

Constitution of Australian Sporting Alliance for People with a Disability Limited

Corporations Act 2001 (Cth)

A public company limited by guarantee

Amended 20th May 2025

Constitution of Australian Sporting Alliance for People with a Disability

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Corporations Act 2001

A public company limited by guarantee

Australian Sporting Alliance for People with a Disability Limited

1. Definitions and interpretation

1.1 Definitions

(a) Unless the context otherwise requires and other than in the case of an expression defined in clause 1.1(b), an expression in a clause that is used in the Act has the same meaning as in the Act.

(b) In this Constitution:

Act means the *Corporations Act 2001* (Cth) and any regulations and instruments made under the Act, together with any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that section, part or division as so modified, amended or re-enacted.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Alternate Director means a person appointed as an alternate director of the Company under clause 5.5(a) who has not vacated their office.

ASIC means the Australian Securities and Investments Commission.

Auditor means a person appointed as an auditor of the Company under clause 12.1 who has not vacated their office.

Board means the Directors acting as a board of Directors.

Business Day means a day on which trading banks are open for business in Melbourne, Victoria, other than a Saturday or a Sunday.

Chair means the person elected under clause 7.5.

Commissioner means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 1997.

Company means Australian Sporting Alliance for People with a Disability Limited.

Constitution means this constitution, and a reference to a clause is a reference to a clause of this constitution.

Director means a director of the Company from time to time.

Gift means a gift to the Company as described in item 1 of the table in section 30-15 of the ITAA 1997.

Initial Directors means the Directors listed in Schedule 1.

Initial Members means the Members listed in Schedule 1.

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

Lived Experience means a person who has a disability, impairment or limitation or who has experience living or engaging with a person who has a disability, impairment or limitation.

Member means an organisation entered in the Register of Members as a member of the Company under clause 4.7.

Membership Requirements means the eligibility requirements for an applicant to become a Member and for a Member to maintain membership with the Company, as follows:

- (i) the organisation is an Australian National Sports Organisation for people with a disability or an organisation that has a formalised funding arrangement with the Australian Sports Commission to assist the organisation in increasing the accessibility of sport and physical activity for people with a disability, impairment or limitation in Australia; and
- (ii) the organisation is registered as a charity (as defined under and for the purposes of the Tax Acts or the ACNC Act).

Members Special Decision means a decision of the Members that requires passage by a Special Resolution, as listed in Schedule 2.

Nomination Committee means a nomination committee established by the Board under clause 5.2(d).

Registered Office means the registered office of the Company.

Register of Members means the register listing each organisation that is a Member which the Company maintains under the Act.

Representative means a person appointed to represent a corporate Member or a corporate proxy at a general meeting of the Company under clause 8.8 and the Act.

Secretary means a person appointed under clause 11 as a secretary of the Company.

Special Resolution means a resolution that is passed:

- (i) at a general meeting by at least 75% of the votes cast by Members present (in person or by proxy) at the general meeting and entitled to vote on the resolution; or
- (ii) by a Written Resolution in accordance with clause 8.9 signed by at least 75% of the Members.

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

Written Resolution has the meaning set out in clause 8.9(b).

1.2 Interpretation

- (a) In this Constitution unless the contrary intention appears:
 - (i) words importing any gender include all other genders;

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- (ii) organisation includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
 - (iii) the singular includes the plural and vice versa;
 - (iv) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
 - (v) writing and written includes printing, typing and other modes of reproducing words in a visible form including, but not limited to, any representation of words in a physical document or in an electronic communication or form or otherwise;
 - (vi) a reference to a document or instrument, including this Constitution, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, novated, supplemented or replaced from time to time; and
 - (vii) a reference to an act includes every amendment, re-enactment or replacement of that act and any subordinate legislation made under that act, such as regulations, together with any statutory rectification, amendment or re-enactment in force, and a reference to any section, part or division is to that section, part or division as so defined, amended or re-enacted.
- (b) Subject to clauses 1.2(c) and 1.2(d), this Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.
 - (c) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules do not apply to the Company.
 - (d) While the Company is a registered charity (as defined under and or for the purposes of the Tax Acts or the ACNC Act), if a clause of this constitution is inconsistent with the ACNC Act or would prevent the Company from complying with a provision of the ACNC Act, this Constitution will not apply to the extent of that inconsistency or to the extent it would prevent compliance with the ACNC Act.

2. Nature of the Company

2.1 Public company

The Company is a public company limited by guarantee which is committed to inclusion leadership as a method for creating and sustaining a culture that enables the delivery of the best possible sport outcomes for all people with a disability, impairment or limitation in Australia. As a part of that culture, the Company acknowledges the traditional custodians of country throughout Australia and their connections to land, sea and community.

2.2 Not for profit

- (a) The income and property of the Company must be used and applied solely in promotion of its objects and no portion will be dismantled, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to Members.
- (b) Notwithstanding clause 2.2(a), the Company may make payments to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary course of the business of the Company;

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- (ii) consisting of financial support to a charity that is involved in the promotion and encouragement of disability sports in accordance with the objects of the Company;
 - (iii) consisting of interest at a rate not exceeding bank overdraft rates of interest for moneys lent; or
 - (iv) of reasonable rent for premises let to the Company by the Member.

2.3 Limitation of the Company

The Company does not have the power to:

- (a) issue shares of any kind; or
- (b) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to, a Member, other than payments in good faith as provided in clause 2.2(b).

2.4 Guarantee of Members

Each Member undertakes to contribute a maximum of \$10.00 to the Company for payment of:

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

in the event that the Company is wound up:

- (d) while the Member is a Member; or
- (e) within one year after the Member ceases to be a Member.

2.5 Objects of the Company

The object of the Company is to undertake public charitable activities in Australia with the purpose of advancing health by increasing the accessibility of sport and physical activity for people with a disability, impairment or limitation in Australia, and to support the charitable objectives of all Members as contained within their respective charters and, in particular, but without limitation, by:

- (a) being the representative alliance for people who have a disability, impairment or limitation to enable them to fully participate in sport and physical activity in Australia;
- (b) leading with a unified approach, to build active and enriched lives through provision of a welcoming sporting and physical activity sector based on social inclusion principles;
- (c) advocating, educating, promoting, amplifying, informing, supporting and building the capacity and standards of the wider sporting sector to be inclusive for all people who have a disability, impairment or limitation;
- (d) fostering relationships with governments and other key stakeholders to support the accessibility of the sport and physical activity sector;
- (e) ensuring the Company has a sustainable governance and management structure which supports its vision and mission;

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- (f) providing a central information platform(s) which promote and share key information on being more accessible and inclusive;
 - (g) raising funds to assist in the achievement of the objects of the Company, including through soliciting, applying for and obtaining government and other grants, voluntary contributions, fundraising efforts and other appropriate means;
 - (h) acquiring, operating and maintaining such buildings and equipment and other assets as the Company considers necessary or desirable in connection with the furtherance of its objects;
 - (i) employing such persons as may be required to promote any of the above objects or to provide any service in accordance with them; and
 - (j) any other activities that are incidental or ancillary to, and not inconsistent with, these objects.

