



# Constitution

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Transfolk WA Incorporated  
ABN 25 897 942 199

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## Part A – Preliminary

### 1. Definitions

In this constitution, unless the contrary intention appears:

**ACNC Act** means the *Australian Charities and Not for profits Commission Act 2012* (Cth), or any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or a national education body or otherwise for the not for profit sector, as modified or amended from time to time and includes any regulations made under that Act or any other such legislation and any rulings or requirements of the Commissioner of the Australian Charities and Not for profits Commission (**ACNC**) under that Act, or any commissioner or body under any other such legislation, having application to the Association.

**Act** means the *Associations Incorporation Act 2015* (WA).

**Annual General Meeting** or **AGM** means the Annual General Meeting of the Association, held in accordance with clause 41.

**Applicable Not-for-Profit Laws** means any law relating to the regulation of charities or not for profit entities applicable to the Association, including the ACNC Act, the Charities Act, each Charitable Fundraising Act, the Tax Act and any Rulings or requirements of any commissioner or body under any such law, having application to the Association.

**Association** means Transfolk WA Incorporated ABN 25 897 942 199.

**Board** means the Board governing the Association as described in clause 16. For the avoidance of doubt, the Board shall be deemed to be the Association's management committee (as that term is defined under the Act) and will be the governing body of the Association.

**Board meeting** means a meeting of the Board held in accordance with this constitution.

**Board member** means a member of the Board elected or appointed under Part D, and includes both an Office-Holder and Ordinary Board Member.

**Books**, of the Association, includes the following:

- (a) a register;
- (b) Financial Records, Financial Statements or Financial Reports, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information.

**Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia.

**Chairperson** means the Board member holding office as the chairperson of the Association.

**Charities Act** means the *Charities Act 2013* (Cth) as modified or amended from time to time and includes any regulations made under that Act.

**Charitable Fundraising Act** means the legislation of any State or Territory of Australia, or the Commonwealth of Australia, regulating the raising of funds for charitable purposes and applicable to the Association, which may include, relevantly, the *Charitable Collections Act 1946* (WA).

**Commissioner** means the person for the time being designated as the Commissioner under section 153 of the Act.

**Electronic Transactions Act** means the *Electronic Transactions Act 1999* (Cth) as modified or amended from time to time.

**Financial Records** includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
  - (i) the methods by which Financial Statements are prepared; and
  - (ii) adjustments to be made in preparing Financial Statements.

**Financial Report**, of a Tier 2 Association or a Tier 3 Association, has the meaning given in section 63 of the Act.

**Financial Statements** means the financial statements in relation to the Association required under Part 5 Division 3 of the Act.

**Financial Year**, of the Association, means the period of 12 months commencing on July 1 and ending on June 30 of each year.

**General Meeting**, of the Association, means a meeting of the Association that all Members are entitled to receive notice of and to attend, and includes both an Annual General Meeting and Special General Meeting.

**Member** means a person admitted as a member of the Association pursuant to clause 11.

**Office-Holder** means a Board member who is elected to an office referred to in clause 17.3.

**Ordinary Board Member** means a Board member who is not an Office-Holder of the Association.

**Register of Members** means the register of Members referred to in section 53 of the Act.

**Registered Entity** means a body corporate registered under the ACNC Act.

**Regulations** means the *Associations Incorporation Regulations 2016* (WA).

**Secretary** means the person holding office as the Secretary of the Association.

**Special General Meeting** means a General Meeting of the Association other than the Annual General Meeting.

**Special Resolution** means a resolution passed by the Members at a General Meeting in accordance with section 51 of the Act.

**Subcommittee** means a subcommittee appointed by the Board under clause 39.

**Supporter** means a person, corporation or organisation appointed as a Supporter (or other term set out in the applicable policy) under any separate membership policy as may be adopted or amended by the Association from time to time. For the avoidance of doubt, the rights of Supporters are those set out in the applicable membership policy they are appointed under and this constitution does not apply to, or create a contractual relationship between the Association and, Supporters.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Association.

**Tier 1 Association** means an incorporated association to which section 64(1) of the Act applies.

**Tier 2 Association** means an incorporated association to which section 64(2) of the Act applies.

**Tier 3 Association** means an incorporated association to which section 64(3) of the Act applies.

**Treasurer** means the person holding office as the Treasurer of the Association.

**Vice-Chairperson** means the Board member holding office as the vice-chairperson of the Association.

## 2. Interpretation

2.1 In this constitution, except where the context otherwise requires:

- (a) a word or expression that is not defined in this constitution, but is defined in the Act has, if the context permits, the meaning given by the Act;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this constitution, and a reference to this constitution includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a reference to **A\$, \$A**, dollar or **\$** is to Australian currency;
- (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (i) a requirement for a notification to the Association to be made 'in writing' requires the notification to be made by email or letter addressed to the Association, and will not be satisfied by any other purported notification, including by social media; and
- (j) to the extent permitted by law, a requirement that a document or other communication be 'signed' by a person can be met in any way that meets the requirements of the Electronic Transactions Act.

2.2 Headings are for ease of reference only and do not affect interpretation.

2.3 For the purposes of this constitution, if the provisions of the Act or, while the Association is a Registered Entity, the ACNC Act, conflict on the same matter, the provisions of the Act or ACNC Act (as applicable) prevail.

