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Preliminary

1. Name of the company

- 1.1 The name of the **company** is Australian Counselling Association Limited (the **company**).

2. Type of company

- 2.1 The **company** is a not-for-profit public **company** limited by guarantee.

3. Limited liability of ordinary members

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

4. The guarantee

- 4.1 Each **ordinary member** must contribute an amount not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the person is an **ordinary member**, or within 12 months after they stop being an **ordinary member**, and this contribution is required to pay for the:
- a) debts and liabilities of the **company** incurred before the person stopped being an ordinary member, or
 - b) costs of winding up.

5. Definitions

- 5.1 In this constitution, words and phrases have the meaning set out in clauses 72 to 74.

Objects and Powers

6. Objects

- 6.1 The **company's** objects are:
- a) To provide an industry based association for persons engaged in the practice of Counselling and/or Psychotherapy.
 - b) To monitor, maintain, set and improve professional standards in counsellor education and practice.
 - c) To be a self-regulatory body to provide for registration of ACA registered counsellors and psychotherapists and to provide a mechanism for dealing with complaints about ACA registered counsellors and psychotherapists.
 - d) To liaise with Government and relevant other agencies for the benefit of members and the general public.
 - e) To provide a unified voice for the counselling profession.
 - f) To provide a consistent Code of Conduct and set of Practitioner Standards.
 - g) To promote the professional development and growth of counsellors.
 - h) To provide a complaints committee for the ethical practice of ACA registered counsellors and psychotherapists.
 - i) To assess, review and recognise counsellor education courses.
 - j) To maintain a register of approved counsellors and make this register available to the general public.
 - k) To identify to the public at large counsellors that meet nationally recognisable standards of education and practice.

- l) To make the general public at large more aware of the counselling profession and the availability of reputable counsellors.
- m) Provide and maintain premises and facilities for administration, members and clients.

7. Powers

- 7.1 Subject to clause 8, the **company** has the following powers, which may only be used to carry out its objects set out in clause 6:
- a) the powers of an individual, and
 - b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its **ordinary members**, except as provided in clause 8.2 and 46.2.
- 8.2 Clause 8.1 does not stop the **company** from paying an **ordinary member** for goods or services they have provided or expenses they have properly incurred in good faith at fair and reasonable rates or rates more favourable to the **company**.

9. Amending the constitution

- 9.1 The ordinary members may amend this constitution by passing a **special resolution**.

Ordinary Members

10. Membership and register of ordinary members

- 10.1 The members of the **company** are:
- a) **initial members**, and
 - b) any other person accepted as an **ordinary member**, in accordance with this constitution.
- 10.2 **Ordinary members** agree to comply with the constitution, **Governance Framework** and the terms and conditions relating to membership as fixed by the board from time to time.
- 10.3 **Ordinary members** of the **company** are voting members and are entitled to all of the rights of the member of a company under the **Corporations Act** and this constitution, including but not limited to, the right to:
- a) receive notices of and attend members meetings;
 - b) speak and be heard at a members meeting;
 - c) vote at a member's meeting or by circular resolution;
 - d) be elected as a **member-elected director**, provided they are eligible under this constitution;
 - e) join with others to ask the board to call a general meeting provided the request is in accordance with clause 20.2 this constitution;
 - f) call a general meeting in accordance with clause 21.1 of this constitution;
 - g) join with others to request a member's resolution under clause 30 of this constitution;
 - h) seek access to the company records which are accessible to a member under the

Corporations Act;

- i) be appointed as a proxy under rule 36.2 of this constitution.

10.4 **Ordinary members** must meet the standards and criteria for membership eligibility in accordance with the company's Governance Framework on an ongoing basis.

10.5 The number of **ordinary members** is unlimited.

11. Who can be an ordinary member

11.1 A person who supports the objects of the **company** and meets the criteria for **ordinary membership** set out in the company's **Governance Framework** is eligible to apply to be an **ordinary member** of the **company** under clause 12.

