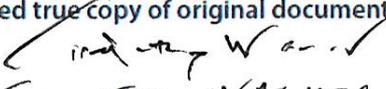




# CONSTITUTION OF National Institute of Organisation Dynamics

Australian Company Number (ACN) 607 032 888  
Australian Business Number (ABN) 97897654659

A company limited by guarantee

'certified true copy of original document'	
Signed	
Name	TIMOTHY WALKER 
Qualification	AUSTRALIAN LEGAL PRACTITIONER
Date	22.10.15

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## Preliminary

### 1. Name of the company

The name of the **company** is National Institute of Organisation Dynamics Australia Ltd.

### 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 \$20 (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

In this constitution, words and phrases have the meaning set out in clauses 68 and 70.

## Charitable purposes and powers

### 6. Object

The **company's** object is to pursue the following charitable purpose(s):

National Institute of Organisation Dynamics Australia Ltd's purpose is the provision of education in systems psychodynamic approaches for the improvement of organisations, community and society.

### 7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) 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. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and **Error! Reference source not found..**
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
  - (a) 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**, or

- (b) making a payment to a member in carrying out the **company's** charitable purpose(s).

## 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.

## Members

### 10. Membership and register of members

- 10.1 The members of the **company** are:
  - (a) **initial members**, and
  - (b) any other person that the board members allow to be a member, in accordance with this constitution.
- 10.2 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 7 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.
- 10.3 The **company** must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

### 11. Who can be a member

- 11.1 Eligibility for membership is limited to NIODA Board of Governance members

### 12. How to apply to become a member

A person may apply to become a member of the **company** after a decision has been taken by the Board of Governance endorsing them as Board member elect 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.
- 12.1 Once the board members 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 13).

### 13. When a person becomes a member

Other than **initial members**, an applicant will become a member when they are entered on the register of members.

### 14. When a person stops being a member

A person immediately stops being a member if they:

- (a) die
- (b) cease to be a Board member of the company
- (c) are wound up or otherwise dissolved or deregistered (for an incorporated member)
- (d) resign, by writing to the secretary
- (e) are expelled under clause 15 or
- (f) 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

### 15. Dispute resolution

- 15.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member and:
  - (a) one or more members
  - (b) the **company**.
- 15.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 16 until the disciplinary procedure is completed.
- 15.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 15.4 If those involved in the dispute do not resolve it under clause 15.3 they must within 10 days:
  - (a) tell the board members 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.
- 15.5 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 board members not involved in the dispute, 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.
- 15.6 A mediator chosen by the board members under clause 15.5(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.

- 15.7 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.

## 16. Disciplining members

- 16.1 In accordance with this clause, the board members may resolve to warn, suspend or expel a member from the **company** if the board members 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**.
- 16.2 At least 14 days before the board members' meeting at which a resolution under clause 16.1 will be considered, the secretary must notify the member in writing:
- (a) that the board members are considering a resolution to warn, suspend or expel the member
  - (b) that this resolution will be considered at a board members' 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 board members, and details of how to do so.
- 16.3 Before the board members pass any resolution under clause 16.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the board members a written explanation before that board members' meeting, and/or
  - (b) speaking at the meeting.
- 16.4 After considering any explanation under clause 16.3, the board members 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 board members consider appropriate (however, the person can only make a decision that the board members could have made under this clause), or
  - (f) require the matter to be determined at a **general meeting**.
- 16.5 The board members cannot fine a member.
- 16.6 The secretary must give written notice to the member of the decision under clause 16.4 as soon as possible.
- 16.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 16.8 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

### 17. General meetings called by board members

- 17.1 The board members may call a **general meeting**.

- 17.2 If members with at least 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 members must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
  - (b) hold the **general meeting** within 2 months of the members' request.
- 17.3 The percentage of votes that members have (in clause 17.2) is to be worked out as at midnight before the members request the meeting.
- 17.4 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**.
- 17.5 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.

### **18. General meetings called by members**

- 18.1 If the board members do not call the meeting within 21 days of being requested under clause 17.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 18.2 To call and hold a meeting under clause 18.1 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**.
- 18.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the board members did not call and hold the meeting.

### **19. Annual general meeting**

- 19.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) within 18 months after registration of the **company**, and
  - (b) after the first annual **general meeting**, at least once in every calendar year.
- 19.2 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
  - (d) the election of board members, and
  - (e) the appointment and payment of auditors, if any.
- 19.3 Before or at the annual **general meeting**, the board members must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.