## Part B— Objects and Not-For-Profit Requirement

### 3. Objects

3.1 The objects of the Association, as a public benevolent institution, are to provide public benevolence to the gender diverse community to advance health and social welfare including by, but not limited to:

- (a) providing a range of peer-led support and information services for gender diverse individuals and their families;
- (b) providing safe and inclusive spaces, social events and personal development opportunities for gender diverse people;
- (c) communicating and collaborating with a broad range of political, government and community-based organisations to advise on policy, increase visibility and awareness of gender diversity and associated human rights issues;
- (d) facilitating health and wellbeing initiatives intended to improve access to medical interventions and support for the gender diverse community;
- (e) providing community education to improve knowledge and awareness of gender diversity and how to support the gender diverse community;

- (f) developing partnerships or associations with other organisations, community groups and businesses with aligned objects in order to amplify the reach of the Association's activities;
- (g) raising funds and seeking donations of goods and services from the public and volunteers to support the overall objects of the Association; and
- (h) doing all things that are incidental or ancillary to the attainment of the above objects.

## 4. Not-for-profit body

- 4.1 The property and income of the Association will only be applied towards the promotion of the objects of the Association set out in clause 3, and the Association will not be carried on for the profit or gain of Members, neither while it is operating or on winding up.
- 4.2 No income, profits or assets (whether in money, property or other benefits) will be paid or otherwise distributed, directly or indirectly, to any Member, except in accordance with clause 4.3.
- 4.3 A payment to a Member out of the funds of the Association is authorised if it is:
  - (a) made in good faith to the Member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business;
  - (b) the payment of interest, on money borrowed by the Association from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia;
  - (c) the payment of reasonable rent to the Member for premises leased by the Member to the Association;
  - (d) the reimbursement of reasonable expenses properly incurred by the Member on behalf of the Association; or
  - (e) such other payments, distributions or transfers as may be permitted by the Applicable Not-for-Profit Laws.

## 5. The Association's powers

- 5.1 The Association has the legal capacity of an individual.
- 5.2 The Association has power to do anything that helps it to achieve its objects.
- 5.3 Subject to the Act and Regulations, the Association may only:
  - (a) exercise its powers; and
  - (b) use its income and assets (including any surplus),for its objects.

## 6. Receipts

- 6.1 If the Association accepts a gift, contribution or donation of money or property, the Association must issue receipts if and as required by, and otherwise comply with, all applicable laws in relation to any such gift, contribution or donation, including without limitation the Applicable Not-for-Profit Laws.
- 6.2 The Association may seek gifts, contributions or donations of money or property from the public.

## 7. Applicable Not-for-Profit Laws

The Association will at all times comply with the Applicable Not-for-Profit Laws.

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## Part C— Membership

### 8. Membership

8.1 The number of Members with which the Association proposes to be registered is unlimited.

8.2 A person is taken to be a Member if:

(a) they are one of the persons on whose behalf the application for registration of the Association under the Act was made; or

(b) they are admitted as a Member under clause 11,

and the person's membership has not ceased pursuant to clause 12.

8.3 Subject to this constitution and applicable law (including the Act), the Board may from time to time determine, vary and replace:

(a) the classes of membership of the Association (including the rights attaching, or not attaching, to a particular class of membership); and

(b) the qualifications for admission, and continued membership, in a particular class of membership (including any membership fees payable on application or on a periodic basis).

8.4 A right, privilege or obligation that a person has because the person is a Member of the Association:

(a) cannot be transferred to another person; and

(b) terminates once the person ceases to be a Member of the Association.

### 9. Eligibility for membership

9.1 Any person over the age of 18 who supports the objects of the Association and who:

(a) identifies as a member of the transgender and gender diverse community; or

(b) has significant ties to, or to a person who identifies as a member of, the transgender and gender diverse community,

is eligible to apply to become a Member.

### 10. Applying for membership

10.1 A person who wants to become a Member must:

(a) apply in writing (using the form (if any) set by the Board from time to time or otherwise containing the information required by the Board in its absolute discretion) to the Association; and

(b) pay the membership fee (if any) required under clause 13.

- 10.2 The application must be signed by the applicant.

## 11. Dealing with membership applications

- 11.1 The Board must consider each application for membership of the Association at the next Board meeting after the application is duly received. In considering an application for membership the Board members may:
- (a) by resolution accept or reject the application; or
  - (b) ask the applicant to give more evidence of eligibility or suitability for membership.
- 11.2 If the Board asks for more evidence under clause 11.1(b), it may delay its consideration of the application until the evidence is given.
- 11.3 The Board must not accept an application unless the applicant:
- (a) is eligible under clause 9; and
  - (b) has applied in accordance with clause 10.
- 11.4 The Board may reject an application even if the applicant:
- (a) is eligible under clause 9; and
  - (b) has applied in accordance with clause 10.
- 11.5 The Board does not have to give any reason for rejecting an application for membership under clause 11.1(a).
- 11.6 As soon as practicable after the Board makes a determination under clause 11.1, the Board must:
- (a) notify the applicant in writing that the Board approved or rejected the application (as applicable); and
  - (b) subject to receipt from the applicant of any required membership fees under clause 13 enter, or cause to be entered, the applicant's name in the Register of Members (at which point the applicant becomes a Member).

## 12. When membership ceases

- 12.1 A Member's membership of the Association will cease:
- (a) where the Member:
    - (i) dies;
    - (ii) becomes mentally incapacitated;
    - (iii) is committed of an indictable offence; or
    - (iv) becomes bankrupt;
  - (b) if a majority of the Board members present and voting at a Board meeting by resolution terminate the membership of a Member:
    - (i) whose conduct, position or circumstances in the opinion of the Board members renders it undesirable that that Member continue to be a Member of the Association; and
    - (ii) only after the Member has been given at least 21 days' notice of the proposed resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;

- (c) if the Member gives the Association written notice of resignation, from the date of receipt of that notice by the Secretary;
  - (d) if the Member does not confirm in writing that they wish to remain a Member within three months of receiving a written request from the Board to confirm they wish to remain a Member; or
  - (e) if the Member fails to pay any required membership fees by the applicable due date for payment and such fees remain unpaid for more than 30 days after notification by the Association to the Member, unless the relevant Member and Board agree to enable the Member to remain a Member.
- 12.2 The Board must keep a record, for at least one year after a person ceases to be a Member, of:
- (a) the date on which the person ceased to be a Member; and
  - (b) the reason why the person ceased to be a Member.