11.2 In this clause, 'person' means an individual.

12. How to apply to become an ordinary member

12.1 A person (as defined in clause 11.2) may apply to become an ordinary member of the **company** in the form required by the Board from time to time.

13. Consideration of membership applications

13.1 Applications for ordinary membership will be considered in accordance with the process determined by the board from time to time.

13.2 If an application for ordinary membership is approved, the company must as soon as possible thereafter:

- a) record the details required by clause 15 in the register of members, and
- b) advise the person that their application was approved, and the date that their membership started (see clause 14).

13.3 An application for membership may be rejected and the company is not required to give any reason for its decision. If an application is rejected, the applicant must be advised as soon as reasonably possible that their application has been rejected.

14. When a person becomes an ordinary member

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

15. Register of Members

15.1 The **company** must establish and maintain a register of members, which must contain:

- a) for each current **ordinary member**:
 - i. name
 - ii. address
 - iii. email address
 - iv. any alternative address nominated by the member for the service of notices,
 - v. date the member was entered on to the register.
- b) for each person who stopped being an **ordinary member** in the last 7 years:
 - i. name
 - ii. address

- iii. email address
- iv. any alternative address nominated by the member for the service of notices,
- v. dates the membership started and ended.

16. Membership Fees for ordinary membership

- 16.1 The fee payable to be an **ordinary member** of the company:
- a) is the amount determined by the board from time to time; and
 - b) if payable, is payable when and in the way as the board determines.
- 16.2 Unless the board otherwise determines, any fee for **ordinary membership** of the company will be payable on the anniversary of membership or on such date as is otherwise determined by the board.
- 16.3 For clarity, any fee payable to be an **ordinary member** of the company is separate to the registration fee payable by a person for registration as a counsellor, psychotherapist or other class in a Registration Class set out in ACA's Scope of Practice.

17. When a person stops being an ordinary member

- 17.1 A person immediately stops being an **ordinary member**, if they:
- a) die,
 - b) resign,
 - c) remove themselves as an **ordinary member** on the company's data base,
 - d) cease to qualify as an **ordinary member** under the company's **Governance Framework**,
 - e) are expelled as an **ordinary member** under clause 19, or
 - f) fail to pay any membership fees to be an **ordinary member** of the company as and when the fee, if any falls due.

Dispute Resolution and Disciplinary Procedures

18. Dispute resolution

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) **under this constitution** between an **ordinary member** or director and:
- a) one or more **ordinary members**
 - b) one or more directors, or
 - c) the **company**.
- 18.2 Disputes about matters not under this constitution or which involve an **ordinary member** and a non-member are to be conducted in accordance with the **company's** policy relating to grievance and dispute procedures from time to time set out in its **Governance Framework**.
- 18.3 An **ordinary member** must not start a dispute resolution procedure under this clause in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.
- 18.4 A person can give notice of a dispute about a matter under this constitution by lodging a written, signed and dated complaint in the form and in the manner approved by the board from time to time.

- 18.5 Upon receipt of a complaint under clause 18.4, the secretary or their representative, will notify the complainant and other parties to the complaint of the receipt of the complaint and the proposed method for addressing the Complaint in accordance with the **company's** grievance and dispute procedures from time to time.
- 18.6 The **company's** grievance and dispute procedures from time to time must:
- a) allow those involved a reasonable chance to be heard,
 - b) allow those involved a reasonable chance to review any written statements, subject to any reasonable requests to keep the statements confidential from other parties due to privacy or other material concerns; and
 - c) ensure that those involved are given natural justice.
- 18.7 During the dispute process, the board may make any decision it deems appropriate including suspending an **ordinary member** from membership until the matter is finalised, if the circumstances warrant.
- 18.8 Following the dispute process, the board may make any decision it deems appropriate including lifting the suspension of a member from membership or terminating a member's membership of the **company**.
- 18.9 The board will advise parties to a dispute of any decision of the board concerning the dispute in writing.

