

Constitution of Disability Sports Australia Limited

ACN 104 461 814

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1 Name of Corporation

The name of the company is Disability Sports Australia Limited.

2 Status of the Constitution

2.1 Constitution of the Company

This is the constitution of the Company.

2.2 Replaceable Rules

This Constitution displaces the Replaceable Rules, accordingly, none of the Replaceable Rules apply.

3 Interpretation

3.1 Definitions

In this Constitution:

Company means Disability Sports Australia Limited ACN 104 461 814, a public company limited by guarantee.

Auditor means the person appointed for the time being as the auditor of the Company.

Board means the Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney, New South Wales.

CEO means a person appointed as the chief executive officer of the Company.

Chair has the meaning ascribed to that term in **rule 23.6(a)**.

Constitution means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.

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

Director means a person who is a director for the time being of the Company and **Directors** means more than one Director.

Independent means, in relation to a Director, a Director that:

- (a) is not elected by the Members to represent any constituent body;
- (b) is not employed by the Company;
- (c) does not hold any other material office within the Company; and

- (d) has no material conflict of interest (including the holding of any state-level director or administration position in an organisation with similar objects or purposes to the Company as set out in this Constitution) as a result of being a Director.

Member means a person who is, or who is registered as, a member of the Company and **Members** means more than one Member.

Members Guarantee Amount means an amount equal to \$1.

Membership means being a Member of the Company.

Membership Year begins on 1 July in one year and ends on 30 June in the following year.

Objects means the objects of the Company set out in **rule 4.1(a)**.

Register of Members means the register of Members maintained pursuant to the Corporations Act, and any branch register.

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

Seal means the common seal for the time being of the Company.

Secretary means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

State means any state of the Commonwealth of Australia and includes the Australian Capital Territory and Northern Territory.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

3.2 Interpretation

In this Constitution:

- (a) the words “including”, “include” and “includes” are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a person includes a partnership, incorporated joint venture, incorporated association or a corporation;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act.

4 Objects and purpose

4.1 Objects and purpose

- (a) The Objects for which the Company is established are to:
 - (i) help people with a physical disability to develop and engage with the community through sports participation, recreational and fitness opportunities;
 - (ii) assist people with a physical disability to attain the highest possible health and wellbeing outcomes throughout their lives;
 - (iii) coordinate, encourage, promote and generally expedite sporting activities and events for people with physical disabilities to enable them to actively engage in their communities;
 - (iv) provide from a national perspective, coordination, direction and guidance to member organisations;
 - (v) facilitate the establishment of associations, organisations and centres throughout Australia which support all matters relating to sporting, recreational and fitness activities for people with physical disabilities; and
 - (vi) promote and support the integration of people with physical disabilities with their able-bodied counterparts in sporting, recreational and fitness activities.
- (b) In furtherance of the Objects, the Company's activities may include doing any of the following:
 - (i) inform and educate the general public on issues faced by people with physical disabilities in general and in particular those seeking to engage in sporting activities;
 - (ii) promote national and international level sporting competition opportunities for people with physical disabilities;
 - (iii) liaise and be affiliated with other national and international associations, organisations or bodies with similar objects to those of the Company;
 - (iv) elect or nominate delegates to any association, organisation or body with similar objects to those of the Company;
 - (v) support and encourage visits to overseas countries in the promotion and furtherance of the Company's objects;
 - (vi) coordinate, conduct and promote all types of fundraising activities to support the Company's objects;
 - (vii) seek and promote the establishment of funds, grants and scholarships supporting the Company's objects;

- (viii) encourage, assist and support research into issues relevant to enhancing the participation in sport of people with physical disabilities;
- (ix) encourage and assist the effective training and/or treatment of people with physical disabilities by persons skilled in such training and/or treatment, including persons skilled in the fields of physical education, physical medicine, physiotherapy, occupational and fitness therapy;
- (x) encourage and promote the training and education of persons, with or without any physical disabilities, in relevant training/coaching skills for sporting activities;
- (xi) promote and maintain the interchange of information between members and amongst interested persons on any matters concerning research, training and development in relation to the Company's objects;
- (xii) act as an advisory resource for public inquiries regarding sporting activities for people with physical disabilities;
- (xiii) print, publish or circulate any newspapers, booklets, leaflets, periodicals or other media which the Company regards as fit for the promotion of its objects;
- (xiv) design, develop and undertake any activity which the Company regards as beneficial to people with physical disabilities in the pursuit of sporting activities; and
- (xv) design, develop and undertake any activity which the Company regards as beneficial to the attainment of its objects.

