- 15.9 Despite clauses 15.7 and 15.8, copies of the representations need not be sent out and the representations need not be read out at the meeting if the Board is satisfied on reasonable grounds that the rights conferred by clause 15.7 are being abused, including to secure publicity for a defamatory matter.
- 15.10 An ordinary resolution of Members is required to pass the necessary resolution to remove the Member referred to in clause 15.6.
- 15.11 Resignation from membership in accordance with clause 15.1, or a Member's membership ceasing in accordance with clause 15.3, clause 15.4 or clause 15.10, does not limit the Member's liability under this constitution, and despite that cessation of membership the former Member continues to be liable for all fees and other money owing to the **Company** as at the date of the cessation of its membership of the **Company** and for any amount payable in accordance with clause 4.

General Meetings of Members

16 Convening of General Meetings

- 16.1 The Board may convene a General Meeting.
- 16.2 If Members with at least five percent (5%) of the votes that may be cast at a General Meeting make a written request to the company for a General Meeting to be held, the Board must:
- 16.2.1 within 21 days of the Members request, give all Members notice of a General Meeting, and
- 16.2.2 hold the General Meeting within two months of the Members request.
- 16.3 A General Meeting (called the Annual General Meeting) must be held at least once in every calendar year.

16.4 A General Meeting may be held at one or more venues, or wholly or partly online or virtually, using any technology that gives the Members a reasonable opportunity to participate, including to hear and be heard. Anyone using this technology is taken to be present in person at the General Meeting.

17 Notice of general meetings

17.1 The Board may give notice of a General Meeting by any form of communication permitted by the Corporations Act.

17.1.1 The notice of a General Meeting must specify:

- (i) the place, the day and the hour of meeting;
- (ii) if the meeting is to be held using technology: details of the technology that will be used to facilitate the meeting;
- (iii) the nature of the business to be transacted; and
- (iv) any other matters as are required by the Corporations Act.

17.1.2 The accidental omission to give notice of any General Meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate resolution passed at the General Meeting.

18 Cancellation at General Meetings

18.1 The Board may cancel a General Meeting, other than a General Meeting which the Board is required to convene and hold under the Corporations Act.

18.2 The Board may cancel a General Meeting if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in notice of meeting.

19 Quorum at general meetings

19.1 The Members in General Meeting may not transact any business unless a quorum of Members is present at the time when the meeting proceeds to business.

19.2 Except as otherwise set out in this constitution, a quorum for the purposes of a General Meeting is the greater of:

19.2.1 Six Members entitled to vote at the meeting; and

19.2.2 The number equal to 40% of the total number of Members entitled to vote at the meeting, rounded up to the next highest whole number.

19.3 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chair:

19.3.1 If the meeting was convened by or on the requisition of Members, it must be dissolved.

19.3.2 Otherwise it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.

19.4 If a meeting has been adjourned to another time and place determined by the Board, not less than five business days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

20 Quorum at adjourned General Meetings

20.1 At the adjourned meeting, the quorum requirements in clause 19.2 apply, but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

21 Appointment of chair of General Meetings

21.1 The **Chair** is entitled to chair **General Meetings**.

21.2 If there is no Chair, or the Chair is not present within 30 minutes after the time appointed for the commencement of the General Meeting, or the Chair is unable or unwilling to act as chair of the meeting or of part of the meeting, then the following persons shall preside as chair of the General Meeting in the order of precedence:

21.2.1 the Deputy Chair;

21.2.2 any other Director present who has been appointed as chair of the General Meeting by the Members present; or

21.2.3 a Member present chosen by a majority of the Members.

22 Role of the chair of General Meetings

22.1 The chair of a General Meeting is responsible for the conduct of the **General Meeting**, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor [if any]).

22.2 The chair of a General Meeting does not have a casting vote.

23 Adjournment of General Meetings

23.1 If a quorum is present, a **General Meeting** must be adjourned if a majority of **Members present** direct the chair to adjourn it.

