



**CONSTITUTION OF
HEART SUPPORT AUSTRALIA LIMITED**

Australian Company Number (ACN) 008 629 221
Australian Business Number (ABN) 34 008 629 221
A company limited by guarantee

15th November 2023

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Contents

1. Name of the company
2. Type of company
3. Limited liability of members
4. The guarantee
5. Definitions
6. Objects
7. Application of income and property |
Not for Profit
8. Establishment of a Gift Fund
9. Money and property credited to Gift
Fund
10. Use and records of gifts made to
Gift Fund
11. Winding up of Gift Fund
12. Establishment of a General Funds
13. Amending the constitution
14. Membership and register of
members
15. Who can be a member
16. How to apply to become a member
17. Directors decide whether to
approve membership
18. When a person becomes a member
19. When a person stops being a
member
20. Dispute resolution
21. Disciplining members
22. General meetings called by
directors
23. General meetings called by
members
24. Annual general meeting
25. Notice of general meetings
26. Quorum at general meetings
27. Auditor's right to attend meetings
28. Using technology to call & hold
meetings
29. Chair for general meetings
30. Role of the chair
31. Adjournment of meetings
32. Members' resolutions and
statements
33. Company must give notice of
proposed resolution or distributed
statement
34. Circular resolutions of members
35. How many votes a member has
36. Challenge to member's right to
vote
37. How voting is carried out
38. When and how a vote in writing
must be held
39. Appointment of proxy
40. Voting by proxy
41. Number of directors
42. Election and appointment of
directors
43. Election of chair & officebearers
44. Term of office

- | | |
|---------------------------------------------------------|----------------------------------------------------------------|
| 45. When a director stops being a director | 61. Financial and related records |
| 46. Powers of directors | 62. By-laws |
| 47. Delegation of directors' powers | 63. What is notice |
| 48. Payments to directors | 64. Notice to the company |
| 49. Execution of documents | 65. Notice to members |
| 50. Duties of directors | 66. When notice is taken to be given |
| 51. Conflicts of interest | 67. CompAny's financial year |
| 52. When the directors meet | 68. Indemnity |
| 53. Calling directors' meetings | 69. Insurance |
| 54. Chair for directors' meetings | 70. Directors' access to documents |
| 55. Quorum at directors' meetings | 71. Surplus assets not to be distributed to members |
| 56. Using technology to hold directors' meetings | 72. Distribution of surplus assets |
| 57. Passing directors' resolutions | 73. Definitions |
| 58. Circular resolutions of directors | 74. Reading this constitution with the Corporations Act |
| 59. Appointment and role of secretary | 75. Interpretation |
| 60. Minutes and records | |

Preliminary

1. NAME OF THE COMPANY

1.1 The name of the **company** is Heart Support Australia Limited (the **company**).

2. TYPE OF COMPANY

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

3. LIMITED LIABILITY OF MEMBERS

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

4. THE GUARANTEE

4.1 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:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member, or
- (b) costs of winding up.

5. DEFINITIONS

5.1 In this constitution, words and phrases have the meaning set out in clauses 73 and 75.

Charitable purposes and powers

6. OBJECTS

6.1 The **company's** objects are to stop secondary cardiac events and improve the lives of those living with heart disease in Australia, and to provide for the relief of suffering among:

- (a) heart or cardiac related surgery patients and their families;
- (b) persons contemplating, or recovering from, heart or cardiac related surgery and their families; and
- (c) persons suffer from medically diagnosed heart disease, heart conditions, or heart defects, and their families.

6.2 To pursue the charitable objects, the **company's** activities include (but are not limited to):

- (a) Providing a range of peer support programs and activities to patients and their families and/or carers both in hospital and out.
 - (b) Supporting and partaking in vital research to improve the lives of those living with heart disease.
 - (c) Supporting patient care, and being a source of information to assist heart disease patients.
 - (d) Making representations to governments and other bodies as required.
- 6.3 To assist in advancing its object, the **company** may:
- (a) borrow and raise funds, seek financial and other assistance by all lawful means, including conducting fundraising campaigns and seeking public funds;
 - (b) lend or invest such funds of the **company** as may not be immediately needed to or in such institutions and on such conditions as the Board of Directors may determine;
 - (c) having regard to the laws of trusts, undertake and execute any trusts (including accepting gifts, endowments, bequests or devises) made to the **company** generally or for any specific purpose; and
 - (d) generally, to do all such acts, matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of any objects of the **company**.
- 6.4 Solely for the purpose of carrying out the objects in this clause **Error! Reference source not found.**, but not otherwise, the **company** shall have the legal capacity and all the powers of a natural person. The powers set forth in subsection 124(1) of the **Corporations Act** shall apply to the **company** except insofar as they are inconsistent with the objects of the **company**.