4.2 Non profit

For the avoidance of doubt, the assets and income of the Company shall be applied solely in furtherance of the Objects, and to this end the Company may:

- (a) apply any part of the income or capital of the Company; and
- (b) accumulate any part of the income or capital of the Company,

insofar as it is consistent with the Objects of the Company and the Company's endorsement under Division 30 or Division 50 of the Tax Act (if any).

5 Powers of the Company

5.1 Powers

The Company has the legal capacity and powers of an individual both in and outside Australia including the power to:

- (a) issue debentures;
- (b) give security by charging uncalled capital;

- (c) arrange for the Company to be registered or recognised as a body corporate in any place outside Australia; and
- (d) do anything that it is authorised to do by any other law.

5.2 Limitation of powers

The Company is prohibited from making distributions to Members and paying fees (or other remuneration) to the Directors. The Directors must approve all other payments the Company makes to Directors.

6 Modification or repeal of this Constitution

6.1 Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.

6.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

7 Member's liability

7.1 Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

7.2 Limited liability

The amount that each Member or past Member is liable to contribute is limited to the amount of the Member's Guarantee Amount.

8 Members

8.1 Number of Members

The Company must have at least one Member.

8.2 Pre-condition to Membership

A person is entitled to become a Member if that person agrees to assume the liability to pay the Member's Guarantee Amount.

8.3 Becoming a Member

Subject to the Corporations Act, a person becomes a Member upon payment of the Membership fee and on the registration of that person's name in the Register of Members.

8.4 Eligibility for Membership

A person is only eligible to become a Member if:

- (a) the person is an incorporated association or a company (**Entity**);
- (b) the Entity is active in support of sporting activities for people with physical disabilities; and
- (c) the Entity is the recognised representative for the sporting activity it coordinates.

8.5 Application for Membership

- (a) Only a person satisfying the eligibility requirements for Membership may apply for Membership.
- (b) The Board may prescribe the form of the application for Membership.
- (c) An application for Membership must be:
 - (i) in writing signed by the applicant; and
 - (ii) if the Board has prescribed the form of the application for Membership, be in that prescribed form.

8.6 Consideration for application for Membership

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept or reject the application.

8.7 Registration as Member

If the Board accepts an application for Membership, as soon as practicable, the Board must register the name of the person in the Register of Members.

8.8 Conduct of Members

The Board may regulate the conduct of the Members and in doing so may:

- (a) make by-laws and issue codes of conduct for the continuation of sound practice by the Members; and
- (b) investigate the conduct of any Member and provide sanctions for those Members who do not comply with the rules of any such by-law or code of conduct.

8.9 Annual fees

- (a) The Board may determine the amount of annual Membership fees.
- (b) The Board may determine:

- (i) the annual Membership fees are to be paid by Members in one or more instalments; and
 - (ii) the amount payable on each instalment.
- (c) Each Member must pay to the Company the amount required by the Board to be paid under this **rule 8.9** no later than 30 days after receipt of a valid tax invoice from the Company in respect of that payment.

9 Rights of Members are non-transferable

The rights and obligations of a Member are personal and are not transferable.

10 Cessation of Membership

10.1 Cessation of Membership

A person ceases to be a Member if it:

- (a) resigns as a Member in accordance with this Constitution;
- (b) ceases to satisfy the eligibility requirements for Membership under this Constitution;
- (c) is suspended or expelled as a Member in accordance with this Constitution;
- (d) fails to pay any amount payable to the Company within 90 days of being required to;
- (e) is placed under external administration or makes any composition or arrangement with its creditors; or
- (f) is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

10.2 Resignation of Member

- (a) A Member may resign from the Company by giving the Secretary not less than three months' prior notice.
- (b) Any member having given notice of its resignation in accordance with this Constitution must continue in Membership in all respects until the expiration of the current Membership Year and is liable for all fees, assessments, expenses and other charges accruing to the Company during that Membership Year or such portion of that year as may be determined by the Board in its absolute discretion.