19. Disciplining ordinary members

- 19.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a person as an **ordinary member** of the **company** if the directors consider that:
- a) the ordinary member has breached this constitution,
 - b) the ordinary member has breached the **company's Governance Framework**, or
 - c) the ordinary member's behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 19.2 At least 14 days before the directors' meeting at which a resolution under clause 19.1 will be considered, the secretary must notify the **ordinary member** in writing:
- a) that the directors are considering a resolution to warn, suspend or expel the member
 - b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - c) what the member is said to have done or not done
 - d) the nature of the resolution that has been proposed, and
 - e) that the member may provide an explanation to the directors, and details of how to do so.
- 19.3 Before the directors pass any resolution under clause 19.1, the member must be given a chance to explain or defend themselves by:
- a) sending the directors a written explanation before that directors' meeting, and/or
 - b) speaking at the meeting.
- 19.4 After considering any explanation under clause 19.3, the directors may:
- a) take no further action,
 - b) warn the person,
 - c) suspend the person's rights as an **ordinary member** for a period of no more than 12 months,
 - d) expel the person as an **ordinary member** of the company,

- e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - f) require the matter to be determined at a **general meeting**.
- 19.5 The directors cannot fine a member.
- 19.6 The secretary must give written notice to the member of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 19.9 For clarity, clause 19 applies to disciplining of **ordinary members** of the company in relation to their relationship with the company under this constitution and does not apply to the process to enforce the professional standards of persons registered by the company in a Registration Class set out in the company's Scope of Practice.

General Meetings of Ordinary Members

20. General meetings called by directors

- 20.1 The directors may call a **general meeting**.
- 20.2 If at least 5% of the ordinary members make a written request to the **company** for a **general meeting** to be held, that is accompanied by payment, or an undertaking to pay within 7 days of the date of the requisition, in cleared funds, the convening costs of the meeting, the directors must:
- a) within 21 days of the members' request, give all ordinary members notice of a **general meeting**, and
 - b) hold the **general meeting** within 2 months of the members' request.
- 20.3 The percentage of votes that **ordinary members** have (in clause 20.2) is to be worked out by reference to the register of members as at midnight AEST before the members request the meeting.
- 20.4 The members who make the request for a **general meeting** must:
- a) state in the request any resolution to be proposed at the meeting
 - b) agree in writing to the request, and
 - c) give the request to the **company**.
- 20.5 Separate copies of a document setting out the request may be submitted to the company if the wording of the request is the same in each copy.

21. General meetings called by members

- 21.1 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the ordinary members who made the request may call and arrange to hold a **general meeting**.
- 21.2 To call and hold a meeting under clause 21.1 the members must:
- a) as far as possible, follow the procedures for **general meetings** set out in this constitution,
 - b) call the meeting using the list of the **ordinary members** on the **company's** member

- register, which the **company** must provide to the members making the request at no cost, and
- c) hold the **general meeting** within three months after the request was given to the **company**.
- 21.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

22. Annual general meeting

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

23. Notice of general meetings

- 23.1 Notice of a **general meeting** must be given to:
- a) each ordinary member recorded in the register of members as at midnight of the day before the notice is sent,
 - b) each director, and
 - c) the auditor (if any).
- 23.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:
- a) for an annual general meeting, all the **ordinary members** agree beforehand, or
 - b) for any other **general meeting**, 95% of the **ordinary members** agree beforehand.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- a) remove a director,
 - b) appoint a director in order to replace a director who was removed, or
 - c) remove an auditor.
- 23.5 Notice of a **general meeting** must include:
- a) the place, date and time for the meeting (and if the meeting is to be held in two

- or more places, the technology that will be used to facilitate this)
- b) the general nature of the meeting's business
 - c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution,
 - d) a statement that **ordinary members** have the right to appoint a proxy in accordance with clause 36 of the constitution, namely that:
 - i. the proxy must be an ordinary **member**,
 - ii. the proxy must be appointed in accordance with the procedure for appointing a proxy for that meeting specified in the notice of the meeting, and
 - iii. the proxy form in the form approved by the board must be delivered to the **company** at least 48 hours before the meeting.