Income and Property

7. APPLICATION OF INCOME AND PROPERTY | NOT FOR PROFIT

- 7.1 Subject to clause 7.2, the **company** must apply the profits (if any) or other income and property of the **company** solely towards the promotion and furtherance of the objects of the **company** set out in clause 6.1 and no portion of it may be paid or transferred, directly or indirectly whether by way of dividend, bonus or otherwise to any member of the **company**.
- 7.2 Nothing in clause 7.1 prevents **the company making any payment to any member** in good faith of:

- (a) reasonable and proper remuneration for **any services actually rendered or goods supplied** to the **company** in the ordinary and usual course of business of the **company**;
- (b) the payment or reimbursement of **out-of-pocket expenses** incurred on behalf of the **company** where the amount payable does not exceed an amount previously approved by the Board;
- (c) reasonable and proper **rent or fees** for premises leased or licensed by any member to the **company**;
- (d) money to any member, being a person engaged in any business or trade profession, for all usual **professional or other charges** for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
- (e) **interest** at a rate not exceeding a rate approved by the Board on money borrowed by the **company** from the member.

Gift and other Funds

8. ESTABLISHMENT OF A GIFT FUND

- 8.1 If the purposes of the **company** are held on application to the Commissioner of Taxation to constitute a charitable purpose, permitting the **company** to be an entity to which tax deductible gifts can be made, then the **company** shall set up, establish and maintain for the purpose a separate Gift Fund:
- (a) into which all gifts of money or property gifted for charitable purpose for the objects of the **company** are to be made; and;
 - (b) into which any money received by the **company** by reason of such gifts is to be credited; and
 - (c) that does not receive any other money or property other than the property or the money gifted to the **company** for charitable purpose.
- 8.2 For the purpose of establishing the Gift Fund, the **company** must establish a separate bank account in the name of the Gift Fund.
- 8.3 The name of the Gift Fund is the Heart Support Australia Gift Fund.

9. MONEY AND PROPERTY CREDITED TO GIFT FUND

- 9.1 Any and all monies and contributions paid to the **company** as **tax deductible gifts** (other than money and property credited to a General Funds account) shall be under the control of the Board and shall be deposited in a Gift Fund account with an accredited bank in the name of the **company** pursuant to clause 1.
- 9.2 Only contributions which are eligible to be **tax deductible gifts** within the meaning of *Income Tax Assessment Act 1997* (Cth) are to be credited to the Gift Fund.
- 9.3 If money or property is incorrectly made or credited to the Gift Fund, the money or property must be removed from the Gift Fund as soon as practicable.

10. USE AND RECORDS OF GIFTS MADE TO GIFT FUND

- 10.1 The **company** must use the following only in the furtherance of the **company's** objects:
- (a) gifts made to the Gift Fund; and
 - (b) any money received because of such gifts. This includes the proceeds of sale of gifted property and investment returns (including interest and rents) from gifted money and property.
- 10.2 Details of the Gift Fund (including all uses referred to in clause 10.1) must be properly recorded in records maintained by the **company**.
- 10.3 Gifts of property to the Gift Fund must be specifically identified as gifts to the Gift Fund.
- 10.4 The **company** may use the Gift Fund to pay for reasonable costs and expenses expressly relating to the administration of the Gift Fund.
- 10.5 The **company** must issue a receipt to the donor of gifts to the Gift Fund. A receipt must state:
- (a) the name of the Gift Fund, the name of the **company** and the donor and the amount gifted;
 - (b) the ABN of the **company**; and
 - (c) the fact that the receipt is for a gift.

11. WINDING UP OF GIFT FUND

- 11.1 At the earlier of either:
- (a) the winding up of the Gift Fund; or

- (b) the revocation of the **company's** endorsement as a Deductible Gift Recipient;

any surplus assets of the Gift Fund remaining after payment of liabilities attributable to it shall be transferred to another organisation:

- (c) whose objects are similar to those in clause 6;
- (d) to which income tax deductible gifts can be made;
- (e) which prohibits the distribution of surplus assets to its members to at least the same extent as the **company**; and
- (f) that is a registered charity,

as selected by the members by special resolution in a General Meeting.