2.6 Scope of powers

Subject to any restrictions set out in this Constitution, and provided that its capacities and powers are exercised directly or indirectly in the furtherance of its objects, the Company will have the legal capacity and powers set out in the Act.

3. Internal management of the Company

The internal management of the Company will be governed by this Constitution.

4. Members

4.1 Membership

- (a) At the time of adoption of this Constitution, the Initial Members are the Members.
- (b) Number of Members
 - (i) There must be at least five Members.
 - (ii) The Board may set a limit on the maximum number of Members.
- (c) Classes of Members

At the time of adoption of this Constitution, there are no separate classes of Membership. The Members may, by Special Resolution:

- (i) establish different classes of Members and prescribe the qualifications, rights (including voting rights), privileges and obligations of organisations to become a Member of a class; and
- (ii) vary or cancel the rights attaching to any class of Members only if the variation or cancellation is permitted by the Act and approved by Special Resolution of each of:
 - (A) the Members of all classes voting as a single class; and
 - (B) the Members of the relevant class.

The Company must give written notice of the variation or cancellation to the Members of the relevant class within seven days of the variation or cancellation.

4.2 Application for Membership

The Board or a Member from time to time may invite an organisation that satisfies the Membership Requirements to apply to become a Member. An application to become a Member must be made in the form approved by the Board from time to time, provided that each such application must contain:

- (a) an undertaking on the part of the applicant to be bound by the Constitution;
- (b) the address, facsimile number and electronic mail address (if any) of the applicant;
- (c) adequate particulars of the applicant's qualifications for membership, including supporting information to establish that the applicant satisfies the Membership Requirements); and
- (d) the signature of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time.

4.3 Lodging of applications

An application for membership accompanied by the applicable membership fee or subscription (where applicable) must be lodged with the Company at the place approved by the Board from time to time.

4.4 Determination of application by the Members

- (a) The Board may request the Members to consider whether or not to approve an application for Membership at a general meeting called by the Board or by Written Resolution.
- (b) The Board or a Member may require an applicant to give such further information as it desires before the Members approve or reject the admission of an applicant for Membership.
- (c) An applicant for Membership is taken to be admitted as a Member upon:
 - (i) the Members approving the application by Special Resolution; and
 - (ii) the name, address, facsimile number and email address (if any) of the applicant being entered in the Register of Members.
- (d) The Board may determine the class of membership appropriate for each membership application (if applicable).

4.5 Notification of change in qualifications

If there are qualifications required or necessary for an organisation to become a Member or maintain Membership (such as the Membership Requirements), then a Member whose qualifications have changed must promptly notify the Company of the change in the Member's qualifications.

4.6 Fees, Subscriptions and Charges

- (a) The Board may set fees, subscriptions and other charges or levies (if any) to be paid by Members in respect of their Membership. The fees, subscriptions, other charges or

levies payable by Members may vary by class (if applicable) or other criteria determined by the Board.

- (b) The right of a Member to attend and vote at a general meeting is suspended whilst the payment of any fee, subscription, charge or levy determined under clause 4.6(a) is in arrears for longer than 90 days.
- (c) The Board may defer the obligations of a Member to pay any fee, subscription, charge or levy, or reduce (including to zero) the fee, subscription, charge or levy payable by a Member, if the Board is satisfied that:
 - (i) there are reasonable grounds for doing so;
 - (ii) the Company will not be materially disadvantaged as a result; and
 - (iii) the Member agrees to pay the deferred or (if greater than zero) the reduced fee, subscription, charge or levy within a reasonable timeframe determined by the Board.
- (d) If the Board defers or reduces a fee, subscription, charge or levy payable by a Member under this clause 4.6, that Member will retain its right to attend and vote at a general meeting, unless otherwise determined by the Board acting reasonably.

4.7 Register of Members

- (a) The Directors must cause the Company to keep a Register of Members in accordance with the Act, in which are entered:
 - (i) the name of each Member;
 - (ii) the address, facsimile number and email address (if any) for notices last notified by the Member;
 - (iii) the class of membership (if applicable);
 - (iv) the date of becoming a Member; and
 - (v) in the case of former Members, the date of ceasing to be a Member.
- (b) Each Member must notify the Company in writing of the change in any detail kept in the Register of Members within one month after the change.

4.8 Rights and obligations

- (a) Members that have been suspended in accordance with clause 4.10 are not eligible to participate in the activities of the Company.
- (b) The rights of Members are not transferable and end when the Member ceases to be a Member.

4.9 Resignation of Members

Members may resign by giving no less than three months written notice of resignation to the Company at its Registered Office.

4.10 Suspension of or expulsion from membership

- (a) Subject to clause 4.10(d), the Members may, by Special Resolution passed at a general meeting, suspend the membership of a Member for such period and subject to such conditions as may be set out in the Special Resolution, if that Member:
 - (i) has materially breached or refused or neglected to comply with a provision of this Constitution, the Company's policies that are applicable to Members or any resolution or determination of the Board or of any duly authorised committee of Directors that is applicable to Members;
 - (ii) has acted in a manner unbecoming of a Member or prejudicial to the objects and interests of the Company;
 - (iii) has prejudiced the Company or brought the Company or itself into disrepute; or
 - (iv) has been found to have committed an offence or otherwise to have engaged in an illegal activity.
- (b) Subject to clause 4.10(d), the Members may, by Special Resolution passed at a general meeting, expel a Member from the Membership if:
 - (i) the Member ceases to satisfy the requirements of, where applicable, the criteria for admission to or maintenance of Membership in the Company (including the Membership Requirements); or
 - (ii) the Member commits any material breach of any of the provisions of this Constitution and the breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy that breach within 15 Business Days of notice from the Company or a majority of the non-defaulting Members requesting that the defaulting Member to do so.
- (c) The requirements of natural justice do not apply to any suspension or expulsion from Membership of a Member, except to the extent that the Members otherwise resolve.
- (d) The Board may, on its own motion, or must at the request of at least 3 Members, call a general meeting for the Members to consider whether to suspend or expel a Member in accordance with clause 4.10(a) or 4.10(b). The Board must give at least 21 days' notice to Members in respect of a general meeting at which a Special Resolution for a Member's suspension or expulsion is to be considered. The notice of meeting must:
 - (i) set out the place, date and time of the general meeting;
 - (ii) set out the relevant grounds for the proposed suspension or expulsion (as referred to in clause 4.10(a) or 4.10(b), as applicable); and
 - (iii) inform the Member that is the subject of the resolution that it may submit a written submission to the other Members before the general meeting.