### 13. Membership fees

- 13.1 The Board must determine the entrance fee (if any) and the annual membership fee (if any) to be paid for membership of the Association.
- 13.2 The fees determined under subclause 13.1 may be different for different classes of membership.
- 13.3 A Member must pay the annual membership fee to the Board in the manner determined by the Board and by the due date determined by the Board or under a negotiated payment arrangement.

### 14. Members' liabilities

A Member of the Association does not have any liability to contribute to the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association.

### 15. Register of Members

- 15.1 The Board must allocate responsibility for the requirements imposed on the Association under section 53 of the Act to maintain the Register of Members and record in that register any change in the membership of the Association within 28 days.
- 15.2 The Register of Members must include each Member's name and:
- (a) residential address; or
  - (b) postal address; or
  - (c) email address; or
  - (d) information regarding another means by which contact can be made with the Member.
- 15.3 The Register of Members must be kept at a place determined by the Board and maintained with the highest level of confidentiality.
- 15.4 A Member who wishes to inspect the Register of Members must approach the Board with this request and demonstrate that Member confidentiality will be observed.
- 15.5 If:
- (a) a Member inspecting the Register of Members wishes to make a copy of, or take an extract from, the Register of Members under section 54(2) of the Act; or

- (b) a Member makes a written request under section 56(1) of the Act to be provided with a copy of the Register of Members,

the Board may require the Member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association.

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## Part D — Board

### Division 1 — Powers of Board

#### 16. Board

- 16.1 The Board has the power to manage the affairs of the Association and may exercise all of powers of the Association that this constitution and the Act do not require to be exercised by the Association in General Meeting.
- 16.2 The Board must take all reasonable steps to ensure that the Association complies with the Act and this constitution.

### Division 2 — Composition of Board and duties of Board members

#### 17. Board members

- 17.1 The Board consists of:
  - (a) the Office-Holders of the Association; and
  - (b) at least three Ordinary Board Members.
- 17.2 The total number of Board members is to be no less than five and no more than nine.
- 17.3 The following are the Office-Holders of the Association:
  - (a) Chairperson; and
  - (b) Vice-Chairperson.
- 17.4 A person may be an Ordinary Board Member if the person is at least 18 years of age and either a Member or a Supporter.
- 17.5 A person may be an Office-Holder if the person is at least 18 years of age and a Member.
- 17.6 No more than two Board members may be Supporters (if applicable). A person must not hold 2 or more of the offices mentioned in subclause 17.3 at the same time.

#### 18. Chairperson

- 18.1 The Chairperson has the powers and duties relating to convening and presiding at Board meetings and presiding at General Meetings provided for in this constitution. The Chairperson also has the powers and duties set out in any charter or policy adopted by the Board from time to time.

- 18.2 The Vice-Chairperson is responsible for fulfilling the powers and duties of the Chairperson in the Chairperson's absence.

## 19. Secretary

- 19.1 The Board may appoint a person as secretary of the Association on the terms and conditions determined by the Board.
- 19.2 The Secretary is entitled to attend and be heard on any matter at all Board meetings and General Meetings.
- 19.3 The Board may, subject to the Secretary's employment contract (if any), suspend, remove or dismiss the Secretary.

## 20. Treasurer

- 20.1 The Board may appoint a treasurer of the Association on the terms and conditions determined by the Board.
- 20.2 The Treasurer is entitled to attend and be heard on any matter at all Board meetings and General Meetings.
- 20.3 The Board may, subject to the Treasurer's employment contract (if any), suspend, remove or dismiss the Treasurer.

## **Division 3 — Election of Board members and tenure of office**

### 21. How to become a Board member

- 21.1 A person becomes a Board member if the person:
- (a) is elected to the Board at a General Meeting; or
  - (b) is appointed to the Board by the Board to fill a casual vacancy or as an addition to the existing Board under clause 28.

### 22. Nomination of Board members

- 22.1 At least 14 days before an Annual General Meeting, the Board must send written or electronic notice to all the Members:
- (a) calling for nominations for election to the Board to fill any vacant positions; and
  - (b) stating the date by which nominations must be received by the Board to comply with subclause 22.2.
- 22.2 Any:
- (a) Member can self-nominate for appointment as a Board member, provided the nomination is seconded by another Member;

- (b) Supporter can self-nominate for appointment as a Board member, provided the nomination is seconded by a Member; or
- (c) Member can nominate another Member or Supporter for appointment as a Board member, provided the nomination is seconded by another Member,

by sending written notice of the nomination to the Board at least 7 days before the Annual General Meeting. The notice must be signed by the nominee, seconder and, where the nomination is not a self-nomination, the nominator.

- 22.3 A person may be nominated for election both as an Office-Holder of the Association and, in the event the nominee is not successfully elected as an Office-Holder, as an Ordinary Board Member.
- 22.4 A person whose nomination does not comply with this clause is not eligible for election to the Board unless the person is nominated under clause 23.2 or 24.1(b).

## 23. Election of Office-Holders

- 23.1 At the Annual General Meeting, a separate election must be held for each vacant Office-Holder position.
- 23.2 If there is no nomination for a position, the Chairperson of the meeting may call for nominations from the Members at the meeting.
- 23.3 If only one Member has nominated for a vacant position, the Chairperson of the meeting must declare the Member elected to the position.
- 23.4 If more than one Member has nominated for a position, the Members at the meeting must vote in accordance with procedures that have been determined by the Board to decide who is to be elected to the position.
- 23.5 Each Member present at the meeting may vote for one Member who has nominated for the position.
- 23.6 A Member who has nominated for the position may vote for themselves.
- 23.7 The new Chairperson of the Association will take over as the Chairperson from the conclusion of the meeting at which they are elected.