10.3 Expulsion or suspension of a Member

- (a) Subject to **rule 10.3(b)**, if the Board resolves that it is not in the best interests of the Company for a person to remain as a Member, that person may be expelled as a Member or their Membership may be suspended.

- (b) The Board must give at least 14 days notice to a Member of a meeting at which the resolution for the Member's suspension or expulsion is proposed:
 - (i) setting out the place, date and time of the meeting;
 - (ii) setting out the proposed resolution and grounds for the proposed suspension or expulsion (as the case may be); and
 - (iii) informing the Member that the Member may submit a written submission to the Board before the resolution is put to vote.

11 Maintenance of Register

11.1 Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member; and
- (c) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

11.2 Inspection of Register of Members

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of Members between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

12 General meetings

12.1 Annual General Meetings

The annual general meeting shall be held each calendar year and convened on such a day as the Board determines provided that such a day must be within six months of the close of the previous financial year of the Company.

12.2 Business at annual general meeting

The business of a general meeting must include the following:

- (a) the consideration of the annual financial report, directors' report and auditor's report; and
- (b) the election of directors.

The annual general meeting may consider any other business of which notice has been given in accordance with the Constitution.

12.3 Directors convening a general meeting

Any two or more Directors may convene a general meeting.

12.4 Meetings requested by Members

- (a) If the Board receives a request from a Member or Members with at least 5% of the votes that may be cast at any general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

12.5 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

12.6 Shorter notice of general meeting

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting,

and accordingly, any such general meeting will be treated as having been duly convened.

12.7 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

12.8 General meetings at two or more places

A general meeting may be held in one place or two or more places. If a general meeting is held in two or more places, the Company must use

technology that gives Members a reasonable opportunity to participate at that general meeting.

12.9 Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

12.10 Notice of change, postponement or cancellation of meeting

- (a) If the Directors have convened a general meeting, the Board may change the place (or places) of the general meeting, postpone or cancel the general meeting. If a Director has convened a general meeting, only the Director who convened the general meeting may change the place (or places) of the general meeting, or postpone or cancel the general meeting.
- (b) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (c) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (d) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

12.11 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting including, the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

13 Proceedings at general meetings

13.1 Quorum

- (a) A quorum at a general meeting is 50% or more of the Members, present in person or by proxy. The quorum must be present at all times during the general meeting.

- (b) In determining whether a quorum is present, any person attending as a proxy, attorney or body corporate representatives will be counted.

13.2 Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present or no Director present determines:
 - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

13.3 Chairing general meetings

- (a) The chair of the general meeting will be the Chair elected for the time being as chair of the Board meetings.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

13.4 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

13.5 Adjournment

- (a) The chair of a general meeting at which a quorum is present may, with the consent of the Members present in person or by proxy adjourn the general meeting.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business left unfinished at the adjourned or postponed general meeting.

14 Proxy

14.1 Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may be, but does not have to be, a Member.
- (c) A proxy is not entitled to vote on a show of hands.
- (d) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.
- (e) A Member may not appoint more than one proxy at any time.

14.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.

- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.

14.3 Proxy to be received by Company

- (a) An instrument purporting to appoint a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or the resumption of an adjourned general meeting, as the case may be, at any of the following:
 - (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

14.4 Power to demand poll

A proxy may demand, or join in demanding, a poll in accordance with this Constitution.

14.5 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

14.6 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

14.7 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

15 Body corporate representative

15.1 Appointment of corporate representative

- (a) A Member may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

15.2 Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

15.3 Instrument to be received by Company

- (a) An instrument purporting to appoint a corporate representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
 - (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

15.4 Revocation and appointment of corporate representative

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

15.5 Validity of votes of corporate representative

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member; or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative; or
 - (ii) the appointment of a new corporate representative.

15.6 No liability

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

16 Voting

16.1 Entitlement to vote

- (a) Subject to **rule 16.1(b)**, each Member entitled to vote at a general meeting may vote in person or by proxy only. Each Member has one vote, whether on a show of hands, or on a poll.
- (b) No Member is entitled to vote at any general meeting if that Member has not paid any fees due and payable by it under **rule 8.9**.