- 19.4 The chairperson 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**.

## 20. Notice of general meetings

- 20.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting and
  - (b) the auditor (if any).
- 20.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 20.3 Subject to clause 20.4, 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% of the votes that may be cast at the meeting agree beforehand.
- 20.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a board member
  - (b) appoint a board member in order to replace a board member who was removed, or
  - (c) remove an auditor.
- 20.5 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
  - (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.
- 20.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## 21. Quorum at general meetings

- 21.1 For a **general meeting** to be held, at least 50% of members (a quorum) must be present (in person or by proxy) for the whole meeting. 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).
- 21.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 21.3 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 chairperson specifies. If the chairperson 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.

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

## 22. Auditor's right to attend meetings

22.1 The auditor (if any) 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.

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

## 23. Using technology to hold meetings

23.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.

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

## 24. Chairperson for general meetings

24.1 The **Board chairperson** is entitled to chair **general meetings**.

24.2 The members present and entitled to vote at a **general meeting** may choose a board member or member to be the chairperson for that meeting if:

- (a) there is no **Board chairperson**, or
- (b) the **Board chairperson** is not present within 30 minutes after the starting time set for the meeting, or

## 25. Role of the chairperson

25.1 The chairperson 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)).

25.2 The chairperson does not have a casting vote.

## 26. Adjournment of meetings

26.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.

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

## Members' resolutions and statements

### 27. Members' resolutions and statements

27.1 Members with at least 5% 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 of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 27.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 27.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 27.4 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.
- 27.5 The percentage of votes that members have (as described in clause 27.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 27.6 If the **company** has been given notice of a members' resolution under clause 27.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 27.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

## **28. Company must give notice of proposed resolution or distribute statement**

- 28.1 If the **company** has been given a notice or request under clause 27:
  - (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.
- 28.2 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 1 000 words long
  - (b) the board members consider it may be defamatory
  - (c) clause 28.1(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.

## **29. Circular resolutions of members**

- 29.1 Subject to clause 29.3, the board members may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 29.2 The board members 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.

- 29.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a board member or remove a board member
  - (b) for passing a **special resolution**, or
  - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 29.4 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 29.5 or clause 31.6.
- 29.5 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.
- 29.6 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

### 30. How many votes a member has

Each member has one vote.

### 31. Challenge to member's right to vote

- 31.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 31.2 If a challenge is made under clause 31.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 32. How voting is carried out

- 32.1 Voting must be conducted and decided by:
- (a) a show of hands
  - (b) a vote in writing, or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 32.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 32.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 32.4 The chairperson 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.

### 33. When and how a vote in writing must be held

- 33.1 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 five **members present**
  - (b) **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

- (c) the chairperson.
- 33.2 A vote in writing must be taken when and how the chairperson directs, unless clause 33.3 applies.
- 33.3 A vote in writing must be held immediately if it is demanded under clause 33.1:
  - (a) for the election of a chairperson under clause 24.2, or
  - (b) to decide whether to adjourn the meeting.
- 33.4 A demand for a vote in writing may be withdrawn.

#### **34. Appointment of proxy**

- 34.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 34.2 A proxy does not need to be a member.
- 34.3 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 33.1.
- 34.4 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.
- 34.5 A proxy appointment may not be standing (i.e. not ongoing).
- 34.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 20.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 34.7 A proxy only has the authority to speak and vote for a member at a meeting while the member is not present at the meeting.
- 34.8 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
- 34.9 A proxy appointment must specify the way the proxy must vote on a particular resolution.

#### **35. Voting by proxy**

- 35.1 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).
- 35.2 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.

## Board members

### 36. Number of board members

The **company** must have at least three and no more than nine board members.

### 37. Election and appointment of board members

- 37.1 The initial board members are the people who have agreed to act as board members and who are named as proposed board members in the application for registration of the **company**.
- 37.2 Apart from the initial board members and board members appointed under clause 37.5, the members may elect a board member by a resolution passed in a **general meeting**.
- 37.3 Each of the board members 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.
- 37.4 A person is eligible for election as a board member of the **company** if they:
  - (a) are a member of the **company**,
  - (b) are nominated by two members,
  - (c) give the **company** their signed consent to act as a board member of the **company**, and
  - (d) are not ineligible to be a board member under the **Corporations Act** or the **ACNC Act**.
- 37.5 The board members may appoint a person as a board member to fill a casual vacancy or as an additional board member if that person:
  - (a) is a member of the **company**,
  - (b) gives the **company** their signed consent to act as a board member of the **company**, and
  - (c) is not ineligible to be a board member under the **Corporations Act** or the **ACNC Act**.
- 37.6 If the number of board members is reduced to fewer than three or is less than the number required for a quorum, the continuing board members may act for the purpose of increasing the number of board members to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

### 38. Election of chairperson

The board members must elect a board member as the **company's elected Board chairperson**.