11.2 If the **company** is wound up, clause 71 will apply.

12. ESTABLISHMENT OF A GENERAL FUNDS

12.1 The **company** may **establish and maintain separate funds** (“**General Funds**”) for any money or other property of the **company** which is not eligible for inclusion in the Gift Fund. The **company** shall apply the whole of the income of the General Fund in accordance with clause 6.

12.2 The **General Fund** shall

- (a) be **controlled** by the Board;
- (b) shall be **deposited in** a General Fund account with an accredited bank in the name of the **company**;
- (c) **consist of** any and all monies and contributions paid to the **company** other than money and property credited to a Gift Fund pursuant to clause 8 and may include (but not be limited to):
 - (i) any **real or personal property** of which the Board by the Constitution or by any established practice not inconsistent with the Constitution, has, or in the absence of any limited term lease, bailment or arrangement, would have the right of custody, control or management,
 - (ii) the **membership fees, levies and subscriptions** imposed by the Board,
 - (iii) **contributions and payments** to the **company** from any other source,
 - (iv) any **interest, rents, dividends** or other income derived from investment or use of the General Fund,

- (v) any **superannuation or long service leave or other fund** operated or controlled in accordance with rules relating to the **company** as a whole for the benefit of members, their employees, officers and employees of the **company**,
- (vi) any **sick pay fund, accident pay fund, funeral fund, or like fund** operated in accordance with rules relating to the **company** as a whole for the benefit of its members,
- (vii) any **property acquired** wholly or mainly by expenditure of the monies of the General Fund or derived from other assets of the General Fund,
- (viii) the **proceeds of any disposal** of parts of the General Fund,
- (ix) any **funds from any other source** due to or generated by the **company**

12.3 The Board may determine the proportion of **General Funds allocated to the operations of the company**, that are deemed necessary or convenient to achieve the objects of the **company**.

13. **AMENDING THE CONSTITUTION**

13.1 Subject to clause 13.2, the members may amend this constitution by passing a **special resolution**.

13.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

14. **MEMBERSHIP AND REGISTER OF MEMBERS**

14.1 The members of the **company** are those persons who were members at the adoption of this Constitution, or who are allowed to become members in accordance with clauses 15,16,17.

14.2 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
 - (i) name
 - (ii) address
 - (iii) any alternative address nominated by the member for the service of notices, and
 - (iv) date the member was entered on to the register.

- (b) for each person who stopped being a member in the last seven years:
 - (i) name
 - (ii) address
 - (iii) any alternative address nominated by the member for the service of notices, and
 - (iv) dates the membership started and ended.

14.3 The **company** must give current members access to the register of members.

14.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

15. WHO CAN BE A MEMBER

15.1 The members of the **company** are:

- (a) the directors who become members on election under clause 42,
- (b) registered volunteers who apply for membership under clause 16 and are accepted under clause 17, and
- (c) other persons who are accepted by the directors.

15.2 In this clause, a 'person' means an individual.

16. HOW TO APPLY TO BECOME A MEMBER

16.1 A person (as defined in clause 15.2) may apply to become a member of the **company** by writing to the secretary stating that they:

- (a) want to become a member,
- (b) support the purpose(s) of the **company**, and
- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

17. DIRECTORS DECIDE WHETHER TO APPROVE MEMBERSHIP

17.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.

17.2 If the directors approve an application, the secretary must as soon as possible:

- (a) enter the new member on the register of members, and

- (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 18).

17.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.

17.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 16.1(a), 16.1(b) or 16.1(c). In that case, by applying to be a member, the applicant agrees to those three matters.

18. WHEN A PERSON BECOMES A MEMBER

18.1 An applicant becomes a member when they are entered on the register of members.

19. WHEN A PERSON STOPS BEING A MEMBER

19.1 A person immediately stops being a member if they:

- (a) die,
- (b) resign, by writing to the secretary,
- (c) are expelled under clause 21, or
- (d) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

Dispute resolution and disciplinary procedures

20. DISPUTE RESOLUTION

20.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:

- (a) one or more members,
- (b) one or more directors, or
- (c) the **company**.

20.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 21 until the disciplinary procedure is completed.