## 24. Election of Ordinary Board Members

- 24.1 If the number of nominations received for any vacant Ordinary Board Member positions is not greater than the number of vacant positions, the Chairperson of the meeting:
  - (a) subject to clause 17.6, must declare each of those nominees to be elected to the position; and
  - (b) may call for further nominations from the Members at the meeting to fill any positions remaining unfilled after the elections under subclause 24.1(a).
- 24.2 If:
  - (a) the number of nominations received for any vacant Ordinary Board Member positions is greater than the number to be elected; or
  - (b) the number of nominations received under subclause 24.1(b) is greater than the number of positions remaining unfilled,

the Members at the meeting must vote in accordance with procedures that have been determined by the Board to decide the nominees who are to be elected to the vacant Ordinary Board Member positions.
- 24.3 A Member who has nominated for the position of Ordinary Board Member may vote in accordance with that nomination.

## 25. Term of office

- 25.1 At least a one-third of Board members must retire at each AGM, consisting of:
- (a) all Board members appointed under clause 28;
  - (b) any Board members who have served 3 years (a year meaning the time between two AGMs);
  - (c) any Board members who elect to do so; and
  - (d) further Board members as required to ensure that at least one-third of the Board retire, being those who have served the longest.
- 25.2 A Board member who retires under clause 25.1 may nominate for election or re-election in accordance with this constitution, and there is no limit on the number of terms a Board member can serve.
- 25.3 The term of a Board member:
- (a) in the case of a Board member appointed under clause 28, begins on the date of appointment and ends at the next AGM; and
  - (b) in the case of a Board member elected under clause 23 or 24, begins on the date of election and ends at the AGM at which the Board member retires pursuant to clause 25.1,
- unless the Board member ceases to hold office at an earlier date pursuant to clause 26.

## 26. Resignation and removal from office

- 26.1 A Board member ceases to hold office if the Board member:
- (a) is prohibited by the Act or the ACNC Act (while the Association is a Registered Entity) from holding office or continuing as a Board member;
  - (b) in the opinion of a medical professional or respected third party agency, is incapable of managing the Board member's affairs due to mental or physical incapacity or becomes incapable or performing their duties;
  - (c) resigns by notice in writing to the Board, with effect from the date the notice is received by the Board or such later date specified in the notice;
  - (d) is removed by a resolution of the Members pursuant to clause 26.2;
  - (e) was a Member at the time of their appointment to the Board and ceases to be a Member;
  - (f) fails to attend two or more Board meetings without leave of absence from the Board and the Board resolves to remove the Board member;
  - (g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of the interest and the Board resolves to remove the Board member; or
  - (h) dies.
- 26.2 At a General Meeting, the Association may by resolution:
- (a) remove a Board member from office; and
  - (b) elect a person who is eligible under clause 17.3(b) to fill the vacant position.
- 26.3 A Board member who is the subject of a proposed resolution under subclause 26.2 may make written representations (of a reasonable length) to the Board and may ask that the representations be provided to the Members.

- 26.4 The Board may give a copy of the representations to each Member or, if they are not so given, the Board member may require them to be read out at the General Meeting at which the resolution is to be considered.

## 27. Suspension of Board members

- 27.1 If the conduct, position or circumstance of any Board member is such that continuance in office appears to the majority of the Board to be prejudicial to the interests of the Association, a majority of the Board specifically called for that purpose may suspend that Board member.
- 27.2 Within 14 days of any suspension under clause 27.1, the Board must call a General Meeting, at which the members entitled to vote may either confirm the suspension and remove the Board member from office in accordance with clause 26.2 or annul the suspension and reinstate the Board member.

## 28. Additional and casual Board members

- 28.1 The Board may appoint a person who is eligible under clause 17 to fill a position on the Board that:
- (a) has become vacant under clause 26; or
  - (b) was not filled by election at the most recent Annual General Meeting or under clause 26.2(b), or, subject to clause 17.2, as an addition to the existing Board.
- 28.2 A Board member appointed under clause 28.1 must retire at the next Annual General Meeting but can seek re-election in accordance with the process in clause 22.
- 28.3 Subject to the requirement for a quorum under clause 35, the Board may continue to act despite any vacancy on the Board.
- 28.4 If there are fewer Board members than required for a quorum under clause 35, the Board may act only for the purpose of:
- (a) appointing Board members under this clause; or
  - (b) convening a General Meeting.

## 29. Validity of acts

The acts of a Board or Subcommittee, or of a Board member or member of a Subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Board member or member of a Subcommittee.

## 30. Payments to Board members

- 30.1 No payment will be made to any Board member other than payment:
- (a) of out of pocket expenses reasonably and properly incurred by the Board member in the performance of any duty as Board member of the Association where the amount payable does not exceed an amount previously approved by the Board;
  - (b) where approved by resolution of the Association:

- (i) for any service rendered to the Association by the Board member in a professional or technical capacity, other than in the capacity as Board member, where the provision of the service, and the amount payable, has the prior approval of the Board and is not more than an amount which commercially would be reasonable payment for the service; and
  - (ii) of any reasonable and proper salary or wage due to the Board member as an employee of the Association where the terms of employment have been approved by the Board; and
- (c) to the extent permitted by law (including the Applicable Not-for-Profit Laws), for remuneration for their services as Board member, provided that:
  - (i) the remuneration has been approved by resolution of the Association; and
  - (ii) where required, such remuneration is authorised under any relevant Charitable Fundraising Act.

