

Dated 25 October 2021

**Constitution of
National Herbalists' Association of Australia
ACN 000 009 932**

Corporations Act 2001 (Cth)

Company limited by guarantee

Registered in New South Wales, Australia

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This Constitution is dated on the date specified on the cover page.

Constitution of National Herbalists' Association of Australia ACN 000 009 932, a not for profit organisation incorporated as a public company limited by guarantee.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

Affiliate Member means a person who is a Member under rule 4.5(a)(vi).

ATO means the Australian Taxation Office.

Associate Member means a person who is a Member under rule 4.5(b).

Board means all or some of the Directors for the time being acting as a board.

By-law means any by-law, regulation, charter, policy or the like made by the Board under rule 5.

Chair means the person occupying the position of chair of the Board under rule 11.6.

company means National Herbalists' Association of Australia ACN 000 009 932.

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

Corporate Member means a person who is a Member under rule 4.5(c)(i).

Deductible Contribution means a contribution of money or property as described in item 7 or item 8 in the table in section 30-15 of the Tax Act.

Deductible Gift Recipient has the meaning given in the Tax Act.

Director means a person appointed or elected to the office of director of the company in accordance with this Constitution and, where appropriate, includes an alternate director.

Expert Adviser means each person appointed as an expert adviser by the Board under rule 9.7.

Fellow means a person who is a Member under rule 4.5(h).

Full Non-Practising Member means a person who is a Member under rule 4.5(f)(i).

Full Practising Member means a person who is a Member under rule 4.5(e)(i).

Full Member means a Full Practising Member or a Full Non-Practising Member.

Gift means a donation, contribution, gift, settlement, benefaction or other voluntary transfer or disposition of money, money's worth, property or benefits and whether inter vivos or by will.

Gift Fund means a fund established under rule 3.1.

Intellectual Property means all rights subsisting in copyright, trade names, trademarks, logos, designs, equipment, images (including photographs, videos or films) or service marks (whether registered or registrable) relating to the company or any course of approved training of the company, product, publication, calendar of events or activity (including the

international conference and national conference and chapter meetings) developed, conducted, promoted or administered by the company.

Life Member means a person who is a Member under rule 4.5(d)(i).

Member means a person admitted to the membership of the company in accordance with the provisions of this Constitution.

Member Present means, in connection with a meeting, the Member present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by representative (including, a Member who is taken to be present in accordance with rule 6.2).

person and words importing persons means any person including partnerships, associations and bodies corporate, unincorporated bodies and all other entities or associations recognised by law as well as individuals.

Profession means the professions of naturopathy and Western Herbal Medicine in Australia.

Secretary means a person appointed as secretary of the company in accordance with this Constitution.

Student Member means a person who is a Member under rule 4.5(g)(i).

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Voting Member means a Full Practising Member, Full Non-Practising Member or Life Member who is not prohibited from voting on a resolution of Members.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to any legislation or to any provision of any legislation includes any modification or re enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (d) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

1.3 Replaceable rules

The replaceable rules contained in the Corporations Act do not apply to the company.

1.4 Transitional

- (a) This constitution supersedes the constitution of the company in force immediately before the adoption of this constitution.

- (b) Everything done under any previous constitution of the company continues to have the same operation and effect after the adoption of this constitution as if properly done under this constitution. In particular:
 - (i) every Director and Secretary in office immediately before adoption of this constitution is taken to have been appointed and shall continue in office under this constitution;
 - (ii) every person admitted as a Member immediately before adoption of this constitution is taken to be and shall continue as a Member under this constitution;
 - (iii) any Seal adopted by the company before the adoption of this constitution is taken to be a Seal properly adopted under this constitution;
 - (iv) any By-Laws in force under the previous constitution continue in force until amended or revoked by the Board.

2. Objects

2.1 Objects of the company

The objects of the company are to:

- (a) promote, protect and advance the practice, accessibility and integration with the primary healthcare system, of naturopathy and Western Herbal Medicine in Australia;
- (b) promote, protect and advance the tradition, honour, integrity, career opportunities and interests of the Profession;
- (c) promote, protect and encourage the highest standards of professional and ethical practice by the Profession;
- (d) be recognised by the Australian State and Federal governments and public as the peak body for herbal and naturopathic medicine;
- (e) promote, protect and advance the research into, study of and knowledge about herbal and naturopathic medicine; and
- (f) do all other things which the Board may decide from time to time is conducive (directly or indirectly) to the attainment of, and not inconsistent with, the above objects.