20.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

20.4 If those involved in the dispute do not resolve it under clause 20.3, they must within 10 days:

- (a) tell the directors about the dispute in writing,
- (b) agree or request that a mediator be appointed, and
- (c) attempt in good faith to settle the dispute by mediation.

20.5 The mediator must:

- (a) be chosen by agreement of those involved, or
- (b) where those involved do not agree:
 - (i) for disputes between members, a person chosen by the directors, or
 - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.

20.6 A mediator chosen by the directors under clause 20.5(b)(i):

- (a) may be a member or former member of the **company**,
- (b) must not have a personal interest in the dispute, and
- (c) must not be biased towards or against anyone involved in the dispute.

20.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard,
- (b) allow those involved a reasonable chance to review any written statements,
- (c) ensure that those involved are given natural justice, and
- (d) not make a decision on the dispute.

21. DISCIPLINING MEMBERS

21.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:

- (a) the member has breached this constitution, or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the company.

- 21.2 At least 14 days before the directors' meeting at which a resolution under clause 21.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member,
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting,
 - (c) what the member is said to have done or not done,
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 21.3 Before the directors pass any resolution under clause 21.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
 - (b) speaking at the meeting.
- 21.4 After considering any explanation under clause 21.3, the directors may:
- (a) take no further action,
 - (b) warn the member,
 - (c) suspend the member's rights as a member for a period of no more than 12 months,
 - (d) expel the member,
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - (f) require the matter to be determined at a general meeting.
- 21.5 The directors cannot fine a member.
- 21.6 The secretary must give written notice to the member of the decision under clause 21.4 as soon as possible.
- 21.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 21.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of members

22. GENERAL MEETINGS CALLED BY DIRECTORS

- 22.1 The directors may call a **general meeting**.
- 22.2 If members with at least five percent 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 directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within two months of the members' request.
- 22.3 The percentage of votes that members have (in clause 22.2) is to be worked out as at midnight before the members request the meeting.
- 22.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting,
 - (b) sign the request, and
 - (c) give the request to the company.
- 22.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

23. GENERAL MEETINGS CALLED BY MEMBERS

- 23.1 If the directors do not call the meeting within 21 days of being requested under clause 22.2, 50 percent or more of the members who made the request may call and arrange to hold a **general meeting**.
- 23.2 To call and hold a meeting under clause 23.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution,
 - (b) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost, and
 - (c) hold the general meeting within three months after the request was given to the company.
- 23.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

24. ANNUAL GENERAL MEETING

- 24.1 A **general meeting**, called the annual **general meeting**, must be held at least once in every calendar year.
- 24.2 Even if these items are not set out in the notice of meeting, the business of an **annual general meeting** may include:
- (a) a review of the company's activities,
 - (b) a review of the company's finances,
 - (c) any auditor's report (if applicable),
 - (d) the election of directors, and
 - (e) the appointment and payment of auditors, if any.
- 24.3 Before or at the **annual general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.
- 24.4 The chair of the **annual general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

25. NOTICE OF GENERAL MEETINGS

- 25.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting,
 - (b) each director, and
 - (c) the auditor (if any).
- 25.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 25.3 Subject to clause 25.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an **annual general meeting**, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
 - (b) for any other **general meeting**, members with at least 95 percent of the votes that may be cast at the meeting agree beforehand.
- 25.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director,

- (b) appoint a director in order to replace a director who was removed, or
- (c) remove an auditor.

25.5 Notice of a **general meeting** must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this),
- (b) the general nature of the meeting's business,
- (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution, and
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - (i) the proxy does not need to be a member of the company,
 - (ii) the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - (iii) the proxy form must be delivered to the company at least 48 hours before the meeting.

25.6 If a **general meeting** is adjourned for one month or more, the members must be given new notice of the resumed meeting.

26. QUORUM AT GENERAL MEETINGS

26.1 For a **general meeting** to be held, at least three (3) members must be present (in person, by proxy or by representative) for the whole meeting (the **quorum**). When determining whether a **quorum** is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

26.2 No business may be conducted at a **general meeting** if a quorum is not present.

26.3 If there is no **quorum** present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chair specifies. If the chair does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week,
- (b) if the time is not specified – the same time, and
- (c) if the place is not specified – the same place.

26.4 If no **quorum** is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

27. AUDITOR'S RIGHT TO ATTEND MEETINGS

27.1 The auditor is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

27.2 The **company** must give the auditor any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

28. USING TECHNOLOGY TO CALL & HOLD MEETINGS

28.1 The **company** may give notice by any form of technology in accordance with the **Corporations Act** and may hold a **general meeting** wholly virtually, or at two or more physical venues using any technology, that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.

