

Constitution

National Mental Health Consumer Organisation Ltd

ACN

A Public Company Limited by Guarantee

Corporations Act 2001

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1. Definitions

1.1 In this *Constitution*, unless the context requires otherwise:

- (a) **Act** means the *Corporations Act 2001*;
- (b) **applicant** means any *Individual* or *Entity* applying to be a *Member* of the Company under clause 5;
- (c) **Board** means the Board of Directors of the *Company*;
- (d) **Board Appointed Director** means a *Director* appointed to the *Board* in accordance with clause 9.27;
- (e) **By-Laws** means by-laws made or adopted under clause 16;
- (f) **CEO** means the chief executive officer of the *Company*, appointed under clause 15.1;
- (g) **Chairperson of the Board** means the chairperson of the *Board*, elected from time to time under clause 10.1;
- (h) **chairperson** means the person entitled to preside as chair at a particular:
 - (i) board meeting, as determined under clauses 10.7 and 10.8; or
 - (ii) general meeting, as determined under clauses 6.20 to 6.22;
- (i) **Committee** means a committee appointed by the *Board* under clause 12.1;
- (j) **Company** means National Mental Health Consumer Organisation Ltd, ACN ;
- (k) **Constitution** means the *Company's* constitution as amended from time to time;
- (l) **Director** means a person appointed in accordance with this *Constitution* to perform the duties of a director of the *Company*;
- (m) **Director Eligibility and Board Composition Policy** means the policy made from time to time under clause 9.7;
- (n) **Deputy Chairperson of the Board** means the deputy chairperson of the *Board*, if any, elected from time to time under clause 10.1;
- (o) **Elected Director** means a *Director* appointed to the *Board* in accordance with clause 9.16;
- (p) **Entity** means a corporation, as that expression is defined in the *Act*, and any other form of entity, whether or not incorporated, which the *Board* determines may be treated as a body corporate;
- (q) **Independent Nominations Committee** means the committee formed from time to time pursuant to clause 9.11;
- (r) **Individual** means a natural person;
- (s) **Maximum Term** means two consecutive terms of three years;

- (t) **Member** means an *Entity* or *Individual* who, at the relevant time, is a member of the *Company* in accordance with this constitution (whether a *Voting Member* or a *Non-Voting Member*, unless otherwise specified);
- (u) **Mental Health Consumer** is a person who identifies as having a current or past lived experience of mental health issues or mental illness, irrespective of whether that person has a diagnosed mental illness and/or has received treatment;
- (v) **Non-Voting Member** means:
- (i) an *Individual* who, at the relevant time, is a non-voting member of the *Company* in accordance with clause 5.4; or
- (ii) an *Entity* who, at the relevant time, is a non-voting member of the *Company* in accordance with clause 5.5;
- (w) **notice** means a communication in writing in either hard copy or electronic form from:
- (i) the *Company* to a *Member*, or
- (ii) a *Member* to the *Company*;
- (x) **Register** means the register of *Voting and Non-Voting Members* kept by the *Company* under the *Act*;
- (y) **Regulator** means a government authority, statutory body or other instrumentality or agency;
- (z) **Representative** means, in relation to a *Member*, the representative of the *Member* appointed under clause 8;
- (aa) **Seal** means the common seal of the *Company* (if any);
- (bb) **Secretary** means the person appointed as secretary of the *Company* under clause 14.1;
- (cc) **Voting Member** means:
- (i) an *Individual* who, at the relevant time, is a voting member of the *Company* in accordance with clause 5.2; or
- (ii) an *Entity* who, at the relevant time, is a voting member of the *Company* in accordance with clause 5.3.

2. Nature of Company

2.1 The *Company* is a public company limited by guarantee.

2.2 The liability of *Members* is limited. Each *Member* undertakes to contribute \$2 to the assets of the *Company*:

- (a) in the event that the *Company* is wound up; or
- (b) in the event that the *Company* is wound up within one year after the *Member* ceases to be a *Member*.

2.3 The broad purpose of the *Company* is to bring together a diversity of *Mental Health Consumers* and *Mental Health Consumer* organisations and

groups enabling them to work collaboratively towards achieving a shared national vision leading to improved quality of life, social justice and inclusion.

- 2.4 The *Company* champions the inclusion of *Mental Health Consumers* by an overt and direct policy commitment to employing people with lived experience within the *Company*.

3. Objects

- 3.1 The primary objects for which the company is established are to:
- (a) promote, influence and facilitate the rights of *Mental Health Consumers* to enable improvements in mental health, wellbeing and quality of life of all people with lived experience of mental health issues;
 - (b) promote and facilitate community education and awareness of mental health issues, including targeted campaigns and initiatives, to improve the mental health and wellbeing of *Mental Health Consumers*, and all Australians;
 - (c) provide national *Mental Health Consumer* leadership, increase the effectiveness and enhance the long term viability of *Mental Health Consumer* charities, not-for-profit and other organisations by promoting partnerships and a coordinated approach to improving social inclusion, realising potential and is respectful of people who live with mental health issues;
 - (d) promote the needs of all people at risk of mental illness through a systems approach to prevention, treatment/support, recovery and peer lead intervention; and
 - (e) provide national leadership on *Mental Health Consumer* matters.
- 3.2 The *Company* may achieve the primary objects through (without limitation):
- (a) promoting holistic mentally health communities, improve the lives and promote recovery of *Mental Health Consumers*;
 - (b) developing:
 - (i) mechanisms for a strong united, diverse and informed *Mental Health Consumer* voice to contribute to mental health reform, the highest standards of mental health policy and services, and the rights of all peoples living with mental health issues;
 - (ii) strategies that respond to the challenges and issues identified by *Mental Health Consumers* as not having equitable access to mental health services and support, and all people at risk of mental illness, and will be;
 - (A) respectful of human rights;
 - (B) focused on social justice;

- (C) culturally relevant;
 - (D) universally accessible; and
 - (E) cost effective,
- (c) providing *Mental Health Consumer* centred leadership to influence policy and funding decisions that impact on the quality of mental health programs and services in Australia;
 - (d) participating, facilitating and contributing to research that impacts on *Mental Health Consumers*, and is relevant across sectors, inclusive of *Mental Health Consumers*, uses a social justice and human rights approach, and will lead to better health outcomes;
 - (e) promoting a positive community understanding of people experiencing mental illness by breaking down stigma, prejudice and discrimination; and
 - (f) promoting social inclusion and increasing participation of *Mental Health Consumers* in health policy and service planning.
- 3.3 The *Company* may do all such things as are incidental or conducive to the operation of the *Company* and otherwise for the attainment of all or any of the above object of the *Company*.

4. Not for profit

No profits for Members

- 4.1 Subject to clause 4.2, all of the assets and income of the *Company* must be applied solely in the furtherance of the objects of the *Company* and no portion may be distributed directly or indirectly to any *Member*.
- 4.2 Nothing in clause 4.1 prevents the payment, in good faith, of an amount, calculated on arms-length terms, in respect of:
- (a) remuneration payable to an employee of the *Company* who is also a *Member*, for services actually rendered to the *Company*; or
 - (b) goods or services actually supplied by a *Member* to the *Company* in the ordinary and usual course of the *Member's* business;
 - (c) interest (at a rate not exceeding interest at the rate for the time being charged by the *Company's* bankers for overdrawn accounts) on money borrowed from a *Member*;
 - (d) rent for premises let by a *Member* to the *Company*; or
 - (e) payment to a *Member* in his or her capacity as a *Director*, under clause 9.43.