2.2 Application of income and property to objects

- (a) Subject to paragraph (b), the income and property of the company must only be used to further the objects of the company set out in rule 2.1 and no part of that income or property may be paid or transferred, directly or indirectly, to any Member of the company by way of dividend, bonus or otherwise.
- (b) Paragraph (a) does not prevent the company from making a payment in good faith to a Member of the company:
 - (i) of reasonable and proper remuneration for services provided to the company;
 - (ii) for goods supplied in the ordinary course of business; or
 - (iii) of reasonable and proper rent for premises let by a Member.

3. Gift Fund

3.1 Establishment of Gift Fund

At all times during which the company operates a fund (including any library fund), authority or institution that is endorsed as a Deductible Gift Recipient, the company must maintain a fund (the **Gift Fund**), to which Gifts to the company are to be made in accordance with the following:

- (a) any Gifts received by the company under paragraph (b) will be accepted by the company in the following manner:
 - (i) they will be placed in a separate bank account established for the purpose of the Gift Fund; and
 - (ii) receipts under the name of the company will be issued to the person who made the Gift to the Gift Fund and will state:
 - (A) the Australian Business Number of the company;
 - (B) the name of the Gift Fund to which the Gift has been credited;
 - (C) the fact that the receipt is for a Gift; and
 - (D) any other information which is required under the Tax Act;
- (b) all Gifts made to the Gift Fund must be separately identified and kept separately from any other funds of the company;
- (c) any receipts (other than Deductible Contributions) from sponsorship or commercial activities or proceeds of raffles, charity auctions, dinners and the like are not to be credited to the Gift Fund; and
- (d) the Gift Fund must operate otherwise in accordance with any applicable requirements of the Tax Act.

3.2 Accounting policies

The company must establish and maintain internal accounting policies exclusively for money, property and benefits received for the Gift Fund.

3.3 Books of account

The company must ensure that proper books of account and other records are kept in respect of all receipts and payments and otherwise in relation to the Gift Fund.

3.4 Winding up or revocation of endorsement

On the earlier of:

- (a) the winding up of the Gift Fund; and
- (b) if the company is endorsed as a Deductible Gift Recipient because of the Gift Fund, the revocation of that endorsement,

any property whatsoever of the Gift Fund that remains after satisfaction of all debts and liabilities attributable to the Gift Fund, must be dealt with in the same manner as described in rule 15.1.

4. Membership

4.1 Members of the company

- (a) The Members are those persons admitted to the membership of the company whose names are entered into the company's register of members.
- (b) Two or more persons cannot be registered as holding a single membership interest, whether as joint tenants or as tenants in common.

4.2 Limited liability of Members

The liability of the Members of the company is limited.

4.3 Members' liability on winding up

Each Member undertakes to contribute to the assets of the company in the event of it being wound up while they are a Member, or within one year after they cease to be a Member, for payment of the debts and liabilities of the company and of the costs, charges and expenses of winding up, such amount as may be required not exceeding \$1.00.

4.4 Admission as a Member

- (a) A person who wants to apply for membership must:
 - (i) submit a written application to the company in the manner and form determined by the Board; and
 - (ii) pay the first annual membership fee, if any.
- (b) At the next Board meeting or otherwise within a reasonable time after the receipt of an application for membership, the Board will consider the application and decide whether or not to admit the applicant in their absolute discretion, having regard to eligibility criteria as agreed by the Board from time to time and to the objects of the company as outlined in rule 2.1.
- (c) If the Board decides not to admit an applicant to the membership, it does not have to give any reasons for its decision.
- (d) If the applicant does not pay the first annual membership fee, if any, within 21 days after the date on which the applicant is notified that the subscription is payable, the Board may, in its absolute discretion, cancel the acceptance of the applicant's application for membership.
- (e) When the company receives payment from the applicant of the first annual membership fee or, if there is no membership fee, when the Board decides to admit the applicant as a Member, the applicant will be registered in the company's register of Members and will immediately become a Member.

4.5 Categories of Members

- (a) Subject to rule 4.5(k) the company's membership is classified into the following categories:
 - (i) Associate Member;
 - (ii) Corporate Member;

- (iii) Life Member;
- (iv) Full practising Member;
- (v) Full non-practising Member;
- (vi) Student Member;
- (vii) Affiliate Member; and
- (viii) such other categories as are created from time to time under rule 4.5(k),

(b) Associate Member

- (i) Associate Members are persons who have applied in the correct form and whose applications have been approved by the Board under rule 4.4, who have paid the membership fee, if any, applicable to Associate Members and who satisfy any other criteria required by the Board.