28.2 Anyone using this technology is taken to be present in person at the meeting.

29. CHAIR FOR GENERAL MEETINGS

29.1 The elected chair is entitled to chair **general meetings**.

29.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chair for that meeting if:

- (a) there is no **elected chair**, or
- (b) the **elected chair** is not present within 30 minutes after the starting time set for the meeting, or
- (c) the **elected chair** is present but says they do not wish to act as chair of the meeting.

30. ROLE OF THE CHAIR

30.1 The chair 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).

30.2 The chair does not have a casting vote.

31. ADJOURNMENT OF MEETINGS

31.1 If a meeting is adjourned for any reason, only unfinished business may be dealt with at the resumption of the meeting.

Members' resolutions and statements

32. MEMBERS' RESOLUTIONS AND STATEMENTS

- 32.1 Members with at least five percent of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 32.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 32.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 32.4 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.
- 32.5 The percentage of votes that members have (as described in clause 32.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 32.6 If the **company** has been given notice of a members' resolution under clause 32.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 32.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

33. COMPANY MUST GIVE NOTICE OF PROPOSED RESOLUTION OR DISTRIBUTED STATEMENT

- 33.1 If the **company** has been given a notice or request under clause 32:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.

- 33.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1000 words long,
 - (b) the directors consider it may be defamatory,
 - (c) clause 33.1(b) applies, and 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
 - (d) 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.

34. CIRCULAR RESOLUTIONS OF MEMBERS

- 34.1 Subject to clause 34.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 34.2 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.
- 34.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director,
 - (b) for passing a **special resolution**, or
 - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 34.4 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 34.5 or clause 34.6.
- 34.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 34.6 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

35. HOW MANY VOTES A MEMBER HAS

35.1 Each member has one vote.

36. CHALLENGE TO MEMBER'S RIGHT TO VOTE

36.1 A member or the chair may only challenge a person's right to vote at a **general meeting** at that meeting.

36.2 If a challenge is made under clause 36.1, the chair must decide whether or not the person may vote. The chair's decision is final.

37. HOW VOTING IS CARRIED OUT

37.1 Voting must be conducted and decided by:

- (a) a show of hands
- (b) a vote in writing, or
- (c) another method chosen by the chair that is fair and reasonable in the circumstances.

37.2 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.

37.3 On a show of hands, the chair's decision is conclusive evidence of the result of the vote.

37.4 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.

38. WHEN AND HOW A VOTE IN WRITING MUST BE HELD

38.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least three **members present**,
- (b) **members present** with at least five percent 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
- (c) the chair.

38.2 A vote in writing must be taken when and how the chair directs, unless clause 38.3 applies.

38.3 A vote in writing must be held immediately if it is demanded under clause 38.1:

- (a) for the election of a chair under clause 29.2, or
- (b) to decide whether to adjourn the meeting.

38.4 A demand for a vote in writing may be withdrawn.

39. APPOINTMENT OF PROXY

39.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.

39.2 A proxy does not need to be a member.

39.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

- (a) speak at the meeting,
- (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
- (c) join in to demand a vote in writing under clause 38.1.

39.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:

- (a) the member's name and address,
- (b) the company's name,
- (c) the proxy's name or the name of the office held by the proxy, and
- (d) the meeting(s) at which the appointment may be used.

39.5 A proxy appointment may be standing (ongoing).

39.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 25.5(d) or at the **company's** registered address at least 48 hours before a meeting.

39.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

39.8 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:

- (a) dies,
- (b) is mentally incapacitated,
- (c) revokes the proxy's appointment, or

- (d) revokes the authority of a representative or agent who appointed the proxy.

39.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

40. VOTING BY PROXY

40.1 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).

40.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote,
- (b) if the way they must vote is specified on the proxy form, must vote that way, and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

41. NUMBER OF DIRECTORS

41.1 The **company** must have at least three and no more than nine directors.

42. ELECTION AND APPOINTMENT OF DIRECTORS

42.1 The members may elect a director by a resolution passed in a **general meeting**.

42.2 Each of the directors must be appointed by a separate resolution, unless:

- (a) the members present have first passed a resolution that the appointments may be voted on together, and
- (b) no votes were cast against that resolution.