23.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

24 Members' resolutions and statements

24.1 Members with at least five percent (5%) of the votes that may be cast on a resolution may give:

- 24.1.1 written notice to the **Company** of a resolution they propose to move at a **General Meeting** (Members' resolution); and/or
- 24.1.2 a written request to the Board that the **Company** give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a **General Meeting** (Members' statement).
- 24.2 A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- 24.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.
- 24.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 24.5 The percentage of votes that Members have (as described in clause 24.1) is to be worked out as at midnight before the request or notice is given to the **Company**.
- 24.6 If the **Company** has been given notice of a Members' resolution under clause 24.1.1, the resolution must be considered at the next **General Meeting** held more than two months after the notice is given.
- 24.7 This clause does not limit any other right that a Member has to propose a resolution at a **General Meeting**.
- 24.8 The **Company** does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:
 - 24.8.1 it is more than 1,000 words long;
 - 24.8.2 the Directors consider it may be defamatory;
 - 24.8.3 the Members who proposed the resolution or made the request have not paid the **Company** enough money to cover the cost of sending the notice of the proposed Members' resolution or a copy of the Members' statement to Members; or
 - 24.8.4 in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a **General Meeting** or is otherwise not a valid resolution able to be put to the Members as determined by the Board.

25 Circular resolutions of Members

- 25.1 Subject to clause 25.3, the Directors may put a resolution to the Members to pass a resolution without a **General Meeting** being held (a circular resolution).

- 25.2 The Directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- 25.3 Circular resolutions cannot be used:
- 25.3.1 for a resolution to remove an auditor, appoint a Director or remove a Director;
 - 25.3.2 for passing a **special resolution**; or
 - 25.3.3 where the **Corporations Act** or this constitution requires a meeting to be held.
- 25.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 25.5 or clause 25.6.
- 25.5 Members may sign:
- 25.5.1 a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - 25.5.2 separate copies of that document, as long as the wording is the same in each copy.
- 25.6 The **Company** may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

26 Voting rights of Members

- 26.1 Each Member has one vote.

27 Challenge to Member's right to vote

- 27.1 A Member or the chair may only challenge a person's right to vote at a General Meeting at that meeting.
- 27.2 If a challenge is made under clause 27.1, the chair must decide whether or not the person may vote. The chair's decision is final.

28 How voting is carried out

- 28.1 Voting must be conducted and decided by:
- 28.1.1 a show of hands;
 - 28.1.2 a vote in writing; or
 - 28.1.3 another method chosen by the chair that is fair and reasonable in the circumstances.

- 28.2 Before a vote is taken, the chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 28.3 On a show of hands, the chair's decision is conclusive evidence of the result of the vote.
- 28.4 The chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

29 When and how a vote in writing must be held

- 29.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
 - 29.1.1 at least five **Members present**
 - 29.1.2 **Members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - 29.1.3 the chair.
- 29.2 A vote in writing must be taken when and how the chair directs, unless clause 29.3 applies.
- 29.3 A vote in writing must be held immediately if it is demanded under clause 29.1:
 - 29.3.1 for the election of a chair under clause **Error! Reference source not found.**; or
 - 29.3.2 to decide whether to adjourn the meeting.
- 29.4 A demand for a vote in writing may be withdrawn.

30 Appointment of proxies

- 30.1 A Member may appoint a proxy to attend and vote at a **General Meeting** on their behalf.
- 30.2 A proxy does not need to be a Member.
- 30.3 A proxy appointed to attend and vote for a Member has the same rights as the Member to:
 - 30.3.1 speak at the meeting;
 - 30.3.2 vote in a vote in writing (but only to the extent allowed by the appointment); and
 - 30.3.3 join in to demand a vote in writing under clause 29.1.
- 30.4 An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:
 - 30.4.1 the Member's name and address;
 - 30.4.2 the **Company's** name;
 - 30.4.3 the proxy's name or the name of the office held by the proxy; and

- 30.4.4 the meeting(s) at which the appointment may be used.
- 30.5 A proxy appointment may be standing (ongoing).
- 30.6 Proxy forms must be received by the **Company** at the address stated in the notice under clause 17 or at the **Company's** registered address at least 48 hours before a meeting.
- 30.7 A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- 30.8 Unless the **Company** receives written notice before the start or resumption of a **General Meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
 - 30.8.1 revokes the proxy's appointment, or
 - 30.8.2 revokes the authority of a representative or agent who appointed the proxy.
- 30.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