(c) Corporate Member

- (i) Corporate Members are persons who have applied in the correct form and whose applications have been approved by the Board under rule 4.4, who have paid the membership fee, if any, applicable to Corporate Members and who satisfy any other criteria required by the Board.
- (ii) A Corporate member is allowed to use and display the NHAA's name or acronym

(d) Life Member

- (i) Life Members are persons who have applied in the correct form and whose applications have been approved by the Board under rule 4.4, who have paid the membership fee, if any, applicable to Life Members and who satisfy any other criteria required by the Board.
- (ii) A Life Member is allowed to use and display the NHAA's name or acronym and the initials MNHAA next to their name.
- (iii) Subject to confirmation at an Annual General Meeting, the Board may appoint as a Life Member, a Member:
 - (A) after having been a Full Member for no less than 10 years; and
 - (B) who is in the opinion of the Board of Directors entitled to Life Membership for outstanding contributions to NHAA over a number of years, or such other reason as the Board considers warrants such appointment.
- (A)

(e) Full Practising Member

- (i) Full Practising Members are persons who have applied in the correct form and whose applications have been approved by the Board under rule 4.4, who have paid the membership fee, if any, applicable to Full Practising Members and who satisfy any other criteria required by the Board.

(f) Full Non-Practising Member

- (i) Full Non-Practising Members are persons who have applied in the correct form and whose applications have been approved by the Board under rule 4.4, who have paid the membership fee, if any, applicable to Full Non-Practising Members and who satisfy any other criteria required by the Board.
- (ii) A Full practising and non-practising Member is allowed to use and display the NHAA's name or acronym and the initials MNHAA next to their name and agrees to comply with such continuing education requirements as may be prescribed from time to time by the Board of Directors.

(g) Student Member

- (i) Student Members are persons who have applied in the correct form and whose applications have been approved by the Board under rule 4.4, who have paid the membership fee, if any, applicable to Student Members and who satisfy any other criteria required by the Board.

(h) Fellow

- (i) The Board may elevate a Full Member to a Fellow:
 - (A) after having been a Full Member for no less than 10 years; and
 - (B) who is in the opinion of the Board of Directors entitled to Fellowship for outstanding or meritorious work in their profession over a number of years or such other reason as the Board considers warrants elevation.

(i) Affiliate Member

- (i) Affiliate Members are persons who have applied in the correct form and whose applications have been approved by the Board under rule 4.4, who have paid the membership fee, if any, applicable to Affiliate Members and who satisfy any other criteria required by the Board.
- (ii) The Board may appoint as an Affiliate Member a person who, in the Board's opinion (acting reasonably), is a member of an equivalent organisation of the Company in a jurisdiction outside Australia, and who satisfies any other criteria required by the Board.
- (j) The rights and privileges of every Member are personal to the Member. They are not transferable by the Member's own act or by operation of law, and no Member is entitled to exercise the rights and privileges of a Member unless all monies due by the Member to the company have been paid.
- (k) The Board may:
 - (i) determine and admit different classes of Members, including establishing at any time a new class of membership provided no new class of Members shall have voting rights at a general meeting; and
 - (ii) prescribe or vary the qualifications, rights and privileges of persons to become a Member of a class.
- (l) The Board may vary or cancel the rights of Members in any class. For the avoidance of doubt, this shall be taken to be the procedure for varying and cancelling rights of Members in any class.

4.6 Membership fee

- (a) The Board may from time to time determine a membership fee for any class of Members (which may be a different amount to that payable by any other class of Members) and the terms of payment of the membership fee.
- (b) If a membership fee has been set for a particular class of members, each Member of that class must pay the membership fee.
- (c) The Board may in their absolute discretion vary the amount of any membership fee.

4.7 Resignation of a Member

A Member may resign from the company by giving notice in writing to the company. The resignation will be effective from the date it is received by the company.

4.8 Non-payment of membership fee

- (a) If any membership fee of a Member remains unpaid for a period of 28 days after it becomes due, the company may give notice to the Member of that fact.
- (b) If any membership fee remains unpaid more than 14 days after the date of the notice given under paragraph (a), the Board may cancel the membership of the Member and remove the Member's name from the register of Members.