## 31. Material personal interest

- 31.1 A Board member who has a material personal interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest to the Board as soon as the Board member becomes aware of their interest in the matter.
- 31.2 A Board member who has a material personal interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest at the next General Meeting of the Association.
- 31.3 Clauses 31.1 and 31.2 not apply to a material personal interest:
  - (a) that exists only because the Board member is an employee of the Association;
  - (b) that exists only because the Board member belongs to a class of persons for whose benefit the Association is established; or
  - (c) that the Board member has in common with all, or a substantial proportion of, the Members of the Association.
- 31.4 A Board member with a material personal interest in a matter being considered at a Board meeting must not:
  - (a) be present while the matter is being considered at the Board meeting; or
  - (b) vote on the matter.
- 31.5 Clause 31.4 does not apply to a material personal interest:
  - (a) that exists only because the Board member belongs to a class of persons for whose benefit the Association is established; or
  - (b) that the Board member has in common with all, or a substantial proportion of, the Members of the Association.
- 31.6 If there are not enough Board members to form a quorum because of clause 31.4:
  - (a) one or more Board members (including those who have a material personal interest in the matter) may call a General Meeting; and
  - (b) the General Meeting may pass a resolution to deal with the matter.

## **Division 4 — Board meetings**

### **32. Board meetings**

- 32.1 The Board must meet at least 6 times in each year on the dates and at the times and places determined by the Board.
- 32.2 Special Board meetings may be convened by the Chairperson or any 2 Board members.

### **33. Notice of Board meetings**

- 33.1 Notice of each Board meeting must be given to each Board member at least seven days before the time of the meeting, unless the Board members unanimously agree otherwise. The notice may be in writing or given using any technology consented to by all the Board members.
- 33.2 The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- 33.3 An accidental omission to send a notice of a Board meeting to any Board member or the non-receipt of such a notice by any Board member does not invalidate the proceedings, or any resolution passed, at the meeting.

### **34. Procedure and order of business**

- 34.1 The Chairperson or, in the Chairperson's absence, the Vice-Chairperson must preside as chairperson of each Board meeting.
- 34.2 If the Chairperson and Vice-Chairperson are absent or are unwilling to act as chairperson of a meeting, the Ordinary Board Members at the meeting must choose one of the Ordinary Board Members to act as chairperson of the meeting.
- 34.3 The procedure to be followed at a Board meeting must be determined from time to time by the Board.
- 34.4 The order of business at a Board meeting may be determined by the Board members at the meeting.
- 34.5 A Member or other person who is not a Board member may attend a Board meeting if invited to do so by the Board.
- 34.6 A person invited under subclause 34.5 to attend a Board meeting:
  - (a) has no right to any agenda, minutes or other document circulated at the meeting;
  - (b) must not comment about any matter discussed at the meeting unless invited by the Board to do so; and
  - (c) cannot vote on any matter that is to be decided at the meeting.
- 34.7 In accordance with clause 45, a Board meeting may be held using technology.
- 34.8 Subject to clause 31, a Board member who participates in a meeting held in accordance with this constitution is taken to be present and entitled to vote at the meeting.
- 34.9 Clauses 34.7 to 34.8 apply to meetings of Subcommittees as if all Subcommittee members were Board members.

## 35. Quorum for Board meetings

- 35.1 Subject to clause 35.4, no business is to be conducted at a Board meeting unless a quorum is present.
- 35.2 50% of Board members is a quorum. The quorum must be present at all times during the meeting.
- 35.3 If a quorum is not present within 30 minutes after the notified commencement time of a Board meeting:
  - (a) in the case of a special meeting the meeting lapses; or
  - (b) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- 35.4 If:
  - (a) a quorum is not present within 30 minutes after the commencement time of a Board meeting held under subclause 35.3(b); and
  - (b) at least 2 Board members are present at the meeting,those Board members present are taken to constitute a quorum.
- 35.5 Where a quorum cannot be established for the consideration of a particular matter at a Board meeting, the chairperson may call a General Meeting to deal with the matter.

## 36. Voting at Board meetings

- 36.1 Each Board member present at a Board meeting has one vote on any question arising at the meeting.
- 36.2 A motion is carried if a majority of the Board members present at the Board meeting vote in favour of the motion.
- 36.3 If the votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- 36.4 A vote may take place by the Board members present indicating their agreement or disagreement or by a show of hands, unless the Board decides that a secret ballot is needed to determine a particular question.
- 36.5 If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

## 37. Written resolutions

- 37.1 The Board may pass a resolution without a Board meeting being held if at least 50% of the Board 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. The resolution is passed when it has been signed by at least 50% of the Board members.
- 37.2 For the purposes of clause 37.1, separate copies of a document may be used for signing by Board members if the wording of the resolution and statement is identical in each copy.
- 37.3 Any document referred to in this clause may be in the form of an electronic transmission or notification.
- 37.4 The minutes of Board meetings must record that a resolution was passed in accordance with this clause.
- 37.5 This clause applies to meetings and resolutions of any Subcommittees established by the Board as if all members of the Subcommittee were Board members.

## **38. Minutes of Board meetings**

- 38.1 The Board must ensure that minutes are taken and kept of each Board meeting.
- 38.2 The minutes must record the following:
- (a) the names of the Board members present at the meeting;
  - (b) the name of any person attending the meeting under clause 34.5;
  - (c) the business considered at the meeting; and
  - (d) any motion on which a vote is taken at the meeting and the result of the vote.
- 38.3 The minutes of a Board meeting must be entered in the Association's minute book or recorded electronically within 30 days after the meeting is held.
- 38.4 The Chairperson must ensure that the minutes of a Board meeting are reviewed and signed as correct by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next Board meeting.
- 38.5 When the minutes of a Board meeting have been signed as correct they are, until the contrary is proved, evidence that:
- (a) the meeting to which the minutes relate was duly convened and held;
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any appointment purportedly made at the meeting was validly made.