Winding up

- 4.3 Upon the dissolution of the *Company*, any remaining property after satisfaction of all debts and liabilities must not be paid to or distributed among the *Members*, but must be given or transferred to some other charitable institution or organisation:

- (a) which has objects similar to the objects of the *Company*; and
- (b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 4.1,

as determined by the *Voting Members* at or before the time of winding up or dissolution of the *Company* and, in default of any such determination, by the Supreme Court of the Australian Capital Territory.

4.4 If the *Company* 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 charitable institution or organisation to which income tax deductible gifts can be made:

- (a) gifts of money or property for the principal purpose of the organisation;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation; and
- (c) money received by the organisation because of such gifts and contributions.

5. Members

Membership

5.1 There are two classes of membership of the *Company*:

- (a) *Voting Members*; and
- (b) *Non-Voting Members*.

Application for membership

5.2 Voting membership is open to any *Individual* who resides in Australia and satisfies the following requirements:

- (a) has lived experience as a *Mental Health Consumer* or identifies as a *Mental Health Consumer*;
- (b) demonstrates to the satisfaction of the *Board* that he or she is supportive of or has a bona fide interest in the achievement of the objects of the *Company*;
- (c) completes and lodges an application for membership:
 - (i) in the form and manner, and providing such supporting information, as may be from time to time prescribed by the *Board*; and
 - (ii) is signed by the person seeking membership;
- (d) pays the application fee and annual membership fee for *Voting Members*, if any, from time to time prescribed by the *Board* when lodging the application for membership; and
- (e) is accepted to membership by the *Board*.

- 5.3 Voting membership is open to any *Entity* which is incorporated or has a physical presence in Australia and satisfies the following requirements:
- (a) demonstrates to the satisfaction of the *Board* that the *Entity* is supportive of or has a bona fide interest in the achievement of the objects of the *Company*;
 - (b) demonstrates to the satisfaction of the *Board* that it is an *Entity* which has a stated mission or objective primarily concerned with the wellbeing of *Mental Health Consumers* and which may include but is not limited to:
 - (i) the *Entity's* governing body including at least one *Mental Health Consumer*;
 - (ii) a category or class of members comprising or including *Mental Health Consumers*; and/or
 - (iii) the primary objects of the *Entity* including objectives regarding *Mental Health Consumers*;
 - (c) completes and lodges an application for membership:
 - (i) in the form and manner, and providing such supporting information, as may be from time to time prescribed by the *Board*; and
 - (ii) is signed by the *Entity*;
 - (d) pays the application fee and annual membership fee for *Voting Members*, if any, from time to time prescribed by the *Board* when lodging the application for membership; and
 - (e) is accepted to membership by the *Board*.
- 5.4 Non-Voting membership is open to any *Individual* or *Entity* that satisfies the following requirements:
- (a) demonstrates to the satisfaction of the *Board* that the *applicant* is supportive of or has a bona fide interest in the achievement of the objects of the *Company*;
 - (b) completes and lodges an application for membership:
 - (i) in the form and manner, and providing such supporting information, as may be from time to time prescribed by the *Board*; and
 - (ii) is signed by the *applicant*;
 - (c) pays the application fee and annual membership fee for *Non-Voting Members*, if any, from time to time prescribed by the *Board* when lodging the application for membership; and
 - (d) is accepted to membership by the *Board*.
- 5.5 *Non-Voting Membership* is open to any *Entity* who:
- (a) demonstrates to the satisfaction of the *Board* that the *Entity* is supportive of or has a bona fide interest in the achievement of the objects of the *Company*;

- (b) completes and lodges an application for membership:
 - (i) in the form and manner, and providing such supporting information, as may be from time to time prescribed by the *Board*; and
 - (ii) is signed by the *applicant*;
 - (c) pays the entrance fee and annual membership fee for Non-Voting Members, if any, from time to time prescribed by the Board when lodging the application for membership; and
 - (d) is accepted to membership by the *Board*.
- 5.6 In respect of each application for membership duly made in accordance with this *Constitution*:
- (a) the *Secretary* must provide the application to the *Board* or its duly authorised delegate promptly after receipt of the application;
 - (b) the *Board* or its duly authorised delegate must consider the application promptly and, after considering it, determine in the *Board's* sole and absolute discretion whether to:
 - (i) accept the application, which requires a simple majority of the *Board*; or
 - (ii) reject the application,
- 5.7 If the application for membership is accepted under clause 5.6, the *applicant* must be admitted as a *Member* and the *Secretary* must:
- (a) notify the *applicant* in writing of the admission to membership and the class and category, if any, of that membership;
 - (b) issue a receipt for the membership fee paid by the *Member*; and
 - (c) cause the required details to be entered in the *Register*.
- 5.8 If the application for membership is rejected under clause 5.6:
- (a) the *Secretary* must notify the *applicant* in writing of the rejection of the application; and
 - (b) the *Secretary* must refund in full the membership fee paid with the application.
- 5.9 The *Board* is not required to give reasons for accepting or rejecting any application for membership.

Members' obligations and rights

- 5.10 Without limiting clause 5.11, *Members* agree to be bound by the provisions of this *Constitution* and any *By-Laws* made by the *Board* under this *Constitution*.
- 5.11 For so long as a *Member* abides by the provisions of this *Constitution* and the *By-Laws*, the *Member* will enjoy the rights and privileges of membership under the *Act*, this *Constitution* and the *By-Laws*.

- 5.12 *Voting Members* have the right to:
- (a) receive notices of, attend and be heard at any general meeting;
 - (b) cast one vote in person or by proxy at any properly convened general meeting of *Members*; and
 - (c) cast one vote in any properly held postal or formal electronic ballot.
- 5.13 *Non-Voting Members* have the right to receive notices of and attend any general meeting but do not have any right to vote or be heard:
- (a) at any general meeting; or
 - (b) in a postal or formal electronic ballot.

Membership fees

- 5.14 The application fees and annual membership fees for *Members*, if any, and the time and manner of payment of such fees are as determined by the *Board* from time to time.
- 5.15 If a *Member's* membership fee or any part of it remains unpaid for two months after it becomes payable, the *Member* may be given a notice of default:
- (a) requesting the *Member* to pay the unpaid membership fee within the time determined by the *Board* and specified in the *notice*; and
 - (b) informing the *Member* that their rights as a *Member* (under this *Constitution* or otherwise in relation to the *Company*) have been suspended and that the *Member* may be removed from the *Register* pursuant to clause 5.27 if the membership fee remains unpaid within the time specified in the *notice*.
- 5.16 If a *Member's* membership fee or any part of it remains unpaid after the time specified in a *notice* given to the *Member* under clause 5.15, the *Member's* rights as a *Member* (under this *Constitution* or otherwise in relation to the *Company*) shall be suspended until such time as:
- (a) the *Member* has paid all arrears of membership fees, at which point in time the *Members* rights shall be reinstated, or
 - (b) the *Member* has been removed from the *Register*.
- 5.17 A *Member* who:
- (a) resigns and is removed from the *Register* pursuant to clause 5.24;
 - (b) is removed from membership pursuant to clause 5.27; or
 - (c) otherwise ceases to be a *Member*,
- is not entitled to any refund of any application fee or annual membership fees.