4.9 Misconduct of a Member or ceasing to satisfy admission criteria

- (a) The Board may expel from the company any Member:
 - (i) who does not comply with the provisions of this Constitution;
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the company (without limitation, this may include conduct that is inconsistent with the Company's policies in a material respect);
 - (iii) who ceases to satisfy the requirements for admission referred to in rule 4.4(b) which apply at any given time; or
 - (iv) at the written request of at least 75% of Members,
 and remove the Member's name from the register.
- (b) At least 21 days before the Board meets to expel a Member the Board must send a notice to the Member which states:
 - (i) all relevant information, including any allegations against the Member; the proposed resolution for the Member's expulsion;
 - (ii) that the Member has an opportunity to address the meeting either orally or in writing; and
 - (iii) that the Member may elect to have the question of expulsion dealt with by the company in general meeting, with the notice of meeting to enclose a copy of the notice sent to the relevant Member and such relevant information as the Member reasonably requests, provided that the Member notifies the Secretary in writing, at least 48 hours before the meeting at which the resolution is to be considered by the Board.

- (c) The company must expel a Member and remove the Member's name from the register where:
 - (i) a general meeting is held to expel a Member; and
 - (ii) a resolution is passed at the meeting for the expulsion of the Member by a majority of no less than two-thirds of those present and voting (such voting will be by ballot).

4.10 Ceasing to be a Member

A Member's membership of the company will automatically cease:

- (a) in the case of a Member who is a natural person, on the date that:
 - (i) the Member dies;
 - (ii) the Member becomes of unsound mind or a person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (iii) the Member becomes a person whose estate or assets are liable to be dealt with in any way under the laws relating to mental health; or
- (b) in the case of a Member which is a body corporate, on the date that:
 - (i) a liquidator is appointed in connection with the winding up of the Member; or
 - (ii) an order is made by a court for the winding up or deregistration of the Member.

4.11 Liability after a person ceases to be a Member

A person who ceases to be a Member:

- (a) must pay to the company all membership fees or other amounts owing to the company which are due and unpaid at the date that the person ceases to be a Member; and
- (b) must pay to the company amounts which the Member is liable to pay under rule 4.3;
- (c) must return any company documents, records or other property in the possession, custody or control of the Member;
- (d) forfeits all rights in and claims upon the company and its property including Intellectual Property.

4.12 Register of Members

The register of Members must be kept by the Secretary and must contain the full name and address of each Member and any other information required by the Board.

4.13 Address of Members

Every Member must inform the Secretary in writing of any change in their address and any such change of address must be entered in the register of Members. The latest address in the register of Members is deemed to be the Member's registered address.

5. By-laws

5.1 By-laws

- (a) The Board may pass a resolution to make, amend, interpret or revoke By-laws to give effect to this constitution or otherwise as it may in its absolute discretion deem appropriate for the proper organisation and administration of the company.
- (b) This Constitution shall prevail over the By-laws to the extent of any inconsistency.
- (c) Members and directors must comply with the By-laws as if they were part of this constitution.

6. General Meetings

6.1 Power to call a general meeting

The Board may convene a general meeting of the company whenever they think fit.

6.2 Use of technology at meetings

- (a) The company may hold a meeting at two or more venues or at such other place or places as may be determined by the Board using any form of technology which gives the Members as a whole a reasonable opportunity to participate. Subject to applicable law, the place or any place of the meeting does not need to be a physical location and may be a virtual or online location.
- (b) If:
 - (i) the place or a place of the meeting is determined by the Board not to be a physical location; or
 - (ii) a separate meeting place is linked to the main place of the meeting, and is facilitated by an instantaneous communication device which, by itself or in conjunction with other arrangements:
 - (A) gives the general body of Members a reasonable opportunity to participate in the business of the meeting; and
 - (B) enables the Members to vote,

a Member present at the place is taken to be present at the meeting and entitled to exercise all rights of a Member Present.

6.3 Power to cancel or postpone a general meeting

The Board may cancel or postpone any meeting convened by the Board by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

6.4 Non-receipt of notice

The fact that a person entitled to receive notice of a general meeting does not receive that notice or is accidentally not given notice, does not invalidate any resolution passed at the meeting.

6.5 Business of general meetings

Unless all Members are present as Members Present and agree otherwise, the only business to be transacted at a general meeting will be that set out in the notice.

6.6 Right of others to attend general meeting

Any other person (whether a Member or not) requested by the Board to attend any general meeting is entitled to be present and, at the request of the Chair, to speak at that general meeting.

7. Proceedings at General Meetings

7.1 Number for a quorum

Except as otherwise provided in this Constitution, 19 Voting Members constitutes a quorum.

7.2 Requirement for a quorum

No business may be transacted at any general meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business.