## **Division 5 — Subcommittees**

### **39. Subcommittees**

- 39.1 To help the Board in the conduct of the Association's business, the Board may in writing appoint one or more Subcommittees.
- 39.2 A Subcommittee may consist of the number of people, whether or not Members, that the Board considers appropriate.
- 39.3 Subject to this constitution and any directions given by the Board a Subcommittee may meet and conduct business as it considers appropriate.

### **40. Delegation to Subcommittees**

- 40.1 The Board may, in writing, delegate to a Subcommittee the exercise of any power or the performance of any duty of the Board other than:
- (a) the power to delegate; and
  - (b) any powers which by law must be dealt with by the Board members as a Board.
- 40.2 A power or duty, the exercise or performance of which has been delegated to a Subcommittee under this clause, may be exercised or performed by the Subcommittee in accordance with the terms of the delegation.
- 40.3 The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Board specifies in the document by which the delegation is made.

- 40.4 The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- 40.5 Any act or thing done by a Subcommittee, under the delegation has the same force and effect as if it had been done by the Board.
- 40.6 The Board may, in writing, amend or revoke the delegation.

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## Part E — General Meetings of Association

### 41. Annual General Meeting

- 41.1 The Board must determine the date, time and place of the Annual General Meeting.
- 41.2 If it is proposed to hold the Annual General Meeting more than 6 months after the end of the Association's Financial Year, the Secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the Financial Year.
- 41.3 The ordinary business of the Annual General Meeting is as follows:
  - (a) to confirm the minutes of the previous Annual General Meeting and of any Special General Meeting held since then if the minutes of that meeting have not yet been confirmed;
  - (b) to receive and consider:
    - (i) the Board's annual report on the Association's activities during the preceding Financial Year; and
    - (ii) the Financial Statements of the Association for the preceding Financial Year presented under Part 5 of the Act;
  - (c) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the reviewer or auditor on the Financial Statements or Financial Report;
  - (d) to elect the Office-Holders of the Association and Ordinary Board Members to fill any vacant Board member positions; and
  - (e) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act.
- 41.4 Any other business of which notice has been given in accordance with this constitution may be conducted at the Annual General Meeting.

### 42. Special General Meetings

- 42.1 The Board may convene a Special General Meeting.
- 42.2 The Board must convene a Special General Meeting if at least 20% of the Members request a Special General Meeting to be convened.
- 42.3 The Members requesting a Special General Meeting to be convened must:
  - (a) make the request by written or electronic notice given to the Secretary;
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.

- 42.4 The Special General Meeting must be convened within 28 days after notice is given under subclause 42.3(a).
- 42.5 If the Board does not convene a Special General Meeting within that 28 day period, the Members making the request (or any of them) may convene the Special General Meeting.
- 42.6 A Special General Meeting convened by Members under subclause 42.5:
- (a) must be held within 3 months after the date the original request was made; and
  - (b) may only consider the business stated in the notice by which the request was made.

## 43. Notice of General Meetings

- 43.1 The Secretary or, in the case of a Special General Meeting convened under clause 42.5, the Members convening the meeting, must give to each Member:
- (a) at least 21 days' notice of a General Meeting if a Special Resolution is to be proposed at the meeting; or
  - (b) at least 14 days' notice of a General Meeting in any other case.
- 43.2 The notice must:
- (a) specify the date, time and place of the meeting;
  - (b) indicate the general nature of each item of business to be considered at the meeting; and
  - (c) if a Special Resolution is proposed:
    - (i) set out the wording of the proposed resolution as required by section 51(4) of the Act;
    - (ii) state that the resolution is intended to be proposed as a Special Resolution; and
  - (d) comply with clause 44.7.

## 44. Proxies

- 44.1 Subject to subclause 44.2, a Member may appoint an individual who is a Member as the Member's proxy to vote and speak on their behalf at a General Meeting.
- 44.2 A Member may be appointed the proxy for not more than 5 other Members.
- 44.3 The appointment of a proxy must be in writing and signed by the Member making the appointment.
- 44.4 The Member appointing the proxy may give specific directions as to how the proxy is to vote on the Member's behalf.
- 44.5 If no instructions are given to the proxy, the proxy may vote on behalf of the Member in any matter as the proxy sees fit.
- 44.6 The authority appointing a proxy must be in the form (if any) set by the Board and must:
- (a) clearly identify the person appointed as the Member's proxy; and
  - (b) be signed by the Member.
- 44.7 Notice of a General Meeting given to a Member under clause 43 must:
- (a) state that the Member may appoint an individual who is a Member as a proxy for the meeting; and
  - (b) include a copy of any form that the Board has approved for the appointment of a proxy.

- 44.8 A form appointing a proxy must be received by the Association no less than 24 hours before the commencement of the General Meeting for which the proxy is appointed.

## 45. Use of technology to hold meetings

- 45.1 In this clause, 'Meeting' includes a General Meeting, Board meeting or Subcommittee meeting.
- 45.2 Despite anything in this constitution, the attendees need not all be physically present in the same place for a Meeting to be held in accordance with this constitution. A Meeting may be held by all attendees communicating with each other by any technological means which gives all participants as a whole a reasonable opportunity to participate in the Meeting. For the avoidance of doubt, the Association can hold a Meeting by:
- (a) all attendees physically attending the meeting at one or more designated locations;
  - (b) using virtual meeting technology that allows all attendees to simultaneously hear each other and participate in discussion; or
  - (c) using a combination of the above methods.
- 45.3 A Board member, Subcommittee member, Member or any other attendee who attends a Meeting held using technological means is taken to be present and is entitled to vote at the meeting (to the extent they are entitled to vote in accordance with this constitution).
- 45.4 Despite anything in this constitution, the means by which voting will occur will ensure that all attendees have a mechanism for adequate participation.