23.6 If a **general meeting** is adjourned (put off) for one month or more, the **ordinary members** must be given new notice of the resumed meeting.

24. Quorum at general meetings

24.1 For a **general meeting** to be held, at least 20 **ordinary members** or 1% of the total number of **ordinary members** whichever is the greater (a quorum) must be present (in person including by technology or proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once.

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

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

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

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

25. Auditor's right to attend meetings

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

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

26. Using technology to hold meetings

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

26.2 Anyone who participates in the meeting using the technology selected for the meeting is taken to be present in person at the meeting.

27. Chairperson for general meetings

- 27.1 The **Chair of the board** is entitled to chair **general meetings**.
- 27.2 The **ordinary members** present at a **general meeting** may choose a director or an **ordinary member** to be the chair for that meeting if:
- a) there is no **Chair of the board**, or
 - b) the **Chair of the board** is not present within 30 minutes after the starting time set for the meeting, or
 - c) the **Chair of the board** is present but says they do not wish to act as chairperson of the meeting.

28. Role of the chair of meeting

- 28.1 The chair of a meeting is responsible for the conduct of the **general meeting**, and for this purpose must give **ordinary members** a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 28.2 The chair of a meeting does not have a casting vote.

29. Adjournment of meetings

- 29.1 If a quorum is present, a **general meeting** must be adjourned if a majority of the **ordinary members** present direct the chair of the meeting to adjourn it.
- 29.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' Resolutions and Statements

30. Members' resolutions and statements

- 30.1 **Ordinary members** with at least 5% of the votes that may be cast on a resolution may give:
- a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - b) a written request to the **company** that the **company** give all of its **ordinary members** a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 30.2 A notice of a members' resolution referred to in rule 30.1 must set out the wording of the proposed resolution and be agreed to in writing by the members proposing the resolution.
- 30.3 A request to distribute a members' statement must set out the statement to be distributed and agreed to in writing by the members making the request.
- 30.4 Separate copies of a document setting out the notice or request may be submitted to the company if the wording is the same in each copy.
- 30.5 The percentage of votes that members have (as described in clause 30.1) is to be worked out by reference to the register of members as at midnight before the request or notice is given to the company.
- 30.6 If the **company** has been given notice of a members' resolution under clause 30.1, the resolution must be considered at the next **general meeting** held more than two months after the notice is given.

30.7 This clause does not limit any other right that an ordinary member has to propose a resolution at a **general meeting**.

31. Company must give notice of proposed resolution or distribute statement

31.1 If the **company** has been given a notice or request under clause 30:

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

31.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- a) it is more than 1000 words long
- b) the directors consider it may be defamatory
- c) clause 31.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
- d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

32. Circular resolutions of members

32.1 Subject to clause 32.3, the directors may ask the **ordinary members** to pass a resolution without a **general meeting** being held (a circular resolution).

32.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members and set out the wording of the resolution.

32.3 Circular resolutions cannot be used:

- a) for a resolution to remove an auditor, appoint a director or remove a director,
- b) for passing a **special resolution**, or
- c) where the **Corporations Act** or this constitution requires a meeting to be held.

32.4 A circular resolution is passed if all the **ordinary members** sign or agree to the circular resolution, in the manner set out in clause 32.5 or clause 32.6.

32.5 Members may agree in writing to:

- a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
- b) separate copies of that document, as long as the wording is the same in each copy.

32.6 The **company** may send a circular resolution by email to ordinary members and ordinary members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at General Meetings

33. How many votes an ordinary member has

- 33.1 Each **ordinary member** recorded in the register of members at midnight on the day before the Notice of general meeting was sent under rule 23.1(a) has one vote.