16.2 Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

16.3 Voting on resolution

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.

16.4 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and

- (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

16.5 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.

16.6 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.
- (b) The minute books must be kept at the registered office.
- (c) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

16.7 Disputes to be resolved by chair

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

17 Poll

17.1 Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

17.2 Right to demand poll

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by:

- (a) at least two Members entitled to vote on the resolution; or
- (b) Members with at least five percent of the votes that may be cast on the resolution on a poll.

17.3 Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) A demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) A demand for a poll does not prevent the general meeting continuing for the transaction of any business.

18 Appointment and removal of Directors

18.1 Number of Directors

The number of Directors must be determined by the Board and must be at least five and not more than nine.

18.2 Residency

All of the Directors must reside ordinarily in Australia.

18.3 Independence

All of the Directors must be Independent.

18.4 Appointment of Directors

- (a) The Members may by resolution at a general meeting appoint a natural person as a Director.
- (b) The Board may by resolution at a Board meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.
- (c) In determining whether or not to appoint a person as a Director under **rule 18.4(b)** the Board should have regard to, among other things, the mix of skills required of the Directors and any gaps in those skills.
- (d) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company.

18.5 Confirmation of appointment

If a person is appointed as a Director by the Board, the Company must confirm the appointment at the next annual general meeting. If the appointment is not

confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

18.6 Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.
- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, the Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

18.7 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) retires as a Director at a general meeting in accordance with this Constitution (and is not re-elected at the general meeting);
- (d) if the person becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1990* (NSW) or a person under detention under Chapter 4 of that Act and the Board resolves that the person should cease to be a Director;
- (e) dies;
- (f) is disqualified from acting as a Director under the Corporations Act;
- (g) is absent from Board meetings for three consecutive meetings without leave of absence from the Board and the Board resolves that the Director should cease to be a Director;
- (h) is legally bankrupt or suspends or compromises with his or her creditors or is convicted of a criminal offence; or

- (i) is or becomes an employee of the Company.

18.8 Maximum term of Directors

- (a) Subject to **rules 18.8(b)** and **18.8(d)**, a Director must retire from office no later than the annual general meeting of the Company in the ninth consecutive year following that Director's first election at a meeting of Members and may not be re-appointed or re-elected as a Director after that time.
- (b) A Director who retires under **rule 18.8(a)** holds office as Director until the end of the meeting at which the Director retires.
- (c) If the number of Directors who would be required to retire from office at an annual general meeting referred to in **rule 18.8(a)** exceeds one-third of the Directors for the time being, or if their number is not three or a multiple of three, the number nearest one-third then:
 - (i) only the one-third of the Directors who have held office as Director the longest consecutive period of time since their first election at a meeting of Members must retire, but as between two or more Directors who have held office for the same period of time, those Directors determined by lot, unless those Directors agree otherwise; and
 - (ii) **rule 18.8(a)** will not apply to any of the remaining Directors until the immediately following annual general meeting.
- (d) For the purposes of this **rule 18.8**, the period of time is calculated as a consecutive period of time a person has been a Director.

18.9 Rotation of Directors

- (a) At each annual general meeting, one-third of the Directors for the time being, or if their number is not three or a multiple of three, the number nearest one-third must retire from office, at which time (subject to **rule 18.8(a)**) they can seek re-election.
- (b) Any Director retiring by operation of **rule 18.8(a)** is included as a retiring Director for the purposes of **rule 18.9(a)**.
- (c) The Directors to retire at any annual general meeting under **rule 18.9(a)** are determined in accordance with the following priority:
 - (i) any Director who wishes to retire and not seek re-election; and
 - (ii) those Directors who have held office as Director the longest consecutive period of time since their most recent election or appointment to that office, but as between two or more Directors who have held office for the same period of time, those Directors determined by lot, unless those Directors agree otherwise.
- (d) No person, other than a Director retiring under this **rule 18.9** or a Director appointed under **rule 18.4(b)** or a person nominated by the Board, is eligible to be appointed as a Director at any meeting of

members unless a nomination signed by a Member accompanied by the consent of the nominee to act is given to the Company at least 30 days before the annual general meeting.