31 Voting by proxy

- 31.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).
- 31.2 When a vote in writing is held, a proxy:
 - 31.2.1 does not need to vote, unless the proxy appointment specifies the way they must vote
 - 31.2.2 if the way they must vote is specified on the proxy form, must vote that way, and
 - 31.2.3 if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

32 Representatives

- 32.1 A Member may appoint a natural person as its sole representative in any matters connected with the Company, including as permitted by the Corporations Act.
- 32.2 A Member may appoint, and remove, its representative for the time being by written notice to the Secretary in such form as the Board may in its absolute discretion prescribe from time to time.
- 32.3 A document executed by a Member in accordance with section 127 of the Corporations Act (where applicable to the Member) is rebuttable evidence of the appointment, or removal, of the named representative.
- 32.4 For the avoidance of doubt, a representative is entitled to exercise the powers of the Member which appointed him, or her (subject to clause 32.2) and a representative present must be counted towards a quorum on the basis that the

Member is to be considered personally present at the General Meeting by its representative.

- 32.5 Subject to the terms of their appointment, a person attending as a representative of a Member appointed in accordance with this constitution, has all the powers of a Member at a meeting of Members, except where expressly stated to the contrary.

Board and Directors

33 Number of Directors

- 33.1 The **Company** must have at least three and no more than nine Directors comprising up to five representatives of Members of the **Company** elected under clause 34.1 (Elected Directors) and up to four Directors appointed by the Board under clause 34.7 (Appointed Directors).

34 Election and appointment of directors

- 34.1 Elections of Directors will be held prior to the Annual General Meeting in accordance with the By-laws.
- 34.2 If the number of approved nominations exceeds the number of vacancies to be filled, a ballot will be held prior to the Annual General Meeting, which may be an electronic ballot as determined by the Board.
- 34.3 If the number of nominations received is equal to or less than the number of vacant positions to be filled, then the candidates nominated shall be declared elected at the Annual General Meeting following the close of nominations, subject to endorsement of the candidates by separate resolutions at the Annual General Meeting.
- 34.4 Any unfilled positions as a result of insufficient nominations or a candidate not being endorsed by the Members shall be deemed casual vacancies.
- 34.5 A person is eligible for election as an Elected Director of the **Company** if they:
- 34.5.1 are a representative of a Member of the **Company** (appointed under clause 32)
 - 34.5.2 are nominated by two representatives of Members entitled to vote (unless the person was previously elected as a Director at a **General Meeting** and has been a Director since that meeting),
 - 34.5.3 give the **Company** their signed consent to act as a Director of the **Company**, and
 - 34.5.4 are not ineligible to be a Director under the **Corporations Act** or a responsible person of a registered charity under the **ACNC Act**.
- 34.6 If a casual vacancy occurs in the position of an Elected Director, the Board may appoint a person to fill the casual vacancy provided that person satisfies the

requirements under clause 34.5 or other such criteria that may be determined by the Board from time to time.

34.7 The Board may appoint up to four Directors, as Appointed Directors upon such terms and conditions as the Board determines if the appointees:

34.7.1 give the **Company** their signed consent to act as a Director of the **Company**; and

34.7.2 are not ineligible to be a Director of the **Company** under the **Corporations Act** or are not ineligible to be a responsible person of a registered charity under the **ACNC Act**.

34.8 If the number of Directors is reduced to fewer than three or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to three (or higher if required for a quorum) or calling a **General Meeting**, but for no other purpose.

35 Election of Chair and Deputy Chair

35.1 The Board may elect a Director as Chair to chair Directors' Meetings, as follows:

35.1.1 The Board will by resolution elect a Director as Chair at the first Directors' Meeting following the Annual General Meeting to hold office for a maximum period until the commencement of the first Directors' Meeting following the next Annual General Meeting.

35.1.2 The Board may by resolution remove the Chair at any time and appoint another Director as Chair.

35.2 The Board may elect a Director as Deputy Chair to chair Directors' Meetings, as follows:

35.2.1 The Board will by resolution elect a Director as Deputy Chair at the first Directors' Meeting following the AGM to hold office for a maximum period until the commencement of the first Directors' Meeting following the next AGM.