### 39. Term of office

- 39.1 At each annual **general meeting**:
  - (a) any board member appointed by the board members to fill a casual vacancy or as an additional board member must retire, and
  - (b) at least one-third of the remaining board members must retire.

- 39.2 The board members who must retire at each annual **general meeting** under clause 39.1(b) will be the board members who have been longest in office since last being elected. Where board members were elected on the same day, the board member(s) to retire will be decided by lot unless they agree otherwise.
- 39.3 Other than a board member appointed under clause 37.5, a board member'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.
- 39.4 Each board member must retire at least once every three years.
- 39.5 A board member who retires under clause 39.1 may nominate for election or re-election, subject to clause 39.6.
- 39.6 A board member 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**.

#### **40. When a board member stops being a board member**

A board member stops being a board member if they:

- (a) give written notice of resignation as a board member to the **company**
- (b) die
- (c) are removed as a board member by a resolution of the members
- (d) stop being a member of the **company**
- (e) are absent for [2] consecutive board members' meetings without approval from the board members, or
- (f) become ineligible to be a board member of the **company** under the **Corporations Act** or the **ACNC Act**.

## **Powers of board members**

#### **41. Powers of board members**

- 41.1 The board members are responsible for managing and directing the activities of the **company** to achieve the purpose set out in clause 6.
- 41.2 The board members 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.
- 41.3 The board members must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 42, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 41.4 The board members cannot remove a board member or auditor. Board members and auditors may only be removed by a members' resolution at a **general meeting**.

#### **42. Delegation of board members' powers**

- 42.1 The board members may delegate any of their powers and functions to a committee, a board member, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 42.2 The delegation must be recorded in the **company's** minute book.

#### 43. Payments to board members

- 43.1 The **company** must not pay fees to a board member for acting as a board member.
- 43.2 The **company** may:
- (a) pay a board member for work they do for the **company**, other than as a board member, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a board member for expenses properly incurred by the board member in connection with the affairs of the **company**.
- 43.3 Any payment made under clause 43.2 must be approved by the board members.
- 43.4 The **company** may pay premiums for insurance indemnifying board members, as allowed for by law (including the **Corporations Act**) and this constitution.

#### 44. Execution of documents

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

- (a) two board members of the **company**, or
- (b) a board member and the secretary.

## Duties of board members

#### 45. Duties of board members

The board members must comply with their duties as board members 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:

- (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 board member of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6
- (c) not to misuse their position as a board member
- (d) not to misuse information they gain in their role as a board member
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 46
- (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.

#### 46. Conflicts of interest

- 46.1 A board member 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 board members (or that is proposed in a circular resolution):
- (a) to the other board members, or
  - (b) if all of the board members have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 46.2 The disclosure of a conflict of interest by a board member must be recorded in the minutes of the meeting.

- 46.3 Each board member who has a material personal interest in a matter that is being considered at a meeting of board members (or that is proposed in a circular resolution) must not, except as provided under clauses 46.4:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 46.4 A board member 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 board member against liabilities that the board member incurs as a board member of the **company** (see clause 64)
  - (c) their interest relates to a payment by the **company** under clause 63 (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 board member to vote on the matter, or
  - (e) the board members who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the board member, the nature and extent of the board member's interest in the matter and how it relates to the affairs of the **company**, and
    - (ii) says that those board members are satisfied that the interest should not stop the board member from voting or being present.

## Board members' meetings

### 47. When the board members meet

The board members may decide how often, where and when they meet but not less than four times per year.

### 48. Calling board members' meetings

- 48.1 A board member may call a board members' meeting by giving reasonable notice to all of the other board members.
- 48.2 A board member may give notice in writing or by any other means of communication that has previously been agreed to by all of the board members.

### 49. Chairperson for board members' meetings

- 49.1 The **elected chairperson** is entitled to chair board members' meetings.
- 49.2 The board members at a board members' meeting may choose a board member to be the chairperson for that meeting if the **elected chairperson** 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 chairperson of the meeting.