34. Challenge to member's right to vote

- 34.1 An **ordinary member** or the chair of the meeting may only challenge a person's right to vote at a **meeting** at that meeting.
- 34.2 If a challenge is made under clause 34.1, the chair of the meeting must decide whether or not the person may vote and the chair's decision is final.

35. How voting is carried out

- 35.1 Voting must be conducted and decided by:
- a) a show of hands, or
 - b) another method chosen by the chair of the meeting that is fair and reasonable in the circumstances having regard to the technology selected for the meeting.
- 35.2 After a vote is taken, the chair of the meeting must state whether any proxy votes have been received and, if so, how the proxy votes were cast.
- 35.3 On a show of hands, the chair's decision is conclusive evidence of the result of the vote.
- 35.4 The chair of the meeting and the meeting minutes must state the number or proportion of the votes recorded in favour or against a resolution.

36. Appointment of proxy

- 36.1 An **ordinary member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy must be an **ordinary member** of the company.
- 36.3 A proxy appointed to attend and vote for an **ordinary member** has the same rights as the member to:
- a) speak at the meeting, and
 - b) vote.
- 36.4 A proxy must be appointed in accordance with the procedure for appointing a proxy for that meeting advised in the notice of general meeting.
- 36.5 Proxy forms must be received by the **company** at the address stated in the notice of general meeting at least 48 hours before a meeting.
- 36.6 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 36.7 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- a) dies
 - b) is mentally incapacitated
 - c) revokes the proxy's appointment, or
 - d) revokes the authority of a representative or agent who appointed the proxy.

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

37. Voting by proxy

37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on their own behalf on a show of hands).

Directors

38. Number of directors and composition of board

38.1 The **company** must have at least three but no more than eight directors, comprised of:

- Between 3 and 6 eligible persons elected by the **ordinary members** under rule 39 (**member- elected directors**);
- A director to be called the student representative director (appointed by the board having regard to the criteria for appointment to this role set out in policy referred to in rule 40.3), using such process as the board determines; and
- Up to one other person appointed by the board for their skills, knowledge or experience (having regard to the criteria for appointment to this role set out in policy referred to in rule 40.3) upon such terms and conditions as the board determines for a period determined by the board (skills- based director).

39. Election and appointment of directors

39.1 The **initial directors** are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.

39.2 Apart from the **initial directors**, the **member- elected directors** are to be elected by the **ordinary members** by a resolution passed by them either at a **general meeting** or by the use of a reputable and reliable online voting platform approved by the board.

39.3 Each of the **member- elected directors** must be appointed by a separate resolution, unless:

- The **ordinary members** present at the meeting have first passed a resolution that the appointments may be voted on together, and
- no votes were cast against that resolution.

39.4 The directors may appoint a person as a director to fill a casual vacancy in the office of a **member-elected director** until the end of the next AGM if that person:

- is an **ordinary member**;
- gives written consent to act as a director of the company, and
- is not ineligible to be a director under the **Corporations Act**.

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

40. Eligibility of Directors

- 40.1 Subject to clause 40.2, a person is eligible for election as a **member- elected director** of the **company** under rule 38.1 (a), if they:
- a) meet any specific eligibility requirements for the role specified in this constitution or in the **company's Governance Framework**,
 - b) are proposed by one **ordinary member** and seconded by another **ordinary member**,
 - c) give the **company** their written consent to act as a director of the **company**, and
 - d) are not ineligible to be a director under the **Corporations Act**.
- 40.2 In addition to the requirements in clause 40.1, to be eligible for election as a **member- elected director** of the **company** under rule 38.1 (a):
- a) In 2025 a person must be an **ordinary member** and have been an **ordinary member** of the company continuously prior to the date of the election for 12 months;
 - b) From 2026 a person must be an **ordinary member** and have been an **ordinary member** of the company continuously prior to the date of election for at least 2 years.
- 40.3 The board must have a governance policy in its **Governance Framework** in relation to the process for identification, recruitment and selection of persons suitable for appointment as a director to ensure that the board is comprised of persons with the necessary skills, experience, knowledge, and qualities for a board governing the company with its purposes and responsibilities.