35.2.2 The Board may by resolution remove the Deputy Chair at any time and appoint another Director as Deputy Chair.

35.3 If no Chair is elected, or if at any Directors' Meeting the Chair is not present within 30 minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chair may act as chair for that meeting.

35.4 If no Chair or Deputy Chair is elected, or if at any Directors' Meeting the Chair and the Deputy Chair are not present within 30 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present must choose one of their number to chair that meeting.

36 Term of Office for Chair and Deputy Chair

- 36.1 Provided that he or she remains a Director, a retiring Chair or Deputy Chair is eligible for re-election to that office and there is no limit to the number of consecutive terms that he or she may serve. However, and without limiting the Board's discretion, there will be a non-binding preference that no Director serves as Chair for more than six consecutive years.

37 Term of office of Directors

- 37.1 At each Annual **General Meeting**:
- 37.1.1 any Elected Director, appointed by the Directors to fill a casual vacancy must retire, and
 - 37.1.2 at least one-third of the remaining Elected Directors must retire.
- 37.2 The Directors who must retire at each Annual **General Meeting** under clause 37.1.2 will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- 37.3 Other than a Director appointed under clause 34.6, an Elected Director's term of office starts at the end of the **Annual General Meeting** at which they are elected and ends at the end of the **Annual General Meeting** at which they retire.
- 37.4 Each Elected Director must retire at least once every three years.
- 37.5 A Director who retires under clause 37.1 may nominate for election or re-election, subject to clause 37.7.
- 37.6 The term of office of an Appointed Director commences at the time of the resolution of the Board appointing the Director and ends at such time as the Board determines at the time of appointment, being no more than two years later. If eligible, an Appointed Director whose term expires maybe re-appointed.
- 37.7 A Director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution**.

38 When a Director stops being a Director

- 38.1 A Director stops being a Director if they:
- 38.1.1 give written notice of resignation as a Director to the **Company**,
 - 38.1.2 die or is physically incapable of fulfilling the Director's duties as a Director,
 - 38.1.3 are removed as a Director by a resolution of the Members,
 - 38.1.4 are a representative of a Member, and that Member stops being a Member,
 - 38.1.5 are a representative of a Member, and the Member notifies the **Company** that the representative is no longer a representative,

- 38.1.6 are absent for three consecutive Directors' Meetings without approval from the Directors,
- 38.1.7 become ineligible to be a Director of the **Company** under the **Corporations Act** or a responsible person of a registered charity under the **ACNC Act**,
- 38.1.8 become a bankrupt or makes any arrangement or composition with personal creditors generally,
- 38.1.9 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,
- 38.1.10 becomes a paid employee of the **Company**,
- 38.1.11 are convicted on indictment of an offence and the Board does not at the next Directors' Meeting after that conviction resolve to confirm the Director's appointment to the office of Director; or
- 38.1.12 fail to disclose a material personal interest in breach of the law unless at its next Directors' Meeting the Board resolves otherwise.

Powers of the Board

39 Powers of the Board

- 39.1 The Board is responsible for managing and directing the activities of the **Company** to achieve the purpose set out in clause 6.
- 39.2 The Board may use all the powers of the **Company** except for powers that, under the **Corporations Act** or this constitution, may only be used by the Members in General Meeting or otherwise.
- 39.3 The Board must decide on the responsible financial management of the **Company** including:
 - 39.3.1 any suitable written delegations of power under clause 40, and
 - 39.3.2 how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 39.4 The Board cannot remove a Director or auditor. Directors and auditors may only be removed by a Members' resolution at a **General Meeting**.

40 Delegation of Board powers

- 40.1 The Board may delegate any of their 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.
- 40.2 The delegation must be recorded in the **Company's** minute book.

41 Payments to Directors

- 41.1 The **Company** must not pay fees to a Director for acting as a Director.

- 41.2 The **Company** may:
- 41.2.1 pay a Director for work they do for the **Company**, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - 41.2.2 reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the **Company**.
- 41.3 Any payment made under clause 41.2 must be approved by the Directors.
- 41.4 The **Company** may pay premiums for insurance indemnifying Directors, as allowed for by law (including the **Corporations Act**) and this constitution.