42.3 A person is eligible for election as a director of the **company** if they:

- (a) are either:
 - (i) a member of the company, or
 - (ii) are nominated by two members entitled to vote, and
- (b) give the company their signed consent to act as a director of the company, and

- (c) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 42.4 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the company,
 - (b) gives the company their signed consent to act as a director of the company, and
 - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 42.5 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.
- 42.6 If a person who meets the criteria in clause 42.3(a)(ii) is elected a director, then they are automatically deemed to have applied for membership (pursuant to clause 16) and been approved by the board (pursuant to clause 17).

43. ELECTION OF CHAIR & OFFICEBEARERS

- 43.1 At the first board meeting following an annual general meeting, the directors must elect (from amongst themselves) directors to serve as the **company's**:
- (a) chair;
 - (b) deputy-chair;
 - (c) company secretary; and
 - (d) finance director,
- (the office bearers).**
- 43.2 The board may, at any time by ordinary resolution, remove a director from their position as an office bearer, and appoint another director in their place.
- 43.3 Each office bearer serves from the close of the board meeting at which they are elected to their position until the earlier of:
- (a) if an office bearer ceases to be a director – the date on which they cease to be a director;
 - (b) if an office bearer is re-elected at the next annual general meeting after their appointment to the position – the close of the board meeting immediately following the first board meeting after that annual general meeting; or

(c) a resolution pursuant to clause 43.2.

43.4 Each office bearer may be re-appointed.

44. TERM OF OFFICE

44.1 At each annual general meeting any director appointed by the directors to fill a casual vacancy or as an additional director must retire.

44.2 Other than a director appointed under clause 42.6, a 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.

44.3 Each director must retire at least once every two years.

44.4 A director who retires under clause 44.1 or 44.3 may nominate for re-election, subject to clause 44.5.

44.5 A director who has held office for a continuous period of six years or more may only be re-appointed or re-elected by a **special resolution**

45. WHEN A DIRECTOR STOPS BEING A DIRECTOR

45.1 A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the **company**;
- (e) are absent for three consecutive directors' meetings without approval from the directors, or
- (f) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

46. POWERS OF DIRECTORS

46.1 The directors are responsible for managing and directing the activities of the **company** to achieve the objects set out in clause 6. This includes the appointment of a patron, or patrons, to support and assist the **company** in achieving its objects.

46.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.

46.3 The directors must decide on the responsible financial management of the **company** including:

- (a) any suitable written delegations of power under clause 47, and
- (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

46.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

47. DELEGATION OF DIRECTORS' POWERS

47.1 The directors 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.

47.2 The delegation must be recorded in the **company's** minute book.

48. PAYMENTS TO DIRECTORS

48.1 The **company** must not pay fees to a director for acting as a director.

48.2 The **company** may in good faith:

- (a) 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,
- (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**,
- (c) pay a Director, being a person engaged in any business or trade profession, for all usual **professional or other charges** for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service,
- (d) reimburse a director for any **insurance premium** in respect of a contract insuring a Director or officer for a liability incurred as an officer of the Company where the Board has approved the payment of the premium, or
- (e) make any payment in relation to **indemnity or insurance** under Article 68 or 69.

48.3 Any payment made under clause 48.2 must be approved by the directors.

48.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

49. EXECUTION OF DOCUMENTS

49.1 The **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**, or
- (b) a director and the secretary.

Duties of directors

50. DUTIES OF DIRECTORS

50.1 The directors must comply with their duties as directors under legislation and common law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**;
- (b) to act in good faith in the best interests of the **company** and to further the charitable objects and purposes of the **company** set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 51;
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and
- (g) not to allow the **company** to operate while it is insolvent.

51. CONFLICTS OF INTEREST

51.1 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 meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors, or
- (b) 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.

- 51.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 51.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 51.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 51.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the company, and the other members have the same interest
 - (b) 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 69)
 - (c) their interest relates to a payment by the company under clause 68 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
 - (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the director to vote on the matter, or
 - (e) 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' (Board) meetings

52. WHEN THE DIRECTORS MEET

- 52.1 The directors may decide how often, where and when they meet provided that a minimum of three meetings are held each financial year.

53. CALLING DIRECTORS' MEETINGS

- 53.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 53.2 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.

54. CHAIR FOR DIRECTORS' MEETINGS

- 54.1 The **elected chair** is entitled to chair directors' meetings.
- 54.2 The directors at a directors' meeting may choose a director to be the chair for that meeting if the **elected chair** is:
- (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chair of the meeting.