41. Chair of the board

- 41.1 The person elected as the President at the 2023 AGM of the incorporated association will be the initial **Chair of the board** for the term set out in clause 42.1 (a).
- 41.2 After the initial **Chair of the board**, the board is entitled to appoint a **Chair of the board** from amongst the existing directors from time to time, for such term as the board determines.

42. Term of office

- 42.1 The term of office for the **initial directors** will end:
- a) for the person elected as President upon the adoption of this constitution – at the end of the third AGM after the adoption of this constitution; and
 - b) for all other initial directors - at the end of the second AGM after the adoption of this constitution.
- 42.2 The term of office of a **member- elected director** (other than an initial director) will be up to 3 years:
- a) starting
 - i. at the end of the annual general meeting at which they are elected; or
 - ii. in the case of an online election, at the annual general meeting held immediately after their election; and
 - b) ending at the end of the third annual general meeting after their election.
- 42.3 A director may nominate for re-election, for up to two further terms but must thereafter retire from their role on the board for 3 years.
- 42.4 Any period served by a director in a casual vacancy appointed under clause 39.4 is not to be counted in calculating the maximum term of office they may serve.

42.5 As far as is practicable to enable the ongoing refreshment of the board, after the **initial directors**, terms for directors are to be co-ordinated so that at least 1/3 of the directors (rounded to the next whole number) retire at each AGM.

43. When a director stops being a director

- 43.1 A director stops being a director if they:
- a) give written notice of resignation as a director to the **company**,
 - b) die,
 - c) are removed as a director by a resolution of the **ordinary members**,
 - d) are absent for 2 consecutive directors' meetings without approval from the directors,
 - e) become ineligible to be a director of the **company** under the **Corporations Act**, or this **Constitution**, or,
 - f) cease to be eligible for election or appointment in their role under the company's **Governance Framework**.

Powers of Directors

44. Powers of directors

- 44.1 The directors are responsible for managing and directing the activities of the **company** to achieve the objects set out in clause 6.
- 44.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 44.3 The directors must decide on the responsible financial management of the **company** including:
- a) any suitable written delegations of power under clause 45, and
 - b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

45. Delegation of directors' powers

- 45.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 45.2 The delegation must be recorded in the **company's** minute book or other document in the company's **Governance Framework** such as a delegation's authority.

46. Payments to directors

- 46.1 Except as set out in clause 46.2, the **company** must not pay fees to a director for acting as a director.
- 46.2 The **company** may:
- a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done;
 - b) pay for a director's professional development and such similar expenses as agreed by the board, provided the expense is directly connected to the person's role as a director of the **company**;
 - c) reimburse a director for expenses properly incurred by the director in

connection with the affairs of the **company**.

46.3 Any payment made under clause 46.2 must be approved by the directors.

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

47. Execution of documents

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

- a) two directors of the **company**, or
- b) a director and the secretary, or
- c) any person authorised by the board to sign a document on behalf of the company.

Duties of Directors

48. Duties of directors

48.1 The directors must comply with their duties as directors under legislation and common law (judge-made law), including:

- a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- b) to act in good faith in the best interests of the **company** and to further the object(s) of the **company** set out in clause 6
- c) not to misuse their position as a director including to gain a personal or commercial advantage
- d) not to misuse information they gain in their role as a director
- e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 49
- f) to ensure that the financial affairs of the **company** are managed responsibly, and
- g) not to allow the **company** to operate while it is insolvent.

49. Conflicts of interest

49.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- a) to the other directors, or
- b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.

49.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

49.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 49.4:

- a) be present at the meeting while the matter is being discussed, or
- b) vote on the matter.

- 49.4 A director may still be present and vote if:
- a) their interest arises because they are a member of the **company**, and the other members have the same interest
 - b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 68)
 - c) their interest relates to a payment by the **company** under clause 67 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' Meetings

50. When the directors meet

- 50.1 The directors will meet at least eight times per year and may decide where and when they meet.