18.10 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

18.11 CEO restriction

Despite any other rule of this Constitution, a person may not be appointed as a Director if that person is, or was at any time during the three years prior to the proposed date of appointment, the CEO.

19 Powers and duties of Board

19.1 Powers

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the Board include the power to:
 - (i) borrow or otherwise raise money;
 - (ii) subject to the prior approval by the Members in a general meeting, mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future);
 - (iii) issue debentures and other securities, and any instrument (including any bond); and
 - (iv) appoint a patron of the Company from time to time.

19.2 Delegation

The Board may delegate any of its powers, other than powers required by law to be dealt with by the Board, and may revoke, or vary the delegation of such powers to:

- (a) a Director;
- (b) a committee of Directors;
- (c) an employee of the Company, including the CEO; or
- (d) any other person.

19.3 Audit and risk committee and nominations committee

- (a) Without limiting **rule 19.2(b)**, the Board may establish an audit and risk committee and nominations committee.

- (b) The audit and risk committee established under **rule 19.3(a)** should consist of Directors and management with basic financial literacy and at least one external and independent Certified Practising Accountant or Chartered Accountant.
- (c) The nominations committee established under **rule 19.3(a)** should consist of at least three persons (which may be a combination of Directors and external appointments) and any external appointments should be Independent and have significant business and governance expertise.

20 Chief Executive Officer

20.1 Appointment of CEO

- (a) The Board may by resolution appoint a person as the CEO for any period and on such terms and conditions as the Board determines.
- (b) Subject to any agreement between the Company and the CEO, the Board may vary the terms and conditions of, or terminate, the appointment of the CEO at any time.

20.2 Delegation of power by the Board

- (a) The Board may delegate any of its powers to the CEO for any period and on any terms (including the power to further delegate) as the Board resolves.
- (b) The Board may revoke or vary any power delegated to a chief executive officer of the Company.

20.3 Power of the CEO

Subject to the Corporations Act and this Constitution and without limiting **rule 20.4**, the CEO has the power to do all things he or she considers necessary or desirable for the proper management and administration of the Company.

20.4 Limitations on the powers of the CEO

Without limiting the powers or responsibilities of the CEO, the CEO must:

- (a) exercise any powers or responsibilities delegated to him or her in accordance with the directions of the Board;
- (b) as far as practicable, attend all Board meetings and general meetings of the Company;
- (c) as the Board's delegate, prepare the notice of and agenda for all Board meetings and meetings of Members;
- (d) as the Board's delegate, ensure minutes of proceedings of Board meetings and meetings of Members are taken and approved; and

- (e) regularly report to the Board regarding the activities of and issues relating to the Company.

20.5 No invalidity

Subject to the Corporations Act, no resolution passed by the Members will invalidate any prior act of a chief executive officer of the Company or the Board which would have been valid if that resolution had not been passed.

21 Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

22 Remuneration and reimbursement for expenses

No remuneration or other benefit in money or money's worth shall be payable by the Company to any member of the Board other than for reasonable costs and expenses properly incurred or to be incurred:

- (a) in connection with their attendance at meetings of the Board and committees of the Board; or
- (b) in the carrying out of Director's duties.

23 Board meetings

23.1 Convening meetings

- (a) In the ordinary course, the Secretary will convene at least five Board meetings in each calendar year.
- (b) Any two or more Directors may at any time convene a Board meeting by notice to the other Directors.

23.2 Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors.
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

23.3 Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

23.4 Use of technology

- (a) A Board may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting to the extent appropriate.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.

23.5 Quorum at meetings

- (a) A quorum at a Board meeting is at least four Directors present in person.
- (b) The quorum must be present at all times during the Board meeting.

23.6 Chair of meetings

- (a) At the first Board meeting a chair will be elected from the Directors present in person. The chair of the Board meetings will be known as the chair (**Chair**). The person that has been elected as Chair may chair each subsequent Board meeting. At any subsequent Board meeting, a new chair may be elected. On the election of the new chair, the new chair will chair subsequent Board meetings. The Directors may elect a Director to chair a Board meeting by a majority vote.
- (b) If the Chair is not present within 30 minutes after the time appointed for a Board meeting or if the Chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

23.7 Passing resolutions at meetings

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.