7.3 No quorum

- (a) If there is no quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Board adjourns the meeting to a date, time and place determined by the Board.
- (b) If no quorum is present at any adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

7.4 Chair of general meetings

Subject to rule 7.5, the Chair is entitled to preside as chair at every general meeting.

7.5 Absence of Chair

Where a general meeting is held and:

- (a) there is no Chair; or
- (b) the Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,

the Directors present may elect one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present may elect one of their number to be chair of the meeting.

7.6 Conduct of general meetings

- (a) The general conduct of each general meeting of the company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.
- (b) The chair of the meeting may make rulings without putting the question (or any question) to the vote if the chair of the meeting considers action is required to ensure the orderly conduct of the meeting.

- (c) At any time the chair of the meeting considers it necessary or desirable for the proper and orderly conduct of the meeting, the chair of the meeting may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (d) Any determination by the chair of the meeting in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard to vote may only be made at the meeting and may be determined by the chair of the meeting whose decision is final.
- (e) If a person purports to cast a vote in contravention of the Corporations Act, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast.
- (f) Nothing contained in this rule limits the powers conferred on a chair of a meeting by law.

7.7 Adjournments

- (a) During the course of a general meeting, the chair of the meeting may, and if so directed by the meeting must, adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to a meeting held at another time and place determined by the chair of the meeting.
- (b) If the chair of the meeting exercises a right of adjournment under paragraph (a), the chair of the meeting has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless the chair of the meeting exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (c) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

7.8 Voting at general meetings

- (a) Any resolution submitted to a general meeting is to be decided by a show of hands of the Members Present and entitled to vote unless a poll is demanded.
- (b) In the case of an equality of votes, the chair of the meeting does not have, both on a show of hands and on a poll, a casting vote in addition to the vote or votes to which the chair of the meeting may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.
- (c) Unless a poll is demanded, a declaration by the chair of the meeting following a vote on a show of hands that a resolution has been passed or lost is conclusive.
- (d) A poll may be demanded by a Member in accordance with the Corporations Act (and not otherwise) or by the chair of the meeting. No poll may be demanded on the election of a chair of a meeting or, unless the chair of the meeting otherwise determines, the adjournment of a meeting. A demand for a poll may be withdrawn.

7.9 Special Meetings

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members which may be held under the operation of this Constitution or the Corporations Act.

7.10 Procedure for polls

- (a) When demanded, a poll may be taken in the manner and at the time the chair of the meeting directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the chair of the meeting considers appropriate.
- (c) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

8. Votes of Members

8.1 Voting rights

- (a) Only Voting Members shall be entitled to vote at a general meeting.
- (b) Subject to 8.1(a), otherwise provided in this Constitution and any rights or restrictions for the time being placed on any Member or class or classes of Members:
 - (i) at meetings of Members or classes of Members each Member entitled to attend and vote may attend and vote in person or by proxy, by attorney or (where the Member is a body corporate) by representative;
 - (ii) a Member is not entitled to vote at a general meeting unless all sums presently payable by the Member in respect of membership of the company have been paid; and
 - (iii) each Member has one vote both on a show of hands and a poll.

8.2 Right to appoint proxy

- (a) A Member may appoint one proxy.
- (b) A proxy must be nominated by and represent a Member.

8.3 Form of proxy

A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Board may prescribe or accept.

8.4 Lodgement of proxies

An instrument appointing a proxy is not valid unless it and the power of attorney or other authority (if any) under which the instrument is signed is received at the registered office of the company or, if notice of a meeting provides for electronic lodgement of proxies, at the electronic mail address specified in the notice, at any time before the meeting commences.

8.5 Validity of proxies

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal; or
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power,

if no notice in writing of the death, unsoundness of mind or revocation (as the case may be) has been received by the company at its registered office at least 48 hours (or any shorter period as the Board may permit or specified by the Corporations Act) before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.
- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.