4.11 Cessation

- (a) A Member ceases to be a Member if:
 - (i) the Member resigns under clause 4.9;
 - (ii) their Membership is terminated under clause 4.10(b);

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- (iii) the Member becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation); or
 - (iv) the Member's Membership was for a term or period of time and that term or period expires without being renewed or extended.
- (b) If a Member ceases to a Member, the Directors must cause the Company without delay to make the necessary entry in the Register of Members.
- (c) If a Member ceases to be a Member, that Member remains liable to pay to the Company any money which that Member owes to the Company and any amount which that Member has guaranteed under clause 2.4.

5. Directors

5.1 Preliminary

- (a) At the time of adoption of this Constitution, the Initial Directors are the Directors.
- (b) Number of Directors
- (i) The Company must have at least three Directors.
 - (ii) The maximum number of Directors is 9.
- (c) Eligibility for appointment as Director
- (i) To be eligible to be appointed as a Director, a person must:
 - (A) be an individual;
 - (B) reside in Australia;
 - (C) be at least 18 years old;
 - (D) not be otherwise ineligible or disqualified from holding office under this Constitution or the Act;
 - (E) must not be an officer of (other than in their capacity as an Director) or employed by the Company, any Member or the Australian Sports Commission,
 - (F) starting from three years after the date of adoption of this Constitution, must not have been such an officer or employee for a period of at least three years. For the avoidance of doubt, the requirement under this clause 5.1(c)(i)(F) will not apply until the third anniversary of the adoption of this Constitution; and
 - (G) must not have close personal ties with any officer or employee of the Company, any Member or the Australian Sports Commission.
- (d) Non-eligibility of Auditor
- Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be appointed as a Director.
- (e) Gender and Lived Experience of Directors

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- (i) The Members and the Board must use reasonable endeavours to ensure that no one gender constitutes less than 40% or more than 60% of the total number of Directors.
 - (ii) In addition, in considering whether to appoint a person as a Director, each Member should consider whether and the extent to which its candidate for Director has Lived Experience.
- (f) Maximum consecutive years in office for Directors
- (i) A Director must not serve more than six consecutive years as a Director.
 - (ii) For the purpose of clause 5.1(f)(i), where service by a person as a Director under this Constitution is for a period of less than three years:
 - (A) if the service is less than one year, it will be treated as one full year;
 - (B) if the service is between one year and two years, it will be treated as two full years; and
 - (C) if the service is between two years and three years, it will be treated as three full years.
 - (iii) A Director who has served the maximum number of years in accordance with clause 5.1(f)(i) will not be eligible to be a Director for three years following the completion of their maximum term.

5.2 Power to appoint Director

- (a) The Board may, subject to clauses 5.1(c) and 5.1(f), appoint any person to be a Director, either to fill a casual vacancy or as an addition to the Board but so that the number of Directors does not exceed the maximum number determined pursuant to clause 5.1(b)(ii). Any Director appointed under this rule may hold office only until the next annual general meeting of the Company and is then eligible for election at that meeting but is not taken into account in determining the number of Directors who are to retire by rotation at that meeting.
- (b) In determining whether and who to appoint as a Director, the Board should have reasonable regard to, amongst other matters, the following:
 - (i) the mix of gender, skills and experience required of the Directors (and any deficiency in genders or gaps in those skills and experience amongst the Directors then in office); and
 - (ii) any skills matrix for Directors that may be adopted by the Board.
- (c) Subject to clause 5.1(f), a Director holds on such other terms as the Board determines, acting reasonably and in good faith.
- (d) When the Board is considering the appointment of a Director, the Board must establish a Nomination Committee if required to assist in identifying candidates for Director. The Nomination Committee may recommend to the Board that a candidate for appointment as a Director is unsuitable for further consideration by the Board. The Nomination Committee will be comprised of three persons appointed by the Board, consisting of an independent chair, a Member representative and a Director. The duties, functions and rules of the Nomination Committee will be set out in the terms of reference for the Nomination Committee as approved by the Board.

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- (e) The Nomination Committee must utilise a skills matrix approved by the Board as part of its assessment of candidates for Director.

5.3 Term for Directors and their election

- (a) Without prejudice to clauses 5.2(a) and 5.4, at every annual general meeting one third of the Directors, or if their number is not a multiple of three, then the number nearest to but not less than one third must retire from office. A Director must retire from office at the conclusion of the third annual general meeting after which the Director was elected or re-elected (**Retiring Director**), unless the Director vacates the office earlier under clause 5.4(a). A Retiring Director retains office until the dissolution or adjournment of the meeting at which the Retiring Director retires.
- (b) The Directors to retire pursuant to clause 5.3(a) are the Directors or Director longest in office since last being appointed. As between Directors who were elected on the same day, the Directors to retire are determined by ballot unless otherwise agreed between them.
- (c) Subject to clause 5.1(f), a Retiring Director is eligible for reappointment as a Director at the end of their term of office.
- (d) No person (other than a Retiring Director, subject to clause 5.1(f)) is eligible for election to the office of Director at any general meeting unless the person or a Member intending to nominate the person has given notice in writing signed by the nominee giving consent to the nomination and signifying either candidature for the office or the intention of the Member to nominate the nominee. Such nominations must be delivered to the Company no later than 35 Business Days prior to the date of the general meeting where directors can be elected unless the nominee has been recommended by the Board for election, in which case the nomination must be delivered to the Company at least 5 Business days before the meeting.

5.4 Resignation, cessation and termination of a Director

- (a) Vacation of office
 - (i) A Director vacates office if the Director:
 - (A) resigns their office by written notice to the Company under clause 5.4(b);
 - (B) is removed from the office of Director by a resolution of the Members under clause 5.4(c);
 - (C) dies, becomes incapacitated or becomes of unsound mind rendering the Director unable to fulfil their role;
 - (D) was is required to retire under clause 5.3 (as applicable) and the Director is not re-appointed;
 - (E) fails to attend two consecutive Board meetings without leave of absence from the Board;
 - (F) enters into an employment or services agreement with the Company, unless the Board determines otherwise; or
 - (G) ceases to be a Director or becomes prohibited from being a Director under the Act.