55. QUORUM AT DIRECTORS' MEETINGS

- 55.1 Unless the directors determine otherwise, the **quorum** for a directors' meeting is a majority (more than 50 percent) of directors.
- 55.2 A **quorum** must be present for the whole directors' meeting.

56. USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS

- 56.1 The directors may call and hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors. Meetings may be held wholly virtually.
- 56.2 The directors' agreement may be a standing (ongoing) one.
- 56.3 A director may only withdraw their consent within a reasonable period before the meeting.

57. PASSING DIRECTORS' RESOLUTIONS

- 57.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

58. CIRCULAR RESOLUTIONS OF DIRECTORS

- 58.1 The directors may pass a circular resolution without a directors' meeting being held.
- 58.2 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 58.3 or clause 58.4.
- 58.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

- 58.4 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.
- 58.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 58.3 or clause 58.4.

Secretary

59. APPOINTMENT AND ROLE OF SECRETARY

- 59.1 The **company** must have at least one secretary, who may also be a director.
- 59.2 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.
- 59.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 59.4 The role of the secretary includes:
- (a) maintaining a register of the company's members, and
 - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

60. MINUTES AND RECORDS

- 60.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings
 - (b) minutes of circular resolutions of members
 - (c) a copy of a notice of each general meeting, and
 - (d) a copy of a members' statement distributed to members under clause 32.
- 60.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.

- 60.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 61.1, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 14.2, clause 60.1 and clause 61.1.
- 60.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chair of the meeting, or
 - (b) the chair of the next meeting.
- 60.5 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.

61. FINANCIAL AND RELATED RECORDS

- 61.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 61.2 The **company** must also keep written records that correctly record its operations.
- 61.3 The **company** must retain its records for at least seven years.
- 61.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

62. BY-LAWS

- 62.1 The directors may pass a resolution to make, amend or repeal by-laws to give effect to this constitution.
- 62.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

63. WHAT IS NOTICE

63.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 64 to 66, unless specified otherwise.

63.2 Clauses 64 to 66 do not apply to a notice of proxy under clause 39.6.

64. NOTICE TO THE COMPANY

64.1 Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) 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
- (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

65. NOTICE TO MEMBERS

65.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person,
- (b) 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,
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any),
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) 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).

65.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

66. WHEN NOTICE IS TAKEN TO BE GIVEN

66.1 A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered,
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs,
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 65.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

67. COMPANY'S FINANCIAL YEAR

- 67.1 The **company's** financial year is from 1 July to 30 June unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

68. INDEMNITY

- 68.1 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**.
- 68.2 In this clause, '**officer**' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 68.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) 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).
- 68.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

69. INSURANCE

- 69.1 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**.

70. DIRECTORS' ACCESS TO DOCUMENTS

70.1 A director has a right of access to the financial records of the **company** at all reasonable times.

70.2 If the directors agree, the **company** must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors, and
- (b) any other documents referred to in those documents.

Winding up

71. SURPLUS ASSETS NOT TO BE DISTRIBUTED TO MEMBERS

71.1 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 72.1.

72. DISTRIBUTION OF SURPLUS ASSETS

72.1 Subject to the **Corporations Act**, any other applicable Act, clause 11 and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities:

- (a) with charitable objects or purpose(s) similar to, or inclusive of, the objects or purpose(s) in clause 6, and
- (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.

72.2 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.

Definitions and interpretation

73. DEFINITIONS

73.1 In this constitution:

- (a) **ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth)
- (b) **company** means the **company** referred to in clause 1
- (c) **Corporations Act** means the Corporations Act 2001 (Cth)
- (d) **elected chair** means a person elected by the directors to be the **company's** chair under clause 43
- (e) **general meeting** means a meeting of members and includes the annual **general meeting**, under clause 24.1
- (f) **member present** means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting
- (g) **registered charity** means a charity that is registered under the **ACNC Act**
- (h) **special resolution** means a resolution:
 - (i) of which notice has been given under clause 25.5(c), and
 - (ii) that has been passed by at least 75 percent of the votes cast by **members present** and entitled to vote on the resolution, and
- (i) **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.

74. READING THIS CONSTITUTION WITH THE CORPORATIONS ACT

74.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.

74.2 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.

74.3 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.

75. INTERPRETATION

75.1 In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) 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).