8.6 Where proxy is incomplete

- (a) No instrument appointing a proxy is treated as invalid merely because it does not contain:
 - (i) the address of the appointor or of a proxy;
 - (ii) the proxy's name or the name of the office held by the proxy; or
 - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the chair of the meeting.
- (c) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

9. Appointment, Removal and Remuneration of Directors

9.1 Appointment and removal

- (a) The Directors upon adoption of this Constitution are the incumbent Directors specified in the register of Directors.
- (b) The number of Directors (not including alternate Directors) must be not less than 8 and not more than 10 unless otherwise determined by general meeting (but subject to the minimum number of Directors not being less than 3).
- (c) Subject to rule 9.1(d), Directors must be Full Members.
- (d) Up to the greater of:
 - (i) two of the Directors; or
 - (ii) one-fifth of the Directors,

may be independent Directors, who:

- (iii) are not Full Members;
 - (iv) have specific skills in commerce, finance, marketing, law, education or business generally or such other skills which complement the Board's current composition; and
 - (v) need not have experience in the Profession.
- (e) In considering the appointment of Directors, the Board will consider the composition of the company's membership base, and the skills, expertise and experience that are likely to be of benefit to the company and which will otherwise complement the Board's current composition.
 - (f) The Board will aim to achieve gender diversity for the membership of the Board.
 - (g) The Board may at any time appoint a person to be a Director to fill a casual vacancy or as an addition to the existing number of Directors, provided the total number of Directors does not exceed the maximum number under paragraph (b).
 - (h) Any Director appointed under paragraph (g) may hold office only until the next annual general meeting of the company and is then eligible for election at that meeting.

9.2 Term

- (a) The term of a Director (including any director at the date of this constitution) is three years.
- (b) Subject to rule 9.2(c), a Director may stand for re-election after any term served. A Director may also retire at an Annual General Meeting prior to the expiry of the term of appointment and may stand for re-election at this meeting.
- (c) A person may not hold office for a period (whether or not continuous) of more than 9 years after the date this Constitution is adopted.

9.3 Retirement by Rotation

- (a) Subject to rule 9.2, at each annual general meeting:
 - (i) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire; and
 - (ii) at least one-third of the remaining Directors must retire.
- (b) The Directors who must retire at each general meeting under rule 9.3(a)(ii) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (c) A retiring Director will be eligible for re-election without needing to give any prior notice of an intention to submit for re-election and will hold office as a Director (subject to re-election) until the end of the meeting at which the Director retires.

9.4 Remuneration

- (a) No Director is entitled to be paid a fee for his or her service as a Director, provided, however, that this does not prevent an Executive Director (as defined in rule 9.4(d)) receiving remuneration in accordance with rule 9.4(d).

- (b) The Directors will be entitled to be paid or reimbursed for all out-of-pocket expenses properly incurred by them in the performance of their duties as Directors where the amount payable has been approved by the Board.
- (c) A Director may be engaged by the company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as has been approved by the Board.
- (d) An executive Director may be appointed on terms as to remuneration, tenure of office and otherwise as may be determined by the Board (**Executive Director**). There may only be one Executive Director of the company at any given time.

9.5 Vacation of office

- (a) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:
 - (i) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (ii) other than in the case of a non-Member Director, ceases to be a Full Member;
 - (iii) resigns from the office of Director by notice in writing to the company;
 - (iv) is absent without the consent of the Board from meetings of the Board held during a continuous period of 6 months; or
 - (v) dies.
- (b) The office of a Director who is an employee of the company is terminated on the Director ceasing to be employed but the person concerned is eligible for reappointment or re-election as a Director of the company.

9.6 Alternate Director

Subject to this Constitution, each Director may appoint any person (who, if there are other Directors, is approved by a majority of the other Directors) to act as an alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the registered office or to a meeting of the Board. The appointment takes effect on (if there are other Directors) approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of the alternate Director is terminated or suspended on receipt at the registered office of notice in writing from the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by

whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;

- (d) the alternate Director will be entitled to be reimbursed under rule 9.4(b) as if the alternate Director were a Director;
- (e) the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (g) the alternate Director is, while acting as a Director, responsible to the company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

9.7 Expert Advisers

- (a) The Board may appoint, on the terms and conditions as determined by the Board, any person (whether a Member or not) with knowledge, skills or experience in policy development, academic institutions, government departments, not-for-profit organisations or peak industry bodies as an Expert Adviser.
- (b) The Board may request for an Expert Adviser to attend and address the Board at a Board Meeting as the Board thinks fit.

10. Powers of the Board

The business of the company will be managed by the Board, which may exercise all powers of the company which are not, by the Corporations Act or this Constitution, required to be exercised by the company in general meeting.

11. Proceedings of the Board

11.1 Board meetings

The Board may meet together for conducting business and may adjourn and otherwise regulate its meetings as it sees fit.

11.2 Power to call for a Board meeting

A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting.

11.3 Quorum for Board meetings

The number of Directors necessary to form a quorum at a Board meeting is half of the number of Directors (rounded up).