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- (ii) A Director whose office is vacated under clause 5.4(a)(i)(G) is not eligible for re-appointment until the relevant prohibition no longer applies.
- (b) Resignation of a Director
- (i) A Director may resign as a Director of the Company by providing 14 days prior written notice to the Company.
 - (ii) If the resignation of a Director under clause 5.4(b)(i) will cause the number of Directors to fall below the minimum number required by this Constitution or by the Act, the Director must not resign or otherwise vacate their office voluntarily until another Director has been appointed.
- (c) Removal of a Director by Members
- (i) The Company may, by resolution of the Members entitled to vote thereon in general meeting, remove a Director from office.
 - (ii) If the removal of a Director under clause 5.4(c)(i) will cause the number of Directors to fall below the minimum required by this Constitution or the Act, the removal has no effect until a replacement has been appointed.
 - (iii) Notice of intention to move the resolution referred to in clause 5.4(c)(i) must be given to the Company at least two months before the meeting is to be held except if a general meeting is called after the notice of intention is given under this clause.
 - (iv) The Company must give the Director a copy of the notice as soon as practicable after it is received.
 - (v) The Director is entitled to put their case to Members by:
 - (A) giving the Company a written statement for circulation to Members; and
 - (B) speaking to the motion at the general meeting (whether or not the Director is a Member of the Company).
 - (vi) The written statement in clause 5.4(c)(v) is to be circulated by the Company to Members by:
 - (A) sending a copy to everyone to whom notice of the general meeting is sent if there is time to do so; or
 - (B) if there is not time to comply with clause 5.4(c)(vi)(A), having the statement distributed to Members attending the general meeting and read out at the meeting before the resolution is voted on.
 - (vii) The Director's statement does not have to be circulated to Members if it is more than 1,000 words long or defamatory.
 - (viii) If a person is appointed to replace a Director removed under this clause 5.4(c) and the Director who was removed was appointed for a particular term, the time at which the replacement Director or any other Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed a Director.

5.5 Alternate Director

(a) Power to appoint Alternate Director

Subject to clause 5.5(d), each Director may at any time appoint any individual approved for that purpose by the Board to act as an Alternate Director in the appointor's place. For the avoidance of doubt, an individual may act as an Alternate Director for only one (and not more than one) Director.

(b) Suspension of appointment of Alternate Director

The appointor may vary, suspend or terminate the appointment of his or her Alternate Director.

(c) Notice of appointment of Alternate Director

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor, and a copy served on the Company. The Chair will maintain a list of the Alternate Directors that have been appointed from time to time.

(d) Term of appointment of Alternate Director

The term of the appointment of an Alternate Director will be for a 12 month period. If an appointor wants to extend an Alternate Director's term of appointment for a further 12 month period, the appointor must notify the Chair at least one month before the end of the Alternate Director's term, and the extension will be subject to the Chair's approval.

(e) Role of Alternate Director An Alternate Director:

- (i) is not entitled to receive notice of Board meetings unless the appointor has, by written notice to the Company, required the Company to do so either generally or in particular circumstances;
- (ii) may attend and vote at a Board meeting only if the appointor is not present at that meeting;
- (iii) may sign a circulating resolution under clause 7.1 unless the appointor has, by written notice to the Company, suspended that right either generally or in particular circumstances;
- (iv) is entitled to sign a document under clause 6.6 or section 127 of the Act;
- (v) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director (subject to clauses 5.5 to 5.5(f));
- (vi) does not have a conflict of interest, or a material personal interest in a matter that relates to the affairs of the Company, solely by reason of the fact that the appointor has; and
- (vii) is not taken into account in determining the number of Directors in clause 5.1(a).

(f) Termination of appointment

The appointment of an Alternate Director will be terminated by any of the following events:

- (i) if the Alternate Director gives written notice to the Company that they resign the appointment;
- (ii) if the appointment of the Alternate Director is terminated by the appointor under clause 5.5(c);
- (iii) if a majority of the remaining Directors withdraw the approval of the individual to act as an Alternate Director;
- (iv) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (v) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.

5.6 Board review

The Members must, no earlier than three years and no later than four years after the date of registration of the Company, undertake a review of the structure of the Board to determine whether it is still appropriate and effective for the Company governance (**Board Review**). When undertaking the Board Review, the Members must, amongst other matters, consider the following:

- (a) whether the appointment of additional independent Directors would be desirable;
- (b) if the number of Directors should be amended;
- (c) whether a Director's term of 3 years or the period of a Director's maximum tenure should be changed;
- (d) whether the persons who are entitled to appoint Directors or the process for appointing Directors or identifying candidates for Directors should be changed; and
- (e) whether the skills matrix for Directors should be expanded or otherwise adjusted.

The Members will appoint the chair for the Board Review, who may (but need not be) a Director.

5.7 Payments to Directors

- (a) Reimbursement of expenses incurred by Director

Subject to the Act and clause 5.7(b), a Director is entitled to reimbursement of the travelling and other expenses that the Director properly incurs:

- (i) in attending Board meetings or any meetings of a committee of Directors;
- (ii) in attending any general meeting of the Company; or
- (iii) in connection with the Company's business.

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- (b) Payment to be approved by Directors

Any payment proposed to be made to a Director under this Constitution must first be approved by the Board (excluding the Director to whom the payment is to be made).

- (c) Financial benefit

- (i) A Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.
- (ii) The Company must not make loans to Directors or provide guarantees or security for obligations undertaken by Directors except as may be permitted by the Act.

5.8 Conflicts of interest

- (a) The Chair must maintain a list of the matters in respect of which any Director during the previous five years has disclosed they have a material personal interest, and that list must be tabled at the beginning of each Board meeting.

- (b) Prohibition on being present or voting

Subject to the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (i) must not vote on the matter; and
- (ii) must not be present while the matter is being considered at the meeting.