## 46. Chairperson and quorum for General Meetings

- 46.1 The Chairperson or, in the Chairperson's absence, the Vice-Chairperson must preside as chairperson of each General Meeting.
- 46.2 If the Chairperson and Vice-Chairperson are absent or are unwilling to act as chairperson of a General Meeting:
- (a) the Ordinary Board Members at the meeting must choose one of the Ordinary Board Members to act as chairperson of the meeting; and
  - (b) if no election is made under clause 46.2(a) then:
    - (i) the Members may elect one of the Ordinary Board Members present as chairperson; or
    - (ii) if no Board member is present or willing to act as chairperson, the Members may elect one of their number to preside as chairperson.
- 46.3 If there is a dispute at a General Meeting about a question or procedure, the chairperson may determine the question.
- 46.4 The chairperson at an Annual General Meeting must allow a reasonable opportunity for the Members as a whole to ask questions about or make comments on the management of the Association.
- 46.5 No business is to be conducted at a General Meeting unless a quorum is present.
- 46.6 Any 12 Members present (being Members entitled to vote under this constitution at a General Meeting) will constitute a quorum for the conduct of business at a General Meeting.
- 46.7 If a quorum is not present within 30 minutes after the notified commencement time of a General Meeting:
- (a) in the case of a Special General Meeting the meeting lapses; or

- (b) in the case of the Annual General Meeting the meeting is adjourned to;
  - (i) the same time and day in the following week; and
  - (ii) the same place, unless the chairperson specifies another place at the time of the adjournment or written notice of another place is given to the Members before the day to which the meeting is adjourned.

46.8 If:

- (a) a quorum is not present within 30 minutes after the commencement time of an Annual General Meeting held under sub-clause 46.7; and
  - (b) at least two Members are present at the meeting,
- those Members present are taken to constitute a quorum.

## 47. Adjournment of General Meeting

- 47.1 The chairperson of a General Meeting at which a quorum is present may, with the consent of a majority of the Members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- 47.2 Without limiting subclause 47.1, a meeting may be adjourned:
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the Members more time to consider an item of business.
- 47.3 No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- 47.4 Notice of the adjournment of a meeting under this clause is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with clause 43.

## 48. Voting at General Meeting

- 48.1 On any question arising at a General Meeting:
  - (a) subject to subclause 48.4, each Member has one vote; and
  - (b) Members may vote personally or by proxy.
- 48.2 Except in the case of a Special Resolution, a motion is carried if a majority of the Members present at a General Meeting vote in favour of the motion.
- 48.3 A Special Resolution is passed if notice of the proposed resolution is given in accordance with clause 43 and it is supported by at least three-quarters of the votes cast by Members of the Association who are entitled to vote on the resolution.
- 48.4 If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- 48.5 If the question is whether or not to confirm the minutes of a previous General Meeting, only Members who were present at that meeting may vote.
- 48.6 For a person to be eligible to vote at a General Meeting as a Member, the Member:
  - (a) must have been a Member at the time notice of the meeting was given under clause 43; and
  - (b) must have paid any fee or other money payable to the Association by the Member.

## 49. Determining whether resolution carried

- 49.1 In this clause poll means the process of voting in relation to a matter that is conducted in writing.
- 49.2 Subject to subclause 49.4, the chairperson of a General Meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been:
- (a) carried;
  - (b) carried unanimously;
  - (c) carried by a particular majority; or
  - (d) lost.
- 49.3 If the resolution is a Special Resolution, the declaration under subclause 49.2 must identify the resolution as a Special Resolution.
- 49.4 If a poll is demanded on any question by the chairperson of the meeting or by at least 3 other Members present in person or by proxy:
- (a) the poll must be taken at the meeting in the manner determined by the chairperson; and
  - (b) the chairperson must declare the determination of the resolution on the basis of the poll.
- 49.5 If a poll is demanded on the election of the chairperson or on a question of an adjournment, the poll must be taken immediately.
- 49.6 If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the chairperson.
- 49.7 A declaration under subclause 49.2 or 49.4 must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

## 50. Minutes of General Meeting

- 50.1 The Secretary, or a person authorised by the Board from time to time, must take and keep minutes of each General Meeting.
- 50.2 The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 50.3 In addition, the minutes of each Annual General Meeting must record:
- (a) the names of the Members attending the meeting;
  - (b) any proxy forms given to the Chairperson of the meeting under clause 44.8;
  - (c) the Financial Statements or Financial Report presented at the meeting, as referred to in clause 41.3(b)(i) or 41.3(b)(ii); and
  - (d) any report of the review or auditor's report on the Financial Statements or Financial Report presented at the meeting, as referred to in clause 41.3(c).
- 50.4 The minutes of a General Meeting must be entered in the Association's minute book or electronically within 30 days after the meeting is held.
- 50.5 The Chairperson must ensure that the minutes of a General Meeting are reviewed and signed as correct by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next General Meeting.

- 50.6 When the minutes of a General Meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that:
- (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any election or appointment purportedly made at the meeting was validly made.

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## Part F— Financial Matters

### 51. Source of funds

The funds of the Association may be derived from entrance fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

### 52. Control of funds

- 52.1 The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- 52.2 Subject to any restrictions imposed at a General Meeting, the Board may approve expenditure on behalf of the Association.
- 52.3 The Board may authorise a person to expend funds on behalf of the Association up to a specified limit without requiring approval from the Board for each item on which the funds are expended.
- 52.4 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed:
- (a) by 2 Board members; or
  - (b) by one Board member and a person authorised by the Board; or
  - (c) in another manner authorised by the Board.
- 52.5 All funds of the Association must be deposited into the Association's account within 5 working days after their receipt.