51. Calling directors' meetings

- 51.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 51.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

52. Chair for directors' meetings

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

53. Quorum at directors' meetings

- 53.1 The quorum for a directors' meeting is a simple majority of the directors.
- 53.2 Calculation of a quorum will take into account any directors attending electronically in accordance with clause 54.
- 53.3 A quorum must be present for the whole directors' meeting.

54. Using technology to hold directors' meetings

- 54.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

- 54.2 The directors' agreement may be a standing (ongoing) one.
- 54.3 A director may only withdraw their consent within a reasonable period before the meeting.

55. Passing directors' resolutions

- 55.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 55.2 The **chair of the meeting** does not have a casting vote.

56. Circular resolutions of directors

- 56.1 The directors may pass a circular resolution without a directors' meeting being held.
- 56.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 56.3 or clause 56.4.
- 56.3 Each director may agree in writing to:
- a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 56.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 56.5 A circular resolution is passed when the last director signs or otherwise agrees in writing to the resolution in the manner set out in clause 56.3 or clause 56.4.

Secretary

57. Appointment and role of secretary

- 57.1 The **company** must have at least one company secretary, appointed by the board using such process as it determines.
- 57.2 The board must set out the qualifications, skills experience and knowledge required of a company secretary in its Governance Framework which is, subject to clause 57.3, to include the requirement that a person must be a graduate of the Australian Institute of Company Directors company directors' course.
- 57.3 The board may in its discretion appoint an existing director of the company as the company secretary in which case that person is not required to be a graduate of the Australian Institute of Company Directors company directors' course.
- 57.4 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 57.5 The role of the secretary includes:
- a) maintaining a register of the company's members, and
 - b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

- 57.6 The company secretary must attend all board meetings, but unless they are a director in their own right, they will have no right to vote.
- 57.7 Subject to the law, the board may remove a company secretary from office as company secretary.

Minutes and Records

58. Minutes and records

- 58.1 The **company** must, within one month, make and keep the following records:
- minutes of proceedings and resolutions of **general meetings**
 - minutes of circular resolutions of members
 - a copy of a notice of each **general meeting**, and
 - a copy of a members' statement distributed to members under clause 30.
- 58.2 The **company** must, within one month, make and keep the following records:
- minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - minutes of circular resolutions of directors.
- 58.3 To allow **ordinary members** to inspect the **company's** records:
- the **company** must give a member access to the records set out in clause 58.1, and
 - the directors may authorise an **ordinary member** to inspect other records of the **company**, including records referred to in clause 58.2 and clause 59.1.
- 58.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed or otherwise agreed to in writing within a reasonable time after the meeting by:
- the **Chair of the board** if present at the meeting;
 - the chair of the meeting, or
 - the chair of the next meeting.
- 58.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director or otherwise agreed to in writing within a reasonable time after the resolution is passed.

59. Financial and related records

- 59.1 The **company** must make and keep written financial records that:
- correctly record and explain its transactions and financial position and performance, and
 - enable true and fair financial statements to be prepared and to be audited.
- 59.2 The **company** must also keep written records that correctly record its operations.
- 59.3 The **company** must retain its records for at least 7 years.
- 59.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.
- 59.5 The company must prepare an annual financial report which is audited in accordance with the Corporations Act and the Australian Accounting Standards.

Governance Framework

60. Governance Framework

- 60.1 The directors must adopt governance documents and a **Governance Framework** consistent with the constitution which in the opinion of the board are necessary or desirable for the proper control, administration and management of the company's finances, operations and business affairs and amend those documents or framework.
- 60.2 **Ordinary members** and directors must comply with the **Governance Framework** as if they were part of this constitution.

Notice

61. What is notice

- 61.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 62 to 64, unless specified otherwise.
- 61.2 Clauses 62 to 64 do not apply to a notice of proxy under clause 36.5.