- (c) Directors' interests

Subject to this Constitution and the Act:

- (i) a Director or a body or entity in which a Director has a direct or indirect interest may:
- (A) enter into any agreement or arrangement with the Company;
- (B) hold any office or place of profit (other than Auditor) in the Company; and
- (C) act in a professional capacity (other than as Auditor) for the Company,

and the Director or the body or entity may receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company;

- (ii) the fact that a Director holds office as a director and has fiduciary obligations arising out of that office:
- (A) does not void or render voidable a contract made by the Director with the Company;
- (B) does not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and

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- (C) does not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest;
- (iii) a Director may be or become a director or other officer of, or otherwise be interested in:
 - (A) any related body corporate of the Company; or
 - (B) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise,and is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in that body corporate; and
 - (iv) any Director:
 - (A) may exercise the voting power conferred by the interest held by the Company in another company in favour of a resolution appointing themselves or any Director as a director or other officer of the other company;
 - (B) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
 - (C) may be appointed as Representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
 - (D) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.
- (d) Material personal interest - Director's duty to disclose
 - (i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless an exception in the Act applies.
 - (ii) A notice required by clause 5.8(d)(i) must:
 - (A) include details of:
 - (I) the nature and extent of the interest; and
 - (II) the relation of the interest to the affairs of the Company; and
 - (B) be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter.
 - (iii) Directors must provide to the Board an annual statement of interests, which must be updated from time to time to satisfy the requirements in clause 5.8(d)(i).

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- (iv) Where a Director has a material personal interest or in the event of a related party transaction between a Director and the Company, that Director is ineligible to receive the Board meeting papers to the extent related to the matter, must absent themselves from discussion of such matter by the Board and must not vote in respect of such matter unless otherwise determined by the uninterested Directors.
 - (e) Director may give standing notice about a material personal interest
 - (i) A Director required to give notice under clause 5.8(d) may give standing notice of the nature and extent of the interest in the matter in accordance with the Act and this Constitution.
 - (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
 - (iii) A notice under clause 5.8(e)(i) must be given:
 - (A) at a Board meeting either orally or in writing; or
 - (B) to the other Directors individually in writing.
 - (iv) If the standing notice is given to the other Directors individually in writing:
 - (A) the notice is effective when it has been given to every Director; and
 - (B) the notice must be tabled at the next Board meeting after it is given.
 - (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

5.9 Validity of acts

- (a) All actions at any meeting of the Board 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 person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of appointing additional Directors or calling a general meeting of the Company but for no other purpose.

6. Management of business by the Board

6.1 Powers of Directors

- (a) The business of the Company is to be managed by or under the direction of the Board.
- (b) The Directors may exercise all of the powers of the Company except any powers that any provision of the Act or this Constitution require the Company to exercise in a general meeting, and provided that the Company must not do or commit to do any of the things listed in Schedule 2 (**Members Special Decisions**) without the approval of the Members by Special Resolution.
- (c) Without limiting the generality of clause 6.1(b), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the

Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

6.2 Directors must keep transactions confidential

Every Director and other agent or officer of the Company must:

- (a) keep confidential all aspects of all transactions of the Company, except:
 - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (ii) as required by law; or
 - (iii) when requested by the Directors to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

6.3 Appointment of attorney for Company

The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

6.4 Delegation by the Board

- (a) Subject to the Act, the Board may delegate any of its powers to:
 - (i) a committee of Directors;
 - (ii) a Director;
 - (iii) an employee of the Company; or
 - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it under any directions of the Board.
- (c) The effect of the delegate exercising a power is the same as if the Board exercised it.
- (d) The Board may at any time revoke or vary any delegation to a person or committee.

6.5 Seals and execution of documents

- (a) The Directors must provide for the safe custody of any seal of the Company.
- (b) If the Company has a common seal or duplicate common seal:
 - (i) it must be used only by the authority of the Board, or of a committee of the Directors authorised by the Board to authorise its use; and

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- (ii) every document to which it is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.
 - (c) The Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

6.6 Negotiable instruments

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

7. Board meetings

7.1 Directors' resolution without a meeting

- (a) The Directors may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution have provided their consent in writing (which may include an email) to the resolution in accordance with this clause 7.1. The resolution is not invalidated if, in addition to the majority of Directors entitled to vote on the resolution, it is also consented to by a Director who is not entitled to vote.
- (b) A Director may consent to a resolution by providing the Company with a document (including by fax or electronic means):
 - (i) setting out the terms of the resolution;
 - (ii) containing a statement to the effect that the Director is in favour of the resolution; and
 - (iii) signed by the Director.
- (c) Alternatively, the Director may consent to a resolution by giving the Company a written notice (including by fax or electronic means):
 - (i) that includes the Director's assent to the particular resolution;
 - (ii) that sets out the terms, or identifies, the particular resolution; and
 - (iii) where the Director has notified the Company in writing of a specified means by which their consent must be authenticated, that enables the Director's consent to be authenticated by those specified means.
- (d) Separate copies of a document referred to under clause 7.1(b) may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. An email or document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of clause 7.1(b) and is taken to be signed when received by the Company in legible form.

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- (e) The resolution is passed when the last Director forming part of the majority required to pass the resolution consents to the resolution in accordance with this clause 7.1.

7.2 Calling Board meetings

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

7.3 Notice of meeting

Notice of every Board meeting must be given to each Director, but failure to give or receive that notice will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error, or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

7.4 Conduct of Board meetings

- (a) A Board meeting may be called and held:
- (i) in person;
 - (ii) by telephone;
 - (iii) by audio visual linkup; or
 - (iv) using any technology consented to by a majority of the Directors before or during the relevant meeting.
- (b) Any consent under clause 7.4(a)(iv) may be a standing consent.
- (c) If a Director gives their consent under clause 7.4(a)(iv) they may only withdraw their consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a meeting where the meeting is conducted by telephone, audio visual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A meeting conducted by telephone, audio visual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Directors' meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this clause 7, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

7.5 Chairing Board meetings

- (a) The Directors may elect a Chair for its meetings and determine the period for which the Chair is to hold office.

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- (b) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
 - (i) no Chair has been appointed; or
 - (ii) the Chair is not available or declines to act as Chair for the meeting or part of it.

7.6 Voting by Chair at Board meetings

In case of an equality of votes on a resolution at a Board meeting, the Chair will not have a second or casting vote on that resolution in addition to any vote the Chair has in their capacity as a Director in respect of that resolution.

7.7 Quorum at Board meetings

- (a) Unless the Directors determine otherwise, the quorum for a Board meeting is a majority of the Directors, and the quorum must exist at all times during the meeting.
- (b) In determining whether a quorum is present at a Board meeting, an Alternate Director is to be counted only if that Alternate Director's appointor is not attending the Board meeting.
- (c) If, and so long as, a quorum does not exist for the consideration of a particular matter at a Board meeting because one or more of the Directors is prohibited from voting under clause 5.8(a), the Directors, including the Director or Directors prohibited, are entitled to vote on a resolution to call, and put the matter before, a general meeting.

7.8 Meeting competent to exercise all powers

A Board meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

7.9 Passing of Board resolutions

A resolution of the Board will be passed if a majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.