42 Execution of documents

- 42.1 The **Company** may execute a document without using a common seal if the document is signed by:
- 42.1.1 two Directors of the **Company**; or
 - 42.1.2 a Director and the Secretary.

Duties of Directors

43 Duties of Directors

- 43.1 The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:
- 43.1.1 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**;
 - 43.1.2 to act in good faith in the best interests of the **Company** and to further the charitable purpose(s) of the **Company** set out in clause 6
 - 43.1.3 not to misuse their position as a Director;
 - 43.1.4 not to misuse information they gain in their role as a Director;
 - 43.1.5 to disclose any perceived or actual material conflicts of interest in the manner set out in clause 44;
 - 43.1.6 to ensure that the financial affairs of the **Company** are managed responsibly; and
 - 43.1.7 not to allow the **Company** to operate while it is insolvent.

44 Conflicts of interest

- 44.1 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 Directors' Meeting (or that is proposed in a circular resolution):
- 44.1.1 to the other Directors; or

- 44.1.2 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.
- 44.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 44.3 Each Director who has a material personal interest in a matter that is being considered at a Directors' Meeting (or that is proposed in a circular resolution) must not, except as provided under clauses 44.4:
 - 44.3.1 be present at the meeting while the matter is being discussed, or
 - 44.3.2 vote on the matter.
- 44.4 A Director may still be present and vote if:
 - 44.4.1 their interest arises because they are a Member of the **Company**, and the other Members have the same interest
 - 44.4.2 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 61)
 - 44.4.3 their interest relates to a payment by the **Company** under clause 60 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - 44.4.4 the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter, or
 - 44.4.5 the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) 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
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

Directors' Meeting

45 Convening of Directors' Meeting

- 45.1 The Board may meet, including by technological means, for the dispatch of business, and adjourn and otherwise regulate its meetings in the manner it sees fit. The Board may meet as often as it considers is necessary for the Board to discharge its duties and responsibilities.

46 Notice of Directors' Meeting

- 46.1 A Director may call a Directors' Meeting by giving reasonable notice to all of the other Directors.

- 46.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

47 Quorum at Directors' Meeting

- 47.1 Unless the Directors determine otherwise, the quorum for a Directors' Meeting is a majority (more than 50%) of Directors.
- 47.2 A quorum must be present for the whole Directors' Meeting.

48 Using technology to hold Directors' Meeting

- 48.1 The Directors may hold their meetings by using any technology that is agreed to by all of the Directors.
- 48.2 The Directors' agreement may be a standing (ongoing) one.
- 48.3 A Director may only withdraw their consent within a reasonable period before the meeting.

49 Passing Directors' resolutions

- 49.1 A Directors' resolution, including a circular resolution, must be passed by a majority of the votes cast by directors present and/or entitled to vote on the resolution.

50 Circular resolutions of Directors

- 50.1 The Directors may pass a circular resolution without a Directors' Meeting being held.
- 50.2 A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 50.3 or clause 50.4.
- 50.3 Each Director may sign:
- 50.3.1 a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - 50.3.2 separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 50.4 The **Company** may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 50.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 50.3 or clause 50.4.

Secretary

51 Appointment and role of Secretary

- 51.1 The **Company** must have at least one Secretary, who may also be a Director.

- 51.2 A Secretary must be appointed by the Directors (after giving the **Company** their signed consent to act as Secretary of the **Company**) and may be removed by the Directors.
- 51.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 51.4 The role of the Secretary includes:
 - 51.4.1 maintaining a register of the **Company's** Members; and
 - 51.4.2 maintaining the minutes and other records of **General Meetings** (including notices of meetings), Directors' Meetings and circular resolutions.