11.4 Notice

Reasonable notice must be given to every Director of the place, date and time of every Board meeting. Notice of a Board meeting may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Directors or at any other address given to the Secretary by the Director or by any technology agreed to by all the Directors.

11.5 Board meetings by technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:
- (i) video conference;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each Director to communicate with every other Director; or
 - (v) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
- (i) the participating Directors are, for the purpose of every provision of this Constitution concerning Board meetings, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of the Board conducted in that manner are as valid and effective as if conducted at a meeting at which all of the participating Directors were physically present in one location.

11.6 Chair of the Board

- (a) The Board may elect one of their number as their chair and may decide the period for which the Chair is to hold office as Chair. The title of Chair may be used interchangeably with the title of 'President'.
- (b) The Board may elect one of their number as their deputy-chair and may decide the period for which the Deputy-Chair is to hold office as Deputy-Chair. The title of Deputy-Chair may be used interchangeably with the title of 'Vice-President'. The Deputy-Chair shall assume the position of Chair in the absence of, or when decided by, the Chair.
- (c) The By-Laws may specify the method and procedure for election of the Chair and Deputy-Chair.
- (d) Where a Board meeting is held and:
- (i) a Chair (and Deputy-Chair) has not been elected as provided by paragraph (a); or
 - (ii) the Chair (or Deputy-Chair) is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,

the Directors present may elect one of their number to be chair of the meeting.

11.7 Directors' voting rights

- (a) Subject to this Constitution, questions arising at a Board meeting are decided by a majority of votes of Directors present and voting.
- (b) In the case of an equality of votes, the Chair does not have a casting vote in addition to the Chair's deliberative vote.
- (c) Subject to rule 11.9, a Director who has a material personal interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum.

11.8 Conflict of interests

- (a) A Director is not disqualified from contracting with the company in any capacity by reason of holding the office of Director.
- (b) In relation to a contract or arrangement in which a Director is in any way interested:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) the contract or arrangement may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.

11.9 Material personal interest

- (a) Subject to paragraph (b), a Director who has a material personal interest in a matter that relates to the affairs of the company must give the other Directors notice of his or her interest in accordance with the Corporations Act.
- (b) A Director with a material personal interest in a matter that relates to the affairs of the company is not required to give notice in the following circumstances:
 - (i) if all of the following conditions are met:
 - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the company;
 - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
 - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice;
 - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Corporations Act and that standing notice is still effective in relation to the interest; or
 - (iii) as otherwise permitted under the Corporations Act.

- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting or vote on the matter, except as permitted in accordance with the Corporations Act.
- (d) Nothing in this rule affects the duty of a Director:
 - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a Board meeting, the fact and the nature, character and extent of the conflict; or
 - (ii) to comply with the Corporations Act or any other law.

11.10 Committees

- (a) The Board may delegate any of its powers to committees consisting of any one or more Directors or any other person or persons as the Board thinks fit and may revoke that delegation.
- (b) A committee to which any powers have been delegated under paragraph (a), must exercise those powers in accordance with any directions of the Board. These powers are then taken to have been exercised by the Board.
- (c) Subject to paragraph (b), the meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable.
- (d) Nothing in this rule 11.10 limits the power of the Board to delegate.

11.11 Written resolutions

- (a) A resolution in writing signed by all Directors or a resolution in writing of which notice has been given to all Directors and which is signed by all of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a Board meeting) is a valid resolution of the Board and is effective when signed by the last of all the Directors entitled to vote on the resolution.
- (b) For the purpose of this rule, the references to Directors include any alternate Director appointed by a Director who is not available to sign the document or is otherwise unable to sign the document within a reasonable time but do not include any other alternate Director.
- (c) The resolution may consist of several documents in the same form each signed by one or more of the Directors. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director and is deemed to be signed when received in legible form.

11.12 Defects in appointments

All actions at any meeting of the Board or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if each person had been properly appointed and was qualified and continued to be a Director or a member of the committee.

11.13 If less than minimum number of Directors

If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the company but for no other purpose.

12. Officers of the Company

12.1 Appointment of Secretary

- (a) The first Secretary of the company upon the adoption of this Constitution is the person holding such office at the time of adoption of this Constitution and who has consented to become the Secretary of the company.
- (b) There must be at least one Secretary who is to be appointed by the Board.

12.2 Powers, duties and authorities of Secretary

A Secretary of the company holds office on the terms and conditions, and with the powers, duties and authorities, as the Board decides.

12.3 Termination of appointment of Secretary

The Board may at any time terminate the appointment of a Secretary.