7.10 Resolution passed deemed to be a determination of the Board

Any resolution properly passed at a duly called Board meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

7.11 Committee powers and meetings

- (a) Any committee of Directors may exercise the powers delegated to it under any directions that may from time to time be given to it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this clause.

7.12 Validity of acts of Directors

If it is discovered that:

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- (a) there was a defect in the appointment of a person as a Director or member of the Board or committee of Directors; or
 - (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

8. General meetings

8.1 Annual general meeting

- (a) Company must hold annual general meeting

Unless the Company has only one Member, the Company must hold a general meeting, to be called the annual general meeting, once a year and under the Act, subject to any extension of time granted under the Act.

- (b) Business of the annual general meeting

- (i) Whether or not stated in the notice of the annual general meeting, the business of the annual general meeting may include:
 - (A) receiving and considering the income statement balance sheet, reports of the Directors, reports of the Auditors and the statement of the Directors;
 - (B) appointing the Auditor;
 - (C) fixing the remuneration of the Auditor; and
 - (D) voting on a Members Special Decision.
- (ii) The business of the annual general meeting may also include any other business which under this Constitution or the Act ought to be transacted at an annual general meeting.

- (c) Members' opportunity to ask questions

- (i) The Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on:
 - (A) the management of the Company; or
 - (B) the remuneration report (if any).
- (ii) If the Auditor is at the annual general meeting, the Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the annual general meeting to ask the Auditor questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

8.2 Right to call and attend general meetings

- (a) Calling a general meeting

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- (i) A Director or the Directors may, by written notice, call a general meeting at a time and place as the Director or the Directors resolve.
 - (ii) Members may requisition the holding of a general meeting only under the Act and the Directors must call a general meeting as soon as practicable after receiving that requisition.
 - (iii) Members may call and arrange to hold a general meeting only under the Act.
- (b) Right to attend general meetings
- (i) Each Member (other than a Member of any class that does not have voting rights) and any Auditor is entitled to attend a general meeting.
 - (ii) Each Director is entitled to attend and speak at a general meeting.
 - (iii) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
 - (iv) A Member's proxy or a Representative may attend a general meeting only as provided by this Constitution and the Act.

8.3 Notice of general meetings

- (a) Amount of notice of general meetings

Subject to the Act, at least 21 days' notice must be given of a general meeting.

- (b) Calculation of period of notice

In computing the period of notice under clause 8.3(a), the day on which the notice is given or taken to be given is to be disregarded but the day of the general meeting called by it is to be counted.

- (c) Right to notice of general meeting

Written notice of the general meeting must be given under clause 14 and must be given to any person entitled to receive notice under the Act including:

- (i) each Member entitled to vote at the meeting;
- (ii) each Director; and
- (iii) the Auditor (if any) of the Company.

- (d) Content of notice

A notice calling a general meeting must comply with the Act and must:

- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places or virtually, the technology that will be used to facilitate the general meeting);
- (ii) state the general nature of the business to be considered at the general meeting;
- (iii) if a Members Special Decision is to be proposed at the general meeting, set out an intention to propose a Members Special Decision and state the resolution;

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- (iv) if a Member is entitled to appoint a proxy, contain a statement setting out that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company;
 - (v) be accompanied by an instrument of proxy in any form as the Directors may from time to time prescribe or accept; and
 - (vi) contain information that is worded and presented in a clear, concise and effective manner.

8.4 Cancellation or postponement of a general meeting

- (a) Directors may cancel or postpone a general meeting
 - (i) The Board may cancel, postpone, change the place at which a general meeting is held or change the manner in which a general meeting is to be conducted (including the technology that may be used to conduct a general meeting) by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
 - (ii) Clause 8.4(a)(i) does not apply to general meetings called by court order or under the Act:
 - (A) by the Directors on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
 - (B) by Members, unless the Members who called the meeting consent to the postponement or cancellation.
- (b) Contents of notice postponing or cancelling a general meeting

A notice of postponement or cancellation of a general meeting must specify:

- (i) the reasons for the postponement, cancellation or change to the place where the meeting is to be held or the manner in which the meeting will be conducted (including the technology to be used to conduct the meeting), as applicable; and
 - (ii) if the general meeting is postponed:
 - (A) the postponed date and time for the holding of the general meeting;
 - (B) the place or places for the holding of (and, if applicable, the technology to be used in conducting) the general meeting which may be either the same as or different from the place or technology specified in the notice calling the general meeting;
 - (C) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner; and
 - (iii) if the arrangements for the conduct of the general meeting are changed, the new arrangements, including details (as applicable) of the place at which the meeting will be held and the technology to be used.
- (c) Number of clear days for postponement of general meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Act.

(d) Business at postponed general meeting

Subject to clause 8.1(b), the only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice calling the general meeting.

(e) Proxy or Representative at postponed general meeting

Where:

- (i) an instrument of proxy or power of appointment authorises a proxy or Representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (ii) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

(f) Validity of resolutions

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

8.5 Conducting general meetings

(a) Time and place for general meetings

A general meeting must be held at a reasonable time and place.

(b) Arrangements

- (i) A general meeting may be called and held:
 - (A) in person;
 - (B) by telephone;
 - (C) by audio visual linkup;
 - (D) using any technology determined by the Board before the relevant meeting; or
 - (E) using any combination of the means set out in clauses (A) to (D),which gives the Members as a whole a reasonable opportunity to participate.

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- (ii) A Member is regarded as present at a general meeting where the meeting is conducted by telephone, audio visual linkup or other technology if the Member is:
 - (A) afforded a reasonable opportunity to participate in the general meeting; and
 - (B) enabled to vote on all polls held during the general meeting.
 - (iii) A meeting conducted by telephone, audio visual linkup or other technology will be deemed to be held at the place determined by the Board.
- (c) Quorum for a general meeting
- The quorum for a general meeting or an adjourned general meeting is a majority of Members and the quorum must be present at all times during the meeting, unless the Company only has one Member in which case that Member constitutes a quorum.
- (d) Determination of quorum at general meeting
- In determining whether a quorum is present at a general meeting:
- (i) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
 - (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
 - (iii) if an individual is attending both as a proxy and as a Representative, they are to be counted only once; and
 - (iv) if an individual is attending as a proxy or Representative for more than one Member, they are to be counted only once.
- (e) Absence of quorum at a general meeting
- (i) If within 30 minutes after the time for the general meeting set out in the notice of general meeting a quorum is not present, the general meeting:
 - (A) if called under the Act by a Director at the request of Members or by Members, is dissolved; and
 - (B) in any other case, is to be adjourned to a date, time and place as specified by the Directors.
 - (ii) If the Directors do not specify one or more of the requirements in clause 8.5(e)(i)(B), the general meeting is adjourned to:
 - (A) if the date is not specified, the same day of the following week;
 - (B) if the time is not specified, the same time; and
 - (C) if the place is not specified, the same place.
- (f) Adjourned meeting (quorum)