### 50. Quorum at board members' meetings

- 50.1 Unless the board members determine otherwise, the quorum for a board members' meeting is a majority (more than 50%) of board members.
- 50.2 A quorum must be present for the whole board members' meeting.

### 51. Using technology to hold board members' meetings

- 51.1 The board members may hold their meetings by using any technology (such as video, skype or similar, or teleconferencing) that is agreed to by all of the board members.
- 51.2 The board members' agreement may be a standing (ongoing) one.
- 51.3 A board member may only withdraw their consent within a reasonable period before the meeting.

### 52. Passing board members' resolutions

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

### 53. Circular resolutions of board members

- 53.1 The board members may pass a circular resolution without a board members' meeting being held.
- 53.2 A circular resolution is passed if all the board members entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 53.3 or clause 53.4.
- 53.3 Each board member 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.
- 53.4 The **company** may send a circular resolution by email to the board members and the board members may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 53.5 A circular resolution is passed when the last board member signs or otherwise agrees to the resolution in the manner set out in clause 53.3 or clause 53.4.

## Secretary

### 54. Appointment and role of secretary

- 54.1 The **company** must have at least one secretary, who may also be a board member.
- 54.2 A secretary must be appointed by the board members (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the board members.
- 54.3 The board members must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 54.4 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), board members' meetings and circular resolutions.

## Minutes and records

### 55. Minutes and records

- 55.1 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 28.
- 55.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of board members' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of board members.
- 55.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 55.1, and
  - (b) the board members may authorise a member to inspect other records of the **company**, including records referred to in clause 55.2 and clause 56.1.
- 55.4 The board members must ensure that minutes of a **general meeting** or a board members' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 55.5 The board members must ensure that minutes of the passing of a circular resolution (of members or board members) are signed by a board member within a reasonable time after the resolution is passed.

## 56. Financial and related records

- 56.1 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.
- 56.2 The **company** must also keep written records that correctly record its operations.
- 56.3 The **company** must retain its records for at least 7 years.
- 56.4 The board members must take reasonable steps to ensure that the **company's** records are kept safe.

## By-laws

### 57. By-laws

- 57.1 The board members may pass a resolution to make by-laws to give effect to this constitution.
- 57.2 Members and board members must comply with by-laws as if they were part of this constitution.

## Notice

### 58. What is notice

- 58.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 59 to 61, unless specified otherwise.
- 58.2 Clauses 59 to 61 do not apply to a notice of proxy under clause 34.6.

### 59. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the board members 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.

#### **60. Notice to members**

60.1 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).

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

#### **61. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at a 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 62.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## **Financial year**

#### **62. Company's financial year**

The **company's** financial year is from 1 January to 31 December unless the board members pass a resolution to change the financial year.

## Indemnity, insurance and access

### 63. Indemnity

- 63.1 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**.
- 63.2 In this clause, 'officer' means a board member or secretary and includes a board member or secretary after they have ceased to hold that office.
- 63.3 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).
- 63.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

### 64. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the board members 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**.

### 65. Board members' access to documents

- 65.1 A board member has a right of access to the financial records of the **company** at all reasonable times.
- 65.2 If the board members agree, the **company** must give a board member or former board member access to:
- (a) certain documents, including documents provided for or available to the board members, and
  - (b) any other documents referred to in those documents.

## Winding up

### 66. Surplus assets not to be distributed to members

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 **Error! Reference source not found.**

### 67. Distribution of surplus assets (whole DGR endorsement)

- 67.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 67.4) that remain after the company is wound up must be distributed to one or more charities:
- a. with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6
  - b. which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and

- c. that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).
- 67.2 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.
- 67.3 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 67.1(a), (b) and (c), as decided by the directors.
- 67.4 For the purpose of this clause:
- a. '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.
- b. 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997(Cth).

## Definitions and interpretation

### 68. Definitions

In this constitution:

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

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

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

**elected chairperson** means a person elected by the board members to be the **company's** chairperson under clause 38

**general meeting** means a meeting of members and includes the annual **general meeting**, under clause 19.1

**initial member** means a person who is named in the application for registration of the **company**, with their consent, as a proposed member of the **company**

**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

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

**special resolution** means a resolution:

- i. of which notice has been given under clause 20.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and

**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.

### 69. Reading this constitution with the Corporations Act

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

- 69.2 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.
- 69.3 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.
- 69.4 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.

## **70. Interpretation**

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).