Membership categories

- 5.18 The *Board* may make and adopt *By-Laws* setting out, for each class of membership, different categories of membership within that class and:
- (a) the eligibility criteria for each category;
 - (b) the application fee and membership fees payable by *Members* in each category; and
 - (c) the various rights, if any, of *Members* in each category in addition to the rights set out in clauses 5.12 or 5.13.
- 5.19 For the avoidance of doubt, nothing in clause 5.18 affects the rights and obligations of *Members* as set out in clauses 5.12 or 5.13 of this *Constitution*.

Register of Members

- 5.20 A *Register of Members* must be kept to record the *Members* of the *Company*.
- 5.21 The following details must be entered and kept current in the *Register* in respect of each *Member*:
- (a) the *Member's* full name, postal address, telephone number and/or e-mail address;
 - (b) the date of admission to and cessation of membership;
 - (c) the class of membership; and
 - (d) the category, if any, of membership.
- 5.22 The *Register* must be open for inspection by *Members* in accordance with the *Act*.
- 5.23 Each *Member* must notify the *Secretary* in writing of any change in that *Member's* name, postal address, telephone number or e-mail address within one month after the change.

Resignation from membership

- 5.24 A *Member* may resign from membership by giving written *notice* to the *Secretary*.
- 5.25 A *Member's* resignation takes effect at the time the *notice* is given to the *Secretary* or such later date as may be specified in the *notice*.
- 5.26 A *Member's* liability for any fees, subscriptions or other moneys in arrears at the date of resignation continues until discharged by payment.

Removal from Register

- 5.27 If a *Member*:
- (a) fails to pay outstanding fees within the time specified in a *notice* of default given to that *Member* under clause 5.15; or

- (b) fails or declines to complete and lodge with the *Secretary* or *CEO* an annual membership renewal in the form and manner from time to time required by the *Board*;

the *Member* may be removed from membership by resolution of the *Board*.

Removal from membership

5.28 If a *Member*:

- (a) fails to comply with any provisions of the *Constitution* or *By-Laws*; or
- (b) conducts itself in a manner considered:
 - (i) to be injurious or prejudicial to the character, reputation or interests of the *Company*; or
 - (ii) to prevent or attempt to prevent the *Company* achieving its objects;

the *Member* may be removed from membership by resolution of the *Board* at a *Board* meeting.

5.29 A *Member* may only be removed from membership pursuant to clause 5.28 if:

- (a) the *Board* has first given at least two months' written *notice* to the *Member* stating:
 - (i) the intention to consider the termination of the *Member's* membership at a meeting of the *Board*;
 - (ii) setting out the grounds of the intended termination;
 - (iii) inviting the *Member* to provide to the *Board* any written representations which the *Member* wishes to be put to the meeting; and
 - (iv) specifying the time by which such representations must be received;
- (b) the *Board* has included in the *notice* of the meeting a copy of the *Member's* written representations (unless the written representations were not provided by the *Member* in time to be included in the *notice*, in which case the written representations have, if required by the *Member*, been read out at the meeting);
- (c) the *Member* has been given a full and fair opportunity to address the meeting in person or by the *Member's* nominated representative, whether or not the *Member* has provided written representations to the *Board*; and
- (d) the *Member* has not shown cause why the *Member* should not be removed from membership.

Other cessation of membership

5.30 A *Member* otherwise ceases to be a *Member* if the *Member*:

- (a) becomes insolvent;
- (b) becomes the subject of a winding up petition;
- (c) enters into an arrangement for the benefit of its creditors;
- (d) resolves to go into voluntary liquidation;
- (e) has a receiver appointed to its assets or some of its assets;
- (f) has a mortgagee go into possession of some or all of its assets;
- (g) becomes the subject of a writ of execution applicable to some or all of its assets;
- (h) is wound up or is otherwise dissolved or deregistered or otherwise ceases to exist; or
- (i) no longer complies with the eligibility requirements for membership under this *Constitution*.

6. General meetings

Calling of general meetings

- 6.1 General meetings of the *Company* may be called and held at the times and places and in the manner determined by the *Board*.
- 6.2 At least 30% of the *Voting Members* of the *Company* may call, or requisition the *Board* to call, a general meeting of the *Company*.

Notice of general meetings

- 6.3 *Notice* of every general meeting must be given to every *Member*, *Director* and the auditor, if any, for the time being of the *Company*. No other *Individual* or *Entity* is entitled to receive notices of general meetings.
- 6.4 *Notice* of a general meeting:
- (a) must be given at least 21 days prior to the meeting, unless:
 - (i) all the *Voting Members* agree beforehand to a shorter notice period which may only be agreed if the meeting is an annual general meeting at which a resolution will not be moved to remove or appoint a *Director* or remove an auditor; or
 - (ii) at least 95% of the *Voting Members* agree beforehand to a shorter notice period which may only be agreed if the meeting is a general meeting other than an annual general meeting at which a resolution will not be moved to remove or appoint a *Director* or remove an auditor.
 - (b) may be given in accordance with clauses 19.3 and 19.4;
 - (c) must specify:
 - (i) the place, the date and the time of the meeting;
 - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting;

- (iii) the general nature of the business to be transacted;
- (iv) if it is proposed to move a special resolution at the meeting, the intention to propose the special resolution and the resolution; and
- (v) if a *Member* is entitled to appoint a proxy – contain a statement setting out the following information:
 - (A) that the *Member* has a right to appoint a proxy; and
 - (B) that any proxy needs to be a *Member* of the *Company*.

6.5 The accidental omission to give *notice* of any general meeting to, or the non-receipt of a *notice* by, a person entitled to receive *notice* does not invalidate a resolution passed at the general meeting.

Business at general meetings

6.6 At any general meeting, a *Member* may not move any business of which *notice* has not been given under clause 6.4.

6.7 Notwithstanding clause 6.6, the following may be moved by a *Member* at an annual general meeting without *notice*:

- (a) the receipt and consideration of the accounts and reports of the *Board* and the auditors, if required;
- (b) the election of *Directors*;
- (c) the appointment of an auditor;
- (d) the fixing of the auditor's remuneration.

Adjournment of general meetings

6.8 The *chairperson* of any general meeting at which a quorum is present may, with the consent of a simple majority of the *Voting Members* at the meeting, and must if so directed by the *Voting Members* at the meeting, adjourn the meeting to another time and/or to another place.

6.9 The only business that may be transacted at any adjourned general meeting is the business left unfinished at the meeting from which the adjournment took place.

6.10 When a general meeting is adjourned under clause 6.8 for 30 days or more *notice* of the adjourned meeting must be given in the same manner as in the case of an original meeting.

6.11 When a general meeting is adjourned under clause 6.8 for less than 30 days, it is not necessary to give a further *notice* of the adjourned meeting.

Cancellation of general meetings

- 6.12 The *Board* may cancel or postpone any general meeting (other than a meeting which has been called or requisitioned by *Members*) at any time prior to the date on which it is to be held.
- 6.13 If a general meeting has been cancelled or postponed, *notice* of the cancellation or postponement must be given in the same manner as in the case of the original meeting.

Attendance at general meetings

- 6.14 Subject to clause 6.23, a person, whether or not a *Member*, who is invited or requested by the *Board* to attend a general meeting is entitled to attend that general meeting or such part thereof as determined by the *chairperson* of the general meeting.