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- (i) If no quorum is present at the general meeting adjourned under clause 8.5(e) within 30 minutes after the time for the general meeting, the Directors may, in their absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.
 - (ii) If, before or during a general meeting conducted by telephone, audio visual linkup or other technology, any technical difficulty occurs where one or more of the matters set out in clause 8.5(b) is not satisfied, the Chair may:
 - (A) adjourn the meeting until the difficulty is remedied; or
 - (B) subject to all applicable laws, continue to hold the meeting and transact business and no Member may object to the meeting being held or continuing.
 - (g) Appointment and powers of Chair of general meeting

The Chair of the Board will be entitled to take the chair at general meetings.
 - (h) Absence of Chair at general meeting
 - (i) If there is no Chair, or if the Chair is unable or unwilling to chair a general meeting, the Directors may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.
 - (ii) If a general meeting is held and the Chair, or the person elected under clause 8.5(h)(i), is not present within 30 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may take the chair of the meeting (in order of precedence):
 - (A) the deputy chair (if any);
 - (B) a Director chosen by a majority of the Directors present;
 - (C) the only Director present;
 - (D) a person (whether a Member or not) chosen by a majority of the Directors present; or
 - (E) a Member chosen by a majority of the Members present in person or by proxy or Representative who is entitled to vote at the meeting.
 - (iii) If an acting chair becomes unwilling or unable to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.
 - (iv) Any person taking the chair of the general meeting under this clause will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this Constitution.
 - (i) Powers of the Chair and conduct of general meetings
 - (i) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings (which in their opinion are necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes).

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- (ii) Any decision of the Chair is final.
 - (iii) The Chair may delegate any power conferred by this clause to any person.

8.6 Adjournment of general meetings

- (a) Adjournment of general meeting by Chair
 - (i) The Chair may, during the general meeting at which quorum is present, adjourn the meeting or any business, motion, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place that the Chair decides.
 - (ii) The Chair must adjourn a general meeting if the Members present in person or by proxy or Representative with a majority of votes at the meeting agree or direct that the Chair must do so.
 - (iii) If any general meeting is adjourned for more than one month, a notice of the adjournment must be given to the Members in the same manner as notice was or ought to have been given of the original meeting.
- (b) Resumption of adjourned general meeting
 - (i) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 8.6(a).
 - (ii) The resumed meeting may only be adjourned by the Chair.

8.7 Resolutions, voting and polls at general meetings

- (a) Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.
- (b) Resolution determined by majority

At a general meeting, all resolutions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this Constitution or the Act, and each Member will have one vote.
- (c) Voting by Chair at general meetings

In case of an equality of votes on a resolution at a general meeting, the Chair of that meeting will not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity and the resolution will not be carried.
- (d) How voting is carried out
 - (i) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under clause 8.7(f) or the Act either before, on or immediately after the declaration of the result of the vote on a show of hands.
 - (ii) On a show of hands, a declaration by the Chair that a resolution has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes is conclusive evidence of the result.

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- (iii) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.
 - (e) Matters on which a poll may be demanded at a general meeting
A poll may be demanded on any resolution other than resolutions concerning:
 - (i) the election of the Chair; or
 - (ii) the adjournment of the general meeting.
 - (f) Demand for poll
Subject to clause 8.7(e), a poll may be demanded on any resolution by:
 - (i) the Chair;
 - (ii) at least two Members present in person or by proxy or by Representative; or
 - (iii) Members holding not less than ten percent of the total voting rights of all Members having the right to vote on the resolution.
 - (g) Conduct of poll
The Chair may decide in each case the manner in which a poll is taken.
 - (h) Right to vote at general meetings
Subject to this Constitution, the Act, and any rights or restrictions attached to any class of Members, at a general meeting:
 - (i) on a show of hands, each Member present in person or by proxy or Representative has one vote, provided that if an individual is attending as a proxy or Representative for one or more Members, that individual will only have one vote; and
 - (ii) on a poll:
 - (A) each Member present in person or by proxy or Representative has one vote,
 - (B) a person that holds multiple proxies has one vote for each proxy; and
 - (C) a person that is a Representative for multiple corporate Members or corporate proxies, has one vote for each corporate Member or corporate proxy (as applicable).
 - (i) Objections to right to vote
A challenge to a right to vote at a general meeting:
 - (i) may only be made at the meeting or adjourned meeting; and
 - (ii) must be determined by the Chair whose decision if made in good faith is final.

8.8 Proxies and Representatives

- (a) Appointment of proxies and Representatives

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- (i) A Member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Member is a body corporate, a Representative to attend and cast a vote at that meeting.
 - (ii) If a proxy appointed to attend and cast a vote at a general meeting under clause 8.8(a)(i) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
 - (iii) Neither the proxy nor the Representative need to be a Member.
 - (iv) Any proxy or Representative appointed under this clause must be appointed under Division 6 of Part 2G.2 of the Act, and will have the rights set out in that Division.
- (b) Appointment received at electronic address

For the purposes of clause 8.8(a), an appointment made by communicating a document electronically will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated under the Act.

8.9 Members' circulating resolution without a general meeting

- (a) This clause 8.9 applies to all resolutions of Members that are required or permitted to be passed at a general meeting (including any Members Special Decision), other than a resolution to suspend or expel a Member or remove an Auditor.
- (b) The Members may pass a resolution without a general meeting being held if at least 75% of the Members (or Representatives) entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document (**Written Resolution**), provided that if all of the Members do not sign a Written Resolution, notice of the passage of the resolution must be given to the Members that did not sign the Written Resolution.
- (c) At a time when the Company has only one Member, that Member may pass a resolution by recording it in writing and signing the record of that resolution.
- (d) Two or more separate copies of a Written Resolution may be used for signing by Members if the wording of the resolution and statement is identical in each copy. If each separate copy is signed by one or more Members entitled to vote on the resolution, they will be deemed to constitute one document containing the resolution and statement signed by those Members on the respective days on which they signed the separate copies.
- (e) The resolution made under clause 8.9(b) is passed when the Written Resolution is signed by the last required Member.
- (f) When the Members are asked to consider a resolution under this clause, the Company satisfies any requirement of the Act:
 - (i) to give Members information or a document relating to the resolution, by giving Members that information or document with the Written Resolution to be signed;
 - (ii) to lodge with ASIC a copy of the notice of meeting to consider the resolution, by lodging a copy of the Written Resolution to be signed by Members; and
 - (iii) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution, by lodging a copy of the information or documents referred to in clause 8.9(f)(i).