62. Notice to the company

- 62.1 Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:
 - a) delivering it to the company's registered office
 - b) posting it to the company's registered office or to another address chosen by the company for notice to be provided, or
 - c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address.

63. Notice to members

- 63.1 Written notice or any communication under this constitution may be given to a member:
 - a) in person
 - b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
 - c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
 - d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 63.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

64. When notice is taken to be given

- 64.1 A notice:
 - a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
 - b) sent by post, is taken to be given on the third day after it is posted with the

- correct payment of postage costs
- c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and
- d) given under clause 63.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial Year

65. Company's financial year

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

Indemnity, Insurance and Access

66. Indemnity

- 66.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 66.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 66.3 In this clause, 'to the relevant extent' means:
- a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 66.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

67. Insurance

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

68. Directors' access to documents

- 68.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 68.2 If the directors agree, the **company** must give a director or former director access to the following material relevant to their term of office:
- a) certain documents, including documents provided for or available to the directors, and
 - b) any other documents referred to in those documents.

Winding Up

69. Surplus assets not to be distributed to members

- 69.1 If the **company** is wound up, any **surplus assets** must not be distributed to an **ordinary member** or a former **ordinary member** of the **company**.

70. Distribution of surplus assets

- 70.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any surplus assets that remain after the **company** is wound up must be distributed to one or more entities:
- a) with purposes similar to, or inclusive of, the purposes in clause 6, and
 - b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- 70.2 The decision as to the entity to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up.

ACA Affiliates

71. ACA Affiliates are not members of the company

- 71.1 The company must in its Governance Framework provide for ACA Affiliates.
- 71.2 A person who wishes to participate in ACA and use its services is required:
- (a) to be registered by ACA under a particular Registration Class set out in the ACA Scope of Practice; and
 - (b) to either be
 - (i) an ACA **Ordinary Member**; or
 - (ii) an ACA Affiliate.
- 71.3 A person who is registered in a Registration Class in accordance with the company's Scope of Practice, who is not an **ordinary member** of the company, will be deemed to be an ACA Affiliate.
- 71.4 An ACA Affiliate is **not** an **ordinary member** of the company.
- 71.5 ACA Affiliates:
- a) do not have any of the rights of a member under the Corporations Act;
 - b) do not have any of the rights of an ordinary member under this constitution as summarised in clause 10.3;
 - c) are not liable to pay the member guarantee referred to in clause 4;
 - d) are bound by the **Governance Framework** and the ACA Scope of Practice including professional standards and complaints handling.

Definitions and Interpretations

72. Definitions

72.1 In this constitution:

ACA means the **company**.

ACA Affiliate means a person referred to in clause 71.3 who is not an **ordinary member** of the company.

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

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

Chair of the board means the person appointed as the **company's** chairperson under clause 41.

Chair of a meeting for a members meeting means the Chair of the board or a person acting as the chair in accordance with clause 27 and for a board meeting means the chair of the board or a person acting as chair in accordance with clause 52.

general meeting means a meeting of ordinary members and includes the annual general meeting, under clause 22.

Governance Framework means the policies, procedures and other material from time to time supporting the governance of the company.

initial director means a person who becomes a director on the registration of the company.

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

member wherever that term is used in this constitution means **ordinary member** unless specified otherwise.

member-elected director means a person elected as a director under rule 38.1 (a).

ordinary member means a person admitted as an **ordinary member** of the company in accordance with clause 10 of this constitution.

special resolution means a resolution:

- i. of which notice has been given under clause 23 , and
- ii. that has been passed by at least 75% of the votes cast by **ordinary members present** and entitled to vote on the resolution, and

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

73. Reading this constitution with the Corporations Act

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

73.2 The **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

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

74. Interpretation

74.1 In this constitution:

- a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).
- c) where the constitution requires a document to be signed this includes any mark or other indication of signing accepted by the law as evidence of a document being signed such as by electronic means.



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