Quorum at general meetings

- 6.15 No business may be transacted at a general meeting unless a quorum of *Voting Members* is present when the meeting proceeds to business.
- 6.16 A quorum for the purposes of a general meeting is a minimum of twenty five percent of the *Voting Members* or at least 20 *Voting Members* whichever is the lesser.
- 6.17 For the purpose of calculation of a quorum, *Voting Members* must be regarded as present whether present:
- (a) in person for *Individuals* or by a *Representative* for *Entities*;
 - (b) via electronic means; or
 - (c) by proxy.
- 6.18 If a quorum is not present within 30 minutes from the time appointed for the meeting or a longer period allowed by the *chairperson*:
- (a) if the meeting was called or requisitioned by *Members*, it must be dissolved; or
 - (b) in any other case, it must be adjourned to the same day in the next week at the same time and place, or to another day, time and place determined by the *Board*.
- 6.19 Notwithstanding any other provision of this *Constitution*, if a general meeting is adjourned under sub-clause 6.18(b):
- (a) not less than five days' *notice* of the adjourned meeting must be given in the same manner as in the case of the original meeting;
 - (b) a quorum for the purpose of the adjourned meeting is the number of *Voting Members* as required by clause 6.16; and
 - (c) if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting must be dissolved.

Chairperson of general meetings

- 6.20 The *Chairperson of the Board* or, in his or her absence, the *Deputy Chairperson of the Board*, if any, is entitled to chair every general meeting.
- 6.21 The *Directors* present at a general meeting must elect one of the *Directors* present to chair the meeting if any of the following apply:
- (a) there is not then a *Chairperson of the Board* or *Deputy Chairperson of the Board*;
 - (b) neither the *Chairperson of the Board* nor the *Deputy Chairperson of the Board* is present within 15 minutes after the time appointed for the holding of the meeting; or
 - (c) neither the *Chairperson of the Board* nor the *Deputy Chairperson of the Board* is willing to act.
- 6.22 The *Voting Members* present at a general meeting must elect one of the *Voting Members* present to be the *chairperson* of the meeting if either of the following applies:
- (a) there are no *Directors* present within 15 minutes after the time appointed for the holding of the meeting; or
 - (b) all *Directors* present decline to be the *chairperson* of the meeting.
- 6.23 Except as provided by the *Act*, the general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the *chairperson*.
- 6.24 The *chairperson* of a general meeting may, in his or her discretion, refuse admission to, or expel from, the meeting any person who is:
- (a) not behaving in a civil manner;
 - (b) using a recording device without consent; or
 - (c) not a *Member*, *Director* or auditor of the *Company* or has not been invited or requested by the *Board* to attend the meeting pursuant to clause 6.14.

7. Voting at general meetings

- 7.1 At a general meeting, a resolution put to the vote must be decided by a majority vote of the *Voting Members* present and entitled to vote at the meeting. If the votes are equal, the question is decided in the negative.
- 7.2 The *chairperson* does not have a second or casting vote at general meetings.
- 7.3 A *Voting Member* whose membership fees are in arrears at the date of a general meeting is not entitled to vote at that meeting.

Show of hands

- 7.4 At a general meeting, a resolution put to the vote, must be decided on a show of hands unless a poll is requested in accordance with clause 7.8.
- 7.5 On a show of hands, every *Voting Member* present in person, or if an *Entity*, by a *Representative*, and entitled to vote on the resolution has one vote.
- 7.6 For the avoidance of doubt, on a show of hands a *Voting Member* may not vote by proxy.
- 7.7 If a poll is not duly demanded, a declaration by the *chairperson* that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the *Company*, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

Poll

- 7.8 A poll may be demanded in respect of a resolution at a general meeting by:
- (a) at least three *Voting Members* entitled to vote on the resolution;
 - (b) *Voting Members* with at least 5% of the votes that may be cast on the resolution; or
 - (c) the *chairperson*.
- 7.9 A poll may be demanded in respect of a resolution at a general meeting:
- (a) before the vote on that resolution is taken;
 - (b) before the voting result on a show of hands is declared; or
 - (c) immediately after the voting result on a show of hands is declared.
- 7.10 A poll may not be demanded on the election of a *chairperson*.
- 7.11 Every *Voting Member* present in person, by *Representative* or by proxy has:
- (a) the right to join in the demand for a poll; and
 - (b) one vote in the poll.
- 7.12 The demand for a poll may be withdrawn.
- 7.13 If a poll is duly demanded, it must be:
- (a) secret;
 - (b) taken in the manner directed by the *chairperson*;
 - (c) on a question of adjournment, taken immediately; and
 - (d) on any other question, taken either at once or after an interval or adjournment or otherwise as directed by the *chairperson* and

does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll is demanded.

7.14 In the case of any dispute as to the admission or rejection of a vote, the *chairperson's* determination in respect of the dispute is final.

7.15 The result of the poll must be communicated to the meeting by the *chairperson*.

Postal ballot

7.16 A postal ballot may be held by both postal and electronic means.

7.17 Notwithstanding any other provision of this *Constitution*, to the extent permitted by law, a resolution of the *Voting Members* decided by postal ballot conducted in accordance with this *Constitution* is as valid and effective as if it had been passed at a general meeting duly called and constituted.

7.18 Without limiting the purposes for which the *Board* may conduct a postal ballot amongst the *Voting Members*, a postal ballot may be held for the election of *Elected Directors* under clause 9.18 and the results must be declared at the relevant annual general meeting.

7.19 All postal ballots must be held in such a manner as to provide a reasonable opportunity for the *Voting Members* to cast a vote and otherwise in the manner prescribed from time to time by the *Board*.

Proxies

7.20 A *Voting Member* entitled to vote at a general meeting may appoint one *Voting Member* as its proxy, to attend and vote in his or her place at a general meeting.

7.21 The proxy must be appointed in writing, in the form from time to time required by the *Board*, and signed by the *Voting Member* appointing the proxy.

7.22 A person attending a general meeting as proxy has all the rights and powers of the relevant *Voting Member*, except where expressly stated to the contrary in:

- (a) the document appointing the proxy;
- (b) this *Constitution*; or
- (c) the *Act*.

7.23 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

- 7.24 A document appointing a proxy is valid at any adjournment of a meeting to which the proxy relates, unless otherwise specified in the document.
- 7.25 A document appointing a proxy may appoint the proxy for a period of up to one year, for all or stipulated general meetings during that period.
- 7.26 A document appointing a proxy is invalid unless the document appointing the proxy is received by the *Company*:
- (a) at the *Company's* registered office (or other address, facsimile number or electronic address specified for that purpose in the *notice* convening the meeting); and
 - (b) at least 48 hours (or lesser period specified in the *notice* convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote.
- 7.27 A vote made under a proxy is valid despite any of the following facts, unless the *Company* receives written *notice* of the fact before the commencement of the meeting at which the vote is cast:
- (a) the *Voting Member* has died; or
 - (b) the proxy or authority under which the proxy was signed has been revoked.
- 7.28 A proxy is not revoked by the *Voting Member* attending and taking part in the meeting, unless the *Voting Member* actually votes at the meeting on the resolution for which the proxy is proposed to be used.

8. Members' Representatives

- 8.1 *Member Entities* shall appoint an individual as a *Representative* to exercise all or any of the powers of the *Member* under this *Constitution* or the *Act* or otherwise at law.
- 8.2 The *Board* shall have the right to prescribe the form of appointment of a *Representative* of an *Entity* and to demand evidence of the appointment prior to admission to any general meeting.
- 8.3 If the appointment is to be by reference to a position held, the appointment must identify the position.
- 8.4 The appointment may be a standing one.
- 8.5 The appointment may set out restrictions on the *Representative's* powers.
- 8.6 A *Member* may appoint only one *Representative* to exercise the *Member's* powers at any one time.
- 8.7 Unless otherwise specified in the appointment, the *Representative* may exercise, on the *Member's* behalf, all of the powers that the *Member* could exercise at a meeting or in voting on a resolution.
- 8.8 Where the *Board* forms the opinion that a *Representative* has:

- (a) persistently refused or neglected to comply with his or her duties as a *Representative*; or
 - (b) wilfully acted in a manner prejudicial to the interests of the *Representative's* appointing *Member* or the *Company*,
- the *Board* may notify the *Member* in writing of the matters in clauses 8.8(a) and/or 8.8(b) and require the *Member* to appoint another *Representative*.