Minutes and records

52 Minutes and records

- 52.1 The **Board** must, within one month, make and keep the following records:
 - 52.1.1 minutes of proceedings and resolutions of **General Meetings**;
 - 52.1.2 minutes of circular resolutions of Members;
 - 52.1.3 a copy of a notice of each **General Meeting**; and
 - 52.1.4 a copy of a Members' statement distributed to Members under clause 24.
- 52.2 The **Board** must, within one month, make and keep the following records:
 - 52.2.1 minutes of proceedings and resolutions of Directors' Meetings; (including meetings of any committees); and
 - 52.2.2 minutes of circular resolutions of Directors.
- 52.3 To allow Members to inspect the **Company's** records:
 - 52.3.1 the **Board** must give a Member access to the records set out in clause 52.1; and
 - 52.3.2 the Directors may authorise a Member to inspect other records of the **Company**, including records referred to in clause 52.2 and clause 53.1.
- 52.4 The Directors must ensure that minutes of a **General Meeting** or a Directors' Meeting are signed within a reasonable time after the meeting by:
 - 52.4.1 the chair of the meeting; or
 - 52.4.2 the chair of the next meeting.
- 52.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.

53 Financial and related records

- 53.1 The **Board** must make and keep written financial records that:
 - 53.1.1 correctly record and explain its transactions and financial position and performance; and
 - 53.1.2 enable true and fair financial statements to be prepared and to be audited.
- 53.2 The **Board** must also keep written records that correctly record its operations.
- 53.3 The **Board** must retain its records for at least seven years.
- 53.4 The Directors must take reasonable steps to ensure that the **Company's** records are kept safe.

By-laws

54 By-laws

- 54.1 The Directors may pass a resolution to make by-laws to give effect to this constitution.
- 54.2 Members and Directors must comply with by-laws as if they were part of this constitution.

Notice

55 Notice

- 55.1 Anything written to or from the **Company** under any clause in this constitution is written notice and is subject to clauses 55 to 58, unless specified otherwise.
- 55.2 Clauses 55 to 58 do not apply to a notice of proxy under clause 30.6.

56 Notice to the Company

- 56.1 Written notice or any communication under this constitution may be given to the **Company**, the Directors or the secretary by:
 - 56.1.1 delivering it to the **Company's** registered office;
 - 56.1.2 posting it to the **Company's** registered office or to another address chosen by the **Company** for notice to be provided;
 - 56.1.3 sending it to an email address or other electronic address notified by the **Company** to the Members as the **Company's** email address or other electronic address; or
 - 56.1.4 sending it to the fax number notified by the **Company** to the Members as the **Company's** fax number.

57 Notice to Members

- 57.1 Written notice or any communication under this constitution may be given to a Member:
- 57.1.1 in person;
 - 57.1.2 by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the member for service of notices;
 - 57.1.3 sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
 - 57.1.4 sending it to the fax number nominated by the Member as an alternative address for service of notices (if any); or
 - 57.1.5 if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).
- 57.2 If the **Company** does not have an address for the Member, the **Company** is not required to give notice in person.

58 When notice is taken to be given

58.1 A notice:

- 58.1.1 delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- 58.1.2 sent by post, is taken to be given on the third business day after it is posted with the correct payment of postage costs;
- 58.1.3 sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- 58.1.4 given under clause 57.1.5 is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

59 Company's financial year

- 59.1 The **Company's** financial year is 1 July to 30 June unless the Directors pass a resolution to change the financial year.

Indemnity, insurance and access

60 Indemnity

- 60.1 The **Company** indemnifies each officer of the **Company** out of the assets of the **Company**, to the relevant extent, against all losses and liabilities (including

costs, expenses and charges) incurred by that person as an officer of the **Company**.

60.2 In this clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.

60.2.1 In this clause, 'to the relevant extent' means:

- (i) to the extent that the **Company** is not precluded by law (including the **Corporations Act**) from doing so; and
- (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

60.3 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **Company**.

61 Insurance

61.1 To the extent permitted by law (including the **Corporations Act**), and if the Directors consider it appropriate, the **Company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Company** against any liability incurred by the person as an officer of the **Company**.

62 Directors' access to documents

62.1 A Director has a right of access to the financial records of the **Company** at all reasonable times.

62.2 If the Directors agree, the **Company** must give a Director or former Director access to:

- 62.2.1 certain documents, including documents provided for or available to the Directors; and
- 62.2.2 any other documents referred to in those documents.