- (b) Each Director present in person is entitled to vote and has one vote.

23.8 Casting vote

If on any resolution an equal number of votes are cast for and against a resolution, the Chair does not have a casting vote in addition to any vote cast by the chair as a Director.

23.9 Conduct of meetings

The Chair has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

23.10 Written resolutions

The Board may pass a resolution without a Board meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document.

23.11 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The Chair, or the chair of the next Board meeting, must sign the minutes within one month after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

23.12 Committee meetings

The rules of this Constitution relating to meetings (including resolutions and minutes) and proceedings of the Board with any necessary modifications apply to the meeting of any committee of the Board except that a quorum for a meeting of any committee is from time to time to be determined by the Board.

24 Directors' interests

24.1 Declaration of interest

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's

duties or interests as a Director, must give the Board notice of the interest at a Board meeting.

- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

24.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum,

except where permitted under the Corporations Act.

24.3 Interested Directors

If a Director has a material personal interest in a matter, then subject to rule 24.2 and this Constitution:

- (a) that Director may be counted on in a quorum at the Board meeting that considers matters that relate to that interest;
- (b) that Director may participate in and vote on matters that relate to that interest;
- (c) the Company may proceed with any transaction that relates to that interest; and
- (d) the Director may retain the benefits under any transaction that relates to that interest even though the Director has the interest.

24.4 Conflict of interests register

The Board must maintain a conflict of interest register setting out all interests notified to the Board under **rule 24.1(a)**.

25 Appointment of Secretary

- (a) The Company must have at least one Secretary.
- (b) The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (c) Any Secretary appointed may be removed at any time by the Board.

26 Removal and remuneration of Auditor

26.1 Remuneration of Auditor

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

26.2 Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is voted upon; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is to be put to a vote.

26.3 Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

27 Financial records

27.1 Member's access to financial records

Other than as required by law, ordered by a court with jurisdiction or determined to be appropriate by the Board, no Member or any other person may inspect any financial or any other record of the Company.

27.2 Directors' access to financial records

Any Director may at any time access and inspect any financial record and any other record of the Company.

27.3 Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and

any other record of the Company relating to the time during which the person was a Director.

28 Notices

28.1 General

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

28.2 How to give a communication

- (a) In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:
 - (i) personally delivered;
 - (ii) left at the person's current address as recorded in the Register of Members;
 - (iii) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
 - (iv) sent by fax to the person's current fax number for notices; or
 - (v) sent by email to the person's current email address for notices.

28.3 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

28.4 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

28.5 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

28.6 After hours communications

If a communication is given:

- (a) after 5:00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

29 Indemnity and Insurance

29.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may indemnify each officer, Director and Secretary or any person who has been an officer, Director or Secretary of the Company out of the assets of the Company against any liability, loss, damage, cost or expense incurred by the officer, Director or Secretary.
- (b) This indemnity is not intended to indemnify any officer, Director or Secretary in respect of any liability in respect of which the Company must not give an indemnity, and should be construed and, if necessary, read down accordingly.

29.2 Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of any officer, Director or Secretary. The Board will determine the terms of the indemnity contained in the agreement.

29.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer, Director or Secretary or any person who has been an officer, Director or Secretary of the Company in respect of the liability suffered or incurred by the officer, Director or Secretary.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

30 Winding up

- (a) In the event of the winding up of the Company, or the revocation of its endorsement as a deductible gift recipient for income tax law, which ever occurs first, any property that remains after satisfaction of all debts and

liabilities of the Company must not be paid or distributed among the Members, but must be given or transferred to some (one or more) other fund, authority or institution in Australia:

- (i) to which income tax deductible gifts can be made;
 - (ii) having objects and purposes, being charitable, similar to the objects of the Company; and
 - (iii) which prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Company under this Constitution.
- (b) The fund, authority or institution to which any property is to be given or transferred under **rule 28(a)** must be determined by:
- (i) the Members at or before the time of dissolution or winding up of the Company; or
 - (ii) application to the Supreme Court of New South Wales at a time after the dissolution or winding up of the Company.