9. Board of Directors

Powers of the Board

- 9.1 The governance of the *Company* is the responsibility of the *Board* of *Directors* duly appointed under and in accordance with this *Constitution*.
- 9.2 The *Board* may exercise all the powers of the *Company* which are not, by the *Act* or by this *Constitution*, required to be exercised by the *Company* in a general meeting.
- 9.3 If the *Company* holds or owns membership, shares or other interests in another body corporate, trust or other entity, the *Board* may exercise any and all voting rights conferred by the membership, shares or interests in any manner it considers fit.

Number of Directors

- 9.4 The number of *Directors* must be not less than six and not more than nine and each *Director* shall be required to retire in accordance with the terms of this *Constitution* such that:
- (a) each *Elected Director*; and
 - (b) each *Board Appointed Director*,
- will serve for a term of approximately three years commencing from the annual general meeting at which the *Elected Director* was elected, or the date of appointment of any *Board Appointed Director*.
- 9.5 If the number of *Directors* is reduced below the minimum number prescribed by this *Constitution*, the continuing *Director* or *Directors* may act only to:
- (a) appoint additional *Directors* to the minimum number prescribed by this *Constitution*; or
 - (b) convene a general meeting.
- 9.6 The *Board* shall comprise:
- (a) three *Directors* elected by Individual *Voting Members*;
 - (b) three *Directors* elected by *Voting Members* which are *Entities*; and
 - (c) three *Board Appointed Directors*.

Director Eligibility and Board Composition Policy

- 9.7 The *Board* must agree from time to time in writing its policy regarding *Director* eligibility and *Board* composition in a *Director Eligibility and Board Composition Policy*.
- 9.8 The *Director Eligibility and Board Composition Policy* will promote *Director* diversity to reflect the diversity of *Mental Health Consumers* in Australia so as to encourage a strong understanding of the needs of *Mental Health Consumers* in Australia.
- 9.9 The *Director Eligibility and Board Composition Policy* shall be drafted to take into account the following:
- (a) the *Directors* elected under clauses 9.6(a) and 9.6(b) must have lived experience as a *Mental Health Consumer* or identify as a *Mental Health Consumer*; and
 - (b) the *Board* must, as a collective, have *Directors* with appropriate skills and expertise or the ability to develop and maintain such skills and expertise as is required to govern the *Company*.
- 9.10 It is a requirement that candidates for the *Board* comply with the following *Director* eligibility criteria:
- (a) the person is not an employee of the *Company* or any related entity employing staff of the *Company*; or
 - (b) one of the following applies:
 - (i) the person must not have served the *Maximum Term* as a *Director*; or
 - (ii) in the case of a person who has already served the *Maximum Term* as a *Director*, at least three years has elapsed since the person's last term of office; and
 - (iii) the person is not ineligible under the *Act*, under this *Constitution* or otherwise at law for appointment to the *Board*.

Independent Nominations Committee

- 9.11 There shall be an *Independent Nominations Committee* appointed in accordance with this *Constitution*.
- 9.12 The *Independent Nominations Committee* shall:
- (a) have the purpose of reviewing and assessing the extent to which persons seeking election or being considered for appointment to the *Board* fulfil the *Director Eligibility Criteria and Board Composition Policy* requirements; and
 - (b) give full consideration to the brief provided to it by the *Company* which shall include:
 - (i) the desired competencies for the *Board*;
 - (ii) the challenges and opportunities facing the *Company*; and

- (iii) the leadership needs of the *Company*, with a view to:
 - (A) better ensuring the ability of the *Company* to achieve its mission; and
 - (B) creating a sustainable future for the *Company*.
- 9.13 Within six months after each annual general meeting, the *Board* shall appoint an *Independent Nominations Committee* comprising three persons, at least two of whom must not themselves be, or have been during the previous 12 months, *Directors* of the *Company*.
- 9.14 In creating *By-Laws* in relation to the composition and election of the *Independent Nominations Committee* the *Board* must take in to account any recommendations of the *Independent Nominations Committee* in relation to the content of those *By-Laws*.
- 9.15 In addition to the requirements of clause 9.13 and any other criteria which may be set out in the *By-Laws*, a person shall only be eligible for appointment to, and membership of, the *Independent Nominations Committee*, if the person:
 - (a) has at least five years cumulative experience as a member of more than one board of directors of companies or associations established under the *Act* or the various State and Territory legislation providing for the incorporation of not-for-profit entities respectively;
 - (b) is not at the relevant time a director, officer or employee of a *Member*;
 - (c) is not a candidate being considered by the *Independent Nominations Committee* for election (or re-election) or appointment (or re-appointment) to the *Board*;
 - (d) is not and has not been during the previous 12 month period an employee of the *Company*; and
 - (e) has not at the relevant time been a member of the *Independent Nominations Committee* for more than five years.

Elected Directors

- 9.16 An *Elected Director* is elected at an annual general meeting as follows:
 - (a) the *Board* must call for nominations no earlier than three months before the annual general meeting;
 - (b) nominations for:
 - (i) an *Elected Director* under rule 9.6(a) may only be made by an *Individual Voting Member*;
 - (ii) an *Elected Director* under rule 9.6(b) may only be made by a *Voting Member* which is an *Entity*;
 - (c) the nomination must be:
 - (i) in the form prescribed by the *Board*;

- (ii) signed by the *Voting Member* proposing the candidate and the candidate; and
 - (iii) given to the *Board* in the manner and within the time prescribed by the *Board*;
 - (d) the candidate's application will then be considered by the *Independent Nominations Committee*;
- 9.17 If the number of candidates who are eligible for appointment in accordance with the *Director Eligibility and Board Composition Policy* is less than or equal to the number of vacancies, the candidates are automatically appointed as *Elected Directors* from the close of the meeting.
- 9.18 If the number of candidates who are eligible for appointment in accordance with the *Director Eligibility and Board Composition Policy* is more than the number of vacancies:
- (a) a list of the names of all candidates who are eligible for appointment in accordance with the *Director Eligibility and Board Composition Policy*, including the name of the *Voting Members* who nominated the candidate, must be provided to all eligible *Voting Members* at least 21 days before the meeting;
 - (b) the *Board* may hold one of the following to determine the election of the *Elected Directors*:
 - (i) a postal ballot or electronic ballot for the election of *Elected Directors* which may be completed at least four days before the meeting in which each *Voting Member* who is eligible to vote may vote for such number of candidates as there are vacant positions of *Directors*; and
 - (ii) for a contested election held at a general meeting of *Members*, a secret ballot.

Rotation of Directors – Transitional Period of Three Years

Note: The provisions in this section of the Constitution are to ensure that there is a clear pathway to transition Directors to a rotational three year directorship from the start of the Company's incorporation.