12.4 Appointment of Treasurer

The Board may from time to time appoint (and revoke the appointment of) a person to the position of Treasurer, with the powers and responsibilities as the Board may from time to time decide.

The Treasurer may be, but is not required to be a Member or a Director.

The Treasurer must have such qualifications, skills and experience as the Board considers necessary and appropriate for the role.

12.5 Appointment of Executive Officer

- (a) The Board may from time to time appoint a person (who is not a Director) to the position of Executive Officer for such term, on such remuneration and with the powers and responsibilities as the Board may from time to time decide.
- (b) The Executive Officer shall be entitled to notice of, attend and participate in all Board meetings, but shall have no entitlement to vote.
- (c) The Executive Officer shall manage the company and may exercise all powers of the company which are not otherwise required to be exercised by the Board or Members in general meeting. The Executive Officer shall administer the company in accordance with this Constitution, the By-Laws and lawful directions of the Board.
- (d) The Executive Officer may, in consultation with and with the approval of the Board, employ and/or contract such personnel deemed necessary from time to time, for such periods and on such terms and conditions as the Executive Officer determines.

12.6 Appointment of other officers

The Board may from time to time:

- (a) create any other position or positions in the company with the powers and responsibilities as the Board may from time to time decide; and
- (b) appoint any person, whether or not a Director, to any position or positions created under paragraph (a).

12.7 Termination of appointment of other officers

The Board may at any time terminate the appointment of a person holding a position created under rule 12.6(a) and may abolish the position.

13. Seals

13.1 Seals and their use

The company may have a common seal and a duplicate common seal which are to be used by the company as determined by the Board.

14. Notices

14.1 Notices generally

Any Member who has not left at or sent to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the company may be served or sent is not entitled to receive any notice.

14.2 How notice may be given

- (a) The company may give notice to a Member, in its discretion, by: serving it on the Member personally;
- (b) sending it by post to or leaving it at the Member's address as shown in the register of Members or an alternative address supplied by the Member;
- (c) sending it to the fax number or electronic mail address supplied by the Member;
- (d) serving it in any manner contemplated in this rule 14.2 on a Member's attorney as specified by the Member under a notice given under rule 14.3.

14.3 Notices to an attorney

By written notice to the Secretary left at or sent to the registered office, a Member may request that all notices to be given by the company or the Board be served on the Member's attorney at an address specified in the notice and the company may do so in its discretion.

14.4 Personal service or delivery

A notice served on a Member personally or left at the Member's address is conclusively considered to have been served when delivered.

14.5 Notice by post

A notice sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is conclusively considered to have been served at the expiration of 24 hours after the notice is posted, provided that it is properly addressed.

14.6 Notice by fax or electronic mail

Any notice sent by fax or electronic mail is conclusively considered to have been served on the day it is sent, provided that it is properly addressed.

15. Winding Up of Company

15.1 Winding up or revocation of endorsement

On the winding up or dissolution of the company any property whatsoever, that remains, after satisfaction of all debts and liabilities, must not be paid to or distributed among the Members but must be given or transferred to one or more organisations selected by the Members at or before the time of dissolution or revocation of endorsement:

- (a) having objects similar to the objects of the company set out in rule 2.1; and
- (b) which by its Constitution is required to apply its profits (if any) or other income in promoting its objects and is prohibited from distributing its income and property to its members.

15.2 Amalgamation

Where it furthers the objects of the company to amalgamate with any one or more other organisations having similar objects to the objects of the company, the other organisation or organisations must have rules prohibiting the distribution of its income and property to Members.

16. Indemnity

- (a) The company indemnifies each officer of the company out of the assets of the company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer.
- (b) Where the Board considers it appropriate, the company may execute a documentary indemnity in any form in favour of any officer of the company, provided that such terms are not inconsistent with this rule 16.
- (c) Where the Board considers it appropriate, the company may:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the company against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer; and
 - (ii) bind itself in any contract or deed with any officer of the company to make the payments.
- (d) Where the Board considers it appropriate, the company may:
 - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.

(e) In this rule 16:

(i) **officer** means:

- (A) a Director, Secretary, or executive manager;
- (B) any person appointed as an officer under rule 12.4; or
- (C) a person appointed as a trustee by, or acting as a trustee at the request of, the company,

and includes a former officer.

(ii) duties of the officer includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the company or, where applicable, a subsidiary of the company to any other corporation.

(iii) **to the relevant extent** means:

- (A) to the extent the company is not precluded by law from doing so;
- (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
- (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

(iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

(v)