### 53. Financial records, Financial Statements and Financial Reports

- 53.1 The Board must cause the Association to keep written financial records in relation to the business of the Association, and to prepare financial documents and reports, in accordance with the requirements of the Act, the ACNC Act and any other applicable laws.
- 53.2 The Board must cause the financial records and financial documents of the Association to be audited to the extent required by, and in accordance with the requirements of, the Act, the ACNC Act and any other applicable laws.
- 53.3 For each Financial Year, to the extent required by law, the Board must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the Financial Statements or Financial Report of the Association are met.

- 53.4 Without limiting subclause 53.3, those requirements include:
- (a) if the Association is a Tier 1 Association, the preparation of the Financial Statements;
  - (b) if the Association is a Tier 2 Association or Tier 3 Association, the preparation of the Financial Report; and
  - (c) if required, the review or auditing of the Financial Statements or Financial Report, as applicable;
  - (d) the presentation to the Annual General Meeting of the Financial Statements or Financial Report, as applicable; and
  - (e) if required, the presentation to the Annual General Meeting of the copy of the report of the review or auditor's report, as applicable, on the Financial Statements or Financial Report.

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## Part G — General Matters

### 54. Executing documents and common seal

- 54.1 The Association may execute a document without using a common seal if the document is signed by:
- (a) 2 Board members; or
  - (b) one Board member and a person authorised by the Board.
- 54.2 If the Association has a common seal:
- (a) the name of the Association must appear in legible characters on the common seal; and
  - (b) a document may only be sealed with the common seal by the authority of the Board and in the presence of:
    - (i) 2 Board members; or
    - (ii) one Board member and a person authorised by the Board,and each of them is to sign the document to attest that the document was sealed in their presence.
- 54.3 The Board must make a written record of each use of the common seal.
- 54.4 The common seal must be kept in the custody of a person authorised by the Board.

### 55. Giving notices to Members

- 55.1 In this clause recorded means recorded in the Register of Members.
- 55.2 A notice or other document that is to be given to a Member under this constitution is taken not to have been given to the Member unless it is in writing and:
- (a) delivered by hand to the recorded address of the Member;
  - (b) sent by prepaid post to the recorded postal address of the Member; or
  - (c) sent by electronic transmission to an appropriate recorded electronic address of the Member.

## 56. Custody of Books and securities

- 56.1 The:
- (a) Financial Records and, as applicable, the Financial Statements or Financial Reports of the Association;
  - (b) record of Board members and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act; and
  - (c) Books and any securities of the Association,
- must be kept in the custody or control of the Board or its delegate.
- 56.2 Subclause 56.1 has effect except as otherwise decided by the Board.
- 56.3 The Books of the Association must be retained for at least 7 years or such other period required by law.

## 57. Inspection of records and documents

- 57.1 This clause applies to a Member who wants to inspect:
- (a) the Register of Members under section 54(1) of the Act; or
  - (b) the record of the names and addresses of Board members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act.
- 57.2 Subject to clause 15.5 in relation to the Register of Members, a Member who wishes to inspect the documents referenced at clause 57.1 must approach the Board with this request and demonstrate that Member confidentiality will be observed. Once satisfied that confidentiality will be observed, the Board will make the necessary arrangements for the inspection.
- 57.3 The inspection must be free of charge.
- 57.4 A Member is entitled to inspect, make a copy of or take an extract from this constitution in accordance with section 35 of the Act.
- 57.5 Subject to the Act, a Member may request in writing to inspect any other record or document of the Association beyond those referenced in clauses 57.1 and 57.4 by arrangement with the Board. The Board may determine whether and to what extent, and at what times and places and under what conditions, any such record or document will be open for inspection by Members other than Board members. For the avoidance of doubt, the Board may refuse to allow a Member to inspect or obtain a copy of a document under this clause 57.5:
- (a) that relates to confidential, personal, commercial, employment or legal matters; or
  - (b) if the Board considers it would be prejudicial to the interests of the Associations for the Member to do so.
- 57.6 Subject to approval from the Board under clause 57.2, a Member may inspect, make a copy of or take an extract from a record or document referred to in clause 57.1 but does not have a right to remove the record or document for that purpose.
- 57.7 The Member must not use or disclose information in any record or document referred to in this clause for a purpose:
- (a) that is directly connected with the affairs of the Association; or
  - (b) that is related to complying with a requirement of the Act.

## **58. Distribution of surplus property on cancellation of incorporation or winding up**

- 58.1 In this clause surplus property, in relation to the Association, means property remaining after satisfaction of:
- (a) the debts and liabilities of the Association; and
  - (b) the costs, charges and expenses of winding up or cancelling the incorporation of the Association, but does not include Books relating to the management of the Association.
- 58.2 Subject to clause 59, on the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by Special Resolution by reference to the persons mentioned in section 24(1) of the Act.

## **59. Winding up and revocation of deductible gift recipient status**

- 59.1 If the Association is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, and which is charitable at law, to which income tax deductible gifts can be made:
- (a) gifts of money or property for the principal purpose of the Association;
  - (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Association; or
  - (c) money received by the Association because of such gifts and contributions.

## **60. Resolution of internal disputes**

- 60.1 Disputes between Members (in their capacity as Members), and disputes between Members and the Association that arises under or relating to this constitution that the parties have not been able to themselves resolve (after following any internal dispute procedures the Board members specify or adopt) are to be referred to such mediator as the Board members may, subject to applicable law, determine.
- 60.2 At least seven days before such a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.
- 60.3 Any internal dispute procedures the Board members may specify or adopt may include, without limitation:
- (a) the appointment of an independent person to arbitrate on the dispute;
  - (b) processes to bring the parties together to help resolve the dispute at an early stage, and should allow all parties a full and fair opportunity to present their case.

## **61. Alteration of constitution**

This constitution can only be amended by Special Resolution and in accordance with the Act.