- 9.19 At the first annual general meeting of the *Company* after the adoption of the *Constitution*:
- (a) one *Director* who would, but for the initial appointment process, be considered a *Director* elected by *Individual Voting Members* shall retire from office;
 - (b) one *Director* who would, but for the initial appointment process, be considered a *Director* elected by *Voting Members* which are *Entities* shall retire from office; and
 - (c) one *Board Appointed Director* who would, but for the initial appointment process, be considered a *Board Appointed Director* shall retire from office.

- Note: Re-election or appointment will be subject to ensuring the composition of the Board meets the needs of the Company and that the person seeking re-election or appointment has not already served 2 consecutive terms of 3 years as a Director.
- 9.20 The *Directors* who are required to retire from office under clause 9.19 shall be chosen by agreement amongst the *Board* and, if no such agreement can be reached to the satisfaction of the *chairperson*, then by the drawing of lots.
- 9.21 At the second annual general meeting of the *Company* after the adoption this *Constitution*:
- (a) one *Director* who would, but for the initial appointment process, be considered a *Director* elected by *Individual Voting Members* but who did not retire at the previous annual general meeting, shall retire from office;
 - (b) one *Director* who would, but for the initial appointment process, be considered a *Director* elected by *Voting Members* which are *Entities* but who did not retire at the previous annual general meeting shall retire from office; and
 - (c) one *Board Appointed Director* who did not retire at the previous annual general meeting shall retire from office.
- 9.22 The *Directors* who are required to retire from office under clause 9.21 shall be chosen by agreement amongst the *Board* and, if no such agreement can be reached to the satisfaction of the *chairperson*, then by the drawing of lots.
- 9.23 At the third annual general meeting of the *Company* after the adoption this *Constitution*, those *Directors* who have not yet retired from office at the first and second annual general meeting after the adoption of this *Constitution* shall retire from office but shall be eligible for re-election or appointment subject to clauses 9.10 and 9.16.
- 9.24 *Directors* who retire from office pursuant to this clause are eligible for re-election or appointment subject to the requirements of this *Constitution* or at law.

Rotation of Elected Directors after Transitional Period

- 9.25 Each *Elected Director* will serve for a term of approximately three years commencing from the annual general meeting at which the *Elected Director* was elected, but is eligible for re-election as a *Director* if not then disqualified by this *Constitution*, the *Act* or otherwise at law from being re-appointed.
- 9.26 There will be a staggered rotational system of election of *Elected Directors* such that at each annual general meeting:
- (a) one *Director* elected by *Individual Voting Members*; and
 - (b) one *Director* elected by *Voting Members* which are *Entities*,
- each of whom has served a term of approximately three years, must retire from office.

Board Appointed Directors

- 9.27 The *Board* shall appoint three *Board Appointed Directors*.
- 9.28 The *Board* may only appoint a person as a *Board Appointed Director* if that person is eligible for appointment in accordance with the *Director Eligibility and Board Composition Policy*.
- 9.29 Without limiting clause 9.28 the *Board* shall have regard to the desired qualities, experience, skills and other competencies that will assist the *Board* in discharging its role and functions in view of the skills and other competencies brought to the *Board* by the existing *Directors* then on the *Board*.
- 9.30 Each *Board Appointed Director* will serve for a term of three years but is eligible for re-appointment as a *Director* if the desired qualities, experience, skills and competencies are still required on the *Board*, if not then disqualified by this *Constitution*, the *Act* or otherwise at law from being re-appointed.
- 9.31 There will be a staggered rotational system for the appointment of Appointed Directors such that at each annual general meeting one Appointed Director who has served a term of approximately three years, must retire from office.

Resignation from office

- 9.32 A *Director* may resign from office by giving written *notice* to the *Secretary*.
- 9.33 A *Director's* resignation takes effect at the time the *notice* is given to the *Secretary* or such later date as may be specified in the *notice*.

Removal from office

- 9.34 The *Voting Members* may, by ordinary resolution at a general meeting, remove any *Director* from office.
- 9.35 At any general meeting at which it is proposed to remove a *Director* under clause 9.34, the *Director* must be given the opportunity to present his or her case, orally or in writing or by both of those means.
- 9.36 A *Director* who is removed under clause 9.34 retains office until the dissolution or adjournment of the general meeting at which the *Director* is removed.
- 9.37 If a *Director* removed under clause 9.34 was an *Elected Director*, the *Voting Members* may, by ordinary resolution, appoint a person to take that *Director's* place provided they meet the requirements of the *Director Eligibility and Board Composition Policy*. If not such person is elected then the *Elected Director* role will be declared a casual vacancy.

9.38 The term of appointment of a *Director* appointed under clause 9.37 continues until the annual general meeting at which the person who was removed from office would have been required to retire pursuant to this *Constitution* if they had not been removed.

Vacation of office

- 9.39 The office of a *Director* becomes vacant if the *Director*:
- (a) becomes prohibited from being a director of a company by reason of the *Act*, any order made under the *Act* or otherwise at law;
 - (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (c) ceases to be an employee or representative of a *Voting Member*;
 - (d) becomes an employee of the *Company* or any related entity employing staff of the *Company*;
 - (e) the *Director* is absent without the consent of the *Board* from all meetings of the *Board* during a continuous period of six months; or
 - (f) the *Company* resolves that the office of that *Director* be vacated pursuant to clause 9.34.

Casual vacancies

9.40 If a casual vacancy arises in relation to an *Elected Director*, the *Board* may appoint a person who is eligible for appointment in accordance with the *Director Eligibility and Board Composition Policy* as *Director* to fill the casual vacancy.

9.41 The term of appointment of a *Director* appointed under clause 9.40 continues until the annual general meeting at which the person who vacated office early would have been required to retire pursuant to this *Constitution* if he or she had not vacated office early.

9.42 If a casual vacancy arises in relation to a *Board Appointed Director*, the *Board* must appoint another person who is eligible for appointment in accordance with the *Director Eligibility and Board Composition Policy* as soon as reasonably practicable.

Directors' expenses

9.43 *Directors* may be paid all reasonable travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the *Board* or any of its committee or general meetings or otherwise in the execution of their duties as *Directors*, provided that such expenses have first been approved by the *Board* in its discretion.

10. Chairperson of the Board and Deputy Chairperson of the Board

- 10.1 At the first *Board* meeting held after the vacation of office of the *Chairperson of the Board* under clause 10.5, the *Board* must elect a *Director as Chairperson of the Board*.
- 10.2 If there is no *Deputy Chairperson of the Board*, the *Board* may elect a *Director as Deputy Chairperson of the Board* at any time.
- 10.3 The election of the *Chairperson of the Board* and *Deputy Chairperson of the Board* (if any) may be held by any means determined by the *Board*, but in the event of an equality of votes, the matter must be determined by the drawing of lots.
- 10.4 Only *Directors* who have lived experience as a *Mental Health Consumer* or who identify as *Mental Health Consumers* may nominate for appointment as *Chairperson of the Board*.
- 10.5 A *Director* elected by the *Board* as *Chairperson of the Board* or *Deputy Chairperson of the Board* holds that office until:
- (a) the close of the next annual general meeting of the *Company*;
 - (b) the *Director* ceases to be a *Director* in accordance with this *Constitution*;
 - (c) the *Director* resigns from the office of *Chairperson of the Board* or *Deputy Chairperson of the Board* (as the case may be) by written notice to the *Secretary*; or
 - (d) the *Board*, by ordinary resolution excluding the relevant *Director*, removes the *Director* from the office of *Chairperson of the Board* or *Deputy Chairperson of the Board* (as the case may be).
- 10.6 A *Director* is eligible for re-election as *Chairperson of the Board*, provided that the *Director* has not then already served two consecutive full terms as *Chairperson of the Board*.
- 10.7 The *Chairperson of the Board* or, in his or her absence, the *Deputy Chairperson of the Board* (if any) is entitled to preside as *chairperson* at every *Board* meeting.
- 10.8 The *Directors* present at a *Board* meeting must elect one of the *Directors* present to be *chairperson* the meeting if any of the following apply:
- (a) there is not then a *Chairperson of the Board* or *Deputy Chairperson of the Board*;
 - (b) neither the *Chairperson of the Board* nor the *Deputy Chairperson of the Board* is present within 15 minutes after the time appointed for the holding of the meeting; or
 - (c) neither the *Chairperson of the Board* nor the *Deputy Chairperson of the Board* is willing to act.