Winding up

63 Winding up

63.1 The Company can only be wound up or dissolved voluntarily if pursuant to a special resolution of a General Meeting.

64 Surplus assets not to be distributed to Members

64.1 If the **Company** is wound up, any **surplus assets** must not be distributed to a Member or a former Member of the **Company**, unless that Member or former Member is a charity described in clause 65.1.

65 Distribution of surplus assets

- 65.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** including 'gift funds' defined in this clause, that remain after the **Company** is wound up must be distributed to one or more charities:
- 65.1.1 with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6; and
 - 65.1.2 which also prohibit the distribution of any **surplus assets** to its Members to at least the same extent as the **Company**, and
 - 65.1.3 that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).
- 65.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of Members at or before the time of winding up. If the Members do not make this decision, the **Company** may apply to the Supreme Court to make this decision.
- 65.3 If the **Company's** deductible gift recipient endorsement is revoked whether or not the **Company** is to be wound up, any surplus gift funds must be transferred to one or more charities that meet the requirements of this clause as decided by the Directors.
- 65.4 For the purpose of this clause:
- 65.4.1 'gift funds' means:
 - (i) gifts of money or property for the principal purpose of the company;
 - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the company; and
 - (iii) money received by the company because of such gifts and contributions.
- 65.4.2 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

Definitions and interpretation

66 Definitions

In this constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

Board means the board of Directors of the **Company**

Company means the **Company** referred to in clause 1

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

Chair means a person elected by the Directors to be the **Company's** chair under clause 35

Director means a person elected to the board under clause 34

General meeting means a meeting of Members and includes the **Annual General Meeting**, under clause 16

Insolvency Event means, in relation to a Member, anything that reasonably indicates that there is a significant risk that the Member is or will become unable to pay the Member's debts as they fall due. This includes any of the following (as applicable):

- (a) A meeting of the Member's creditors being called or held.
- (b) A step being taken to wind up the Member;
- (c) A step being taken to have a receiver, receiver and manager, administrator; liquidator or provisional liquidator appointed to the Member or any of its assets or such an appointment taking place;
- (d) The Member entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors; or
- (e) The Member ceasing or threatening to cease to carry on its main business.

Member present means, in connection with a **General Meeting**, a **Member present** by representative or by proxy at the meeting

Registered charity means a charity that is registered under the **ACNC Act**

Special resolution means a resolution that has been passed by at least 75% of the votes cast by **Members present** and entitled to vote on the resolution

Surplus assets means any assets of the **Company** that remain after paying all debts and other liabilities of the **Company**, including the costs of winding up

Termination Event means:

- (a) An Insolvency Event occurs in respect of the Member.
- (b) The Member is deregistered or otherwise dissolved.
- (c) If the Member is not a legal person, anything occurs that reasonably indicates that the Member has been dissolved or otherwise has ceased to conduct any activities. For the avoidance of doubt, this includes where the Member's activities are taken over or substantially taken over by another person (whether or not a legal person) but does not include where the Member merely changes the name under which its activities are conducted or where the Member is restructured as a legal person.

67 Reading this constitution with the Acts

- 67.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Company**.
- 67.2 While the **Company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

67.3 If the **Company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

67.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

68 Interpretation

68.1 In this constitution:

68.1.1 the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and

68.1.2 reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

69 Transition clauses

Board:

69.1 Upon this constitution becoming effective:

- (i) the Member elected Directors in office at the time will continue as Directors and will be designated as 'Elected Directors';
- (ii) the co-opted Board appointed Directors in office at the time will continue as Directors and will be designated as 'Appointed Directors'; and
- (iii) the Board may appoint additional Appointed Directors at any time so long as the number of Appointed Directors does not exceed four.

69.2 At the 2024 Annual General Meeting:

- (i) the Elected Directors who are due to retire under clause 37 will retire and if eligible may be nominated for re-election; and
- (ii) an election will be held in accordance with clause 34 to fill the number of vacancies equal to five minus the number of continuing Elected Directors.

69.3 At the 2025 annual general meeting:

- (i) the Elected Director(s) who is/are due to retire under clause 37 will retire and if eligible may be nominated for re-election; and
- (ii) an election will be held in accordance with clause 34 to fill the number of vacancies equal to five minus the number of continuing Elected Directors.

END OF CONSTITUTION