11. Board meetings

Convening of Board meetings

- 11.1 Subject to the provisions of the *Act* and this *Constitution*, the *Board* may meet for the dispatch of business and regulate its meetings as it thinks fit.
- 11.2 The *Board* must meet at least three times in each financial year.
- 11.3 Any three *Directors* may request the *Secretary* to convene a *Board* meeting at any time and the *Secretary* must comply with such request.

Notice of Board meetings

- 11.4 *Notice* of each *Board* meeting must be given to each *Director* at least seven days before the meeting or otherwise as determined by the *Board*.
- 11.5 All *Directors* may waive in writing the required period of *notice* for a particular meeting.
- 11.6 *Notice* of *Board* meeting may be given to a *Director* by:
- (a) mail or delivery to the usual place of residence of the *Director*; or
 - (b) mail, delivery, facsimile transmission or e-mail to any other address, facsimile number or e-mail address given by the *Director* to the *Secretary* for that purpose (unless and until the *Director* informs the *Secretary* that he or she may not be contacted at that other address, facsimile number or e-mail address).

Quorum at Board meetings

- 11.7 A quorum for the purposes of a *Board* meeting is half the number of *Directors* then on the *Board* present (either in person or by use of technology), rounded up to the nearest whole number if the case requires.
- 11.8 If a quorum is not present:
- (a) within 15 minutes from the time appointed for a *Board* meeting being held by use of technology; or
 - (b) within 30 minutes from the time appointed for a *Board* meeting being held in person; or
 - (c) a longer period allowed by the *chairperson*;
- the meeting must be adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the *chairperson* may determine; and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting whether being held by technology or in person, the meeting lapses.

Mode of Board meetings

- 11.9 A *Board* meeting may be called or held in person or using any technology consented to by all *Directors*.
- 11.10 The consent to hold a *Board* meeting using any technology may be a standing one. A *Director* may only withdraw the consent within a reasonable period before the meeting.
- 11.11 If a *Board* meeting is held using any technology the *Directors* taking part in the meeting, are taken to have consented to the use of the technology for that meeting.
- 11.12 The following provisions apply to a *Board* meeting held using any technology:
- (a) each of the *Directors* taking part in the meeting must be able to communicate with each of the other *Directors* taking part in the meeting; and
 - (b) at the commencement of the meeting each *Director* must announce his or her presence to all the other *Directors* taking part in the meeting.
- 11.13 A *Director* may not leave a meeting held using technology by disconnecting his or her link to the meeting unless that *Director* has previously notified the *chairperson* of the meeting.
- 11.14 A *Director* is conclusively presumed to have been present and to have formed part of a quorum at all times during a meeting held using technology unless that *Director* has previously obtained the express consent of the *chairperson* to leave the meeting.

Voting at Board meetings

- 11.15 Resolutions arising at a *Board* meeting must be decided by a majority vote of *Directors* present (either in person or by use of technology) and voting. If the votes are equal, the question is decided in the negative.
- 11.16 The *chairperson* does not have a second or casting vote at meetings of *Directors*.

Resolution in writing without a meeting of the Board

- 11.17 A resolution in writing endorsed by all *Directors* is as valid and effectual as if it had been passed at a *Board* meeting.
- 11.18 A resolution in writing for the purpose of clause 11.17 shall:
- (a) consist of several documents in the same form;
 - (b) be signed by one or more *Directors*;
- and will take effect on the latest date on which a *Director* signs the document referred to in clause 11.18(a).

11.19 For the purpose of clause 11.18(b), a resolution bearing an electronic copy of a signature is considered to be signed.

Validity of acts

11.20 All acts done by the *Board* or a *Committee* or by a person acting as a *Director* are valid even if it is later discovered that there is a defect in the appointment of a person as a *Director* or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

Conflicts of Interest

11.21 The *Board* must agree from time to time in writing on its policy for the regulation of conflicts of interest.

11.22 If there are not enough *Directors* to form a quorum as a result of one or more *Directors* having an interest which disqualifies them from voting, then one or more of the *Directors* (including those who have the disqualifying interest in the matter) may call a general meeting and the *Company* in general meeting may pass a resolution to deal with the matter.

11.23 A *Director* may only be engaged to provide goods or services to or on behalf of the *Company* if:

- (a) that *Director* is for bona fide reasons considered by the *Board*, agreed to be a suitable person to provide, such goods or services;
- (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the *Director's* rates and service levels;
- (c) the goods or services are provided on arms-length terms;
- (d) the provision of the goods and services is disclosed clearly and expressly to the *Members* in the *Company's* annual report; and
- (e) the *Board* agrees, by ordinary resolution excluding the interested *Director*, to the provision of the goods or services by the *Director*.

12. Committees of the Board

12.1 The *Board* may appoint one or more committees of the *Board* consisting of such *Directors*, other *Voting Members* or appropriately qualified and experienced people as the *Board* thinks fit.

12.2 The *Board* must appoint a member of the *Board* to be a chairperson of any *Committee*.

12.3 In the exercise of any powers delegated to it, a *Committee* must:

- (a) conform to the directions of the *Board*;
- (b) report to the *Board*; and

- (c) otherwise conduct its meetings and proceedings in accordance with the provisions of this *Constitution*, as far as practicable, as if they were meetings and proceedings of the *Board*.

12.4 The *Board* may delegate any of its powers, except this power to delegate, to a *Committee*.

13. Advisory committees

13.1 The *Board* may appoint advisory committees as standing or ad-hoc committees to advise or make recommendations to the *Board*.

13.2 Any advisory committee created under this clause 13 must be chaired by a *Director* appointed by the *Board* to chair the particular advisory committee meetings.

13.3 The *Directors* may appoint appropriately qualified and experienced people to serve on all advisory committees established.

14. Secretary

14.1 The *Board* must appoint a suitable person to act as the *Secretary* of the *Company*.

14.2 The *Secretary* is responsible for carrying out all acts and deeds required by this *Constitution* or the *Act* to be carried out by the *Secretary* of the *Company*.

15. Chief Executive Officer

15.1 The *Board* may appoint any person to the position of *CEO* for the period and on the terms and conditions (including as to remuneration) the *Board* sees fit.

15.2 The *Board* may, upon terms and conditions and with any restrictions it sees fit, confer on the *CEO* any of the powers that the *Board* can exercise.

15.3 The *Board* may at any time revoke or vary an appointment of, or any of the powers conferred on, the *CEO*.

15.4 If the *CEO* becomes incapable of acting in that capacity, the *Directors* may appoint any other person other than a *Director* to act temporarily as *CEO* until such time as the position can be filled permanently.

15.5 A *CEO* has no voting rights at a general meeting of *Members* or at a board meeting.

16. By-Laws

16.1 The *Board* may make, adopt, amend and repeal *By-Laws* with respect to any matter or thing for the purposes of giving effect to any provision of

this *Constitution* or generally for the purposes of carrying out the objects of the *Company*, which *By-Laws* are binding on the *Members*.

- 16.2 To the extent of any inconsistency, this *Constitution* prevails over the *By-Laws*.

17. Indemnities and insurance

Officers' liabilities to third parties

- 17.1 Every officer and past officer of the *Company* is indemnified against a liability incurred by that person as an officer, other than a liability:
- (a) to the *Company* or a related body corporate;
 - (b) for a pecuniary penalty under section 1317G of the *Act* or for compensation under section 1317H of the *Act*; or
 - (c) which arises from conduct that involves a lack of good faith.

Officers' costs and expenses

- 17.2 Every officer and past officer of the *Company* is indemnified by the *Company* against a liability for costs and expenses incurred by that person as an officer, other than legal costs incurred:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under clause 17.1;
 - (b) in defending or resisting proceedings in which judgement is made against the person or the person is found guilty;
 - (c) in defending or resisting proceedings brought by a *Regulator* or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this sub-clause does not apply to costs incurred in responding to actions taken by the *Regulator* or a liquidator as part of an investigation before commencing proceedings for the court order); or
 - (d) in connection with any application in relation to those proceedings in which the Court denies relief to the person.

Insurance premiums

- 17.3 The *Company* may pay the premium on a contract insuring a person who is or has been an officer of the *Company* against:
- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
 - (b) any other liability incurred by the person as an officer of the *Company*, except a liability which arises from conduct that involves a wilful breach of duty in relation to the *Company* or a contravention of sections 182, 183 or 184(2) or (3) of the *Act*.

18. Accounts, audit and records

Financial year

18.1 The financial year of the *Company* commences on the 1st day of July and ends on the 30th day of June in the following calendar year.

Banking of moneys

18.2 All moneys of the *Company* must be deposited in a financial institution account in the name of the *Company* at such financial institution as the *Board* may from time to time direct.

Accounts, records and reports

18.3 The *Board* must cause proper accounting and other records to be kept in accordance with the *Act* and must comply with the requirements of the *Act* in respect of reporting and providing accounts to *Members*.

18.4 The *Board* must provide for the safe custody of the books, records, documents, instruments of title and securities of the *Company*.

Audit

18.5 A registered company auditor must be appointed to the *Company*.

18.6 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the *Act*.

18.7 The auditor or their representative is entitled to attend any general meeting and be heard on any part of the business of the meeting which concerns the auditor. The auditor or their representative, if present at the meeting, may be questioned by the *Members* about the financial audit.

Rights of inspection

18.8 Subject to the *Act*, the *Board* may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the *Company* or any of them are open to the inspection of *Members*.

18.9 A *Member* does not have the right to inspect any document of the *Company* except as provided by the *Act* or authorised by the *Board*.

19. Notices

Persons authorised to give notices

19.1 A notice given under this *Constitution* may be given:

- (a) on behalf of the *Company* by a solicitor for the *Company*, the *Secretary* or a *Director*; or
- (b) on behalf of a *Member* by a solicitor, secretary or director of the *Member*.

- 19.2 The signature of a person on a *notice* given by the *Company* or a *Member* may be written, printed or stamped.

Method of giving notices

- 19.3 A *notice* by the *Company* or a *Member* may be given under this *Constitution* by any of the following means:
- (a) by delivering it to the street address of the addressee;
 - (b) by sending it by prepaid ordinary post (or by airmail if outside Australia) to the street or postal address of the addressee;
 - (c) by sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee; or
 - (d) for a *notice* of meeting, by notifying the *Member* in accordance with clause 19.4(d).

Address for notices

- 19.4 For the purposes of:
- (a) clauses 19.3(a) and 19.3(b), the street and postal address of the *Company* is the registered office of the *Company*, or such other address as was last formally notified by the *Company* to the *Member*;
 - (b) clause 19.3(c) the facsimile number and e-mail address of the *Company* are the details last formally notified by the *Company* to the *Member*;
 - (c) clauses 19.3(a)-(c), the street and postal addresses, facsimile number and e-mail address of a *Member* are the details last formally notified by the *Member* to the *Secretary*; and
 - (d) clause 19.3(d), if the *Member* nominates by such process as provided for by the *Company*:
 - (i) an electronic means by which the *Member* may be notified that notices of meeting are available; and
 - (ii) an electronic means the *Member* may use to access notices of meeting;

the *Company* may give the *Member* *notice* of the meeting by notifying the *Member* (using the nominated notification means):

 - (iii) that the *notice* of meeting is available; and
 - (iv) how the *Member* may use the nominated access means to access the *notice* of meeting.

Time notice is given

- 19.5 A *notice* given in accordance with this *Constitution* is deemed to be given, served and received at the following times:
- (a) if delivered to the street address of the addressee, at the time of delivery;

- (b) if sent by post to the street or postal address of the addressee, on the next business day (or 5th business day if outside Australia) after posting; or
- (c) if sent by facsimile or e-mail, at the time transmission is completed.

19.6 For the purpose of clause 19.4(d), the *notice* is taken to be given on the business day after the day on which the *Member* is notified that the *notice* of meeting is available.

Proof of giving notices

19.7 The sending of a *notice* electronically and the time of completion of transmission of the *notice* may be proved conclusively by production of:

- (a) a transmission report by the facsimile machine from which the *notice* was transmitted which indicates that a facsimile of the *notice* was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgement of receipt of the e-mail or equivalent proof that the email was successfully transmitted;
- (c) a certificate signed by an officer that the *notice* was given in accordance with clause 19.4(d).

20. Interpretation

20.1 In this *Constitution*, unless the context requires otherwise:

- (a) a reference to any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation and a reference to a specific provision of such legislation is a reference to the equivalent provision in any later amended, re-enacted or replacement legislation;
- (b) a reference to this *Constitution*, where amended, means this constitution as so amended;
- (c) a word which denotes:
 - (i) the singular denotes the plural and vice versa;
 - (ii) any gender denotes the other genders; and
 - (iii) a person denotes an individual and a body corporate;
- (d) where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (e) an expression used but not defined in this *Constitution* has the same meaning as given in the *Act*;
- (f) writing includes any mode of representing or reproducing words in a visible form; and

(g) a reference to 'dollars' or '\$' means Australian dollars.

20.2 Headings and any table of contents must be ignored in the interpretation of this *Constitution*.

Calculation of time

20.3 In this *Constitution*, unless the context requires otherwise:

- (a) a reference to a time of day means that time of day in the state or territory in which the *Company's* registered office is located;
- (b) a reference to a business day means a day during which financial institutions are open for general banking business in the state or territory in which the *Company's* registered office is located;
- (c) for the purposes of determining the length of a period (but not its commencement) a reference to:
 - (i) a day means a period of time commencing at midnight and ending 24 hours later; and
 - (ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month;
- (d) where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event; and
- (e) a provision of this *Constitution*, except that specifying the time for deposit of proxies with the *Company*, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

21. Amendment

21.1 This *Constitution* may be repealed, amended or added to by a resolution of not less than 75% of *Voting Members* present in person or proxy carried at a general meeting of the *Company*.

22. Replaceable rules

22.1 Each of the provisions of the *Act* which would but for this clause apply to the *Company* as a replaceable rule within the meaning of the *Act* are displaced and do not apply to the *Company*.