9. Directors' and Members' minutes

9.1 Minutes

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors.

9.2 Minutes to be signed by chair

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

9.3 Members' access to minutes

- (a) The Directors must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Directors must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Directors determine that payment should be made for the copies, within 14 days after the Company receives the payment.

10. Chief Executive Officer (CEO)

10.1 Appointment of CEO

The Board may appoint a person to the position of CEO.

10.2 Powers, duties and authorities of CEO

- (a) The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Board.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO are subject at all times to the control of the Board.

10.3 Suspension and removal of CEO

Subject to the terms and conditions of the appointment, the Board may suspend or remove the CEO from that office.

10.4 Delegation by directors to CEO

The Board may delegate to the CEO the power (subject to such conditions on the power as are decided by the Board) to conduct the day-to-day management and control of the business and affairs of the Company. The delegation will include the power and responsibility to:

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- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Board and to implement them to the extent approved by the Board;
 - (b) manage the financial and other reporting mechanisms of the Company;
 - (c) approve and incur expenditure subject to specified expenditure limits;
 - (d) sub-delegate their powers and responsibilities to employees or internal management committees of the Company; and
 - (e) delegate any other powers and responsibilities which the Board considers appropriate to delegate to the CEO.

10.5 CEO to attend meetings

The CEO is entitled, subject to a determination otherwise by the Board, to attend all meetings of the Company, all meetings of the Board and any committees and may speak on any matter, but does not have a vote in their capacity as the CEO.

11. Secretary

11.1 Appointment of Secretary

The Directors must appoint one or more persons to the office of secretary to the Company. Each secretary must ordinarily reside in Australia.

11.2 Notification to ASIC

- (a) If a Secretary is appointed, the Secretary must notify ASIC of the appointment.
- (b) The Directors may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

11.3 Terms and conditions of appointment

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Directors determine.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

12. Auditor

12.1 Appointment of Auditor

If required under the Act, the Directors must appoint one or more persons to the office of Auditor to the Company unless the Members at general meeting have appointed an Auditor.

12.2 Auditor and meetings of Members

- (a) The Auditor is ineligible to be elected or appointed as a Director.
- (b) The Auditor is entitled to receive notice of, attend, and be heard at general meetings.

13. Company books

13.1 Registers

(a) Registers

In accordance with the Act, the Directors must cause the Company to keep:

- (i) a register of the holders of any debentures issued by the Company; and
- (ii) a register of charges.

(b) Branch registers

- (i) The Company may cause a branch register of Members to be kept at any place outside Australia.
- (ii) Subject to the Act, the Directors may make any provisions or arrangements they think fit for the keeping of any branch register and to ensure compliance with the requirements of any local law.

13.2 Financial records and statements

(a) Financial records

- (i) The Directors must cause financial and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair statements of financial performance and financial position to be prepared to permit preparation of any other documents required by the Act or this Constitution.
- (ii) The records must be kept:
 - (A) in a manner which will enable them to be conveniently and properly audited;
 - (B) for seven years after the completion of the transactions or operations to which they relate; and
 - (C) at the Registered Office or at any other place as the Directors think fit and at all times be open to inspection by the Directors.

(b) Financial, Directors' and Auditor's reports

If required under the Act, at each annual general meeting, the Directors must lay before the Company a financial report, a Directors' report and an Auditor's report for the last financial year of the Company that ended before that annual general meeting which comply with all applicable provisions of the Act.

(c) Financial statements and reports

If required under the Act, the Company must cause copies of the Company's financial statements and other reports to be lodged with ASIC and sent to holders of its securities as, and to the extent, required by the Act.

13.3 Inspection

(a) Inspection of financial records

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- (i) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
 - (ii) Subject to the Act, a majority of the Directors or the Members by Special Resolution may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the financial records and other books of the Company.
 - (iii) This clause does not limit the rights of a Director or former Director to inspect the books of the Company under the law.
- (b) Copying financial records
- (i) After inspecting the financial records a Member may request permission to copy them.
 - (ii) The request under clause 13.3(b)(i) must be in writing, must specify the records the Member wishes to copy and must be delivered to the Company at its Registered Office.
 - (iii) Subject to the Act, the Directors must consider the request at their next meeting and may (but need not) consent to the request or any part of the request on any terms as they think fit.

13.4 Audit

- (a) Financial statements to be audited
- If required under the Act, the financial statements of the Company for each financial year must be audited by the Auditors under the Act.
- (b) Approval of financial statements
- (i) The financial statements of the Company once put before an annual general meeting (if the Company is required to do so) will be conclusive except as regards any error identified within three months after the date of that meeting.
 - (ii) If any error is identified within the period referred to in clause 13.4(b)(i), the financial statements must then be corrected and are then conclusive.

14. Service

14.1 Document includes notice

In clause 14.2 to 14.7, a reference to a document includes a notice.

14.2 Giving a document to Members

- (a) The Company may give a document to a Member:
- (i) in person;
 - (ii) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
 - (iii) by sending it to the Member by electronic means (if any) nominated by the Member; or

(iv) by notifying the Member under section 249J(3A) of the Act.

- (b) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by airmail, air courier, or electronic means nominated by the Member.

14.3 Evidence of service of a document on a Member

A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.

14.4 Giving a document to a Director

The Company may give a document to a Director:

- (a) in person;
- (b) by sending it by post to the usual address of that person or the alternative address (if any) nominated by that person;
- (c) by communicating to any electronic address nominated by that person; or
- (d) by any other means agreed between the Company and that person.

14.5 Giving a document to the Company

A person may give a document to the Company:

- (a) by leaving it at the Registered Office;
- (b) by sending it by post to the Registered Office;
- (c) by electronic means sent to any electronic address (if any) nominated by the Company for that purpose; or
- (d) by any other means prescribed by the Act.

14.6 Time of service of a document

- (a) A document sent by post to an address within Australia is taken to be given:
- (i) in the case of a notice of meeting, one Business Day after it is posted; or
- (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (b) A document sent by post or airmail to an address outside Australia is taken to be given:
- (i) in the case of a notice of meeting, five Business Days after it is posted; or
- (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (c) A document sent by air courier to a place outside Australia is taken to be given three Business Days after delivery to the air courier.
- (d) A document communicated electronically is taken to be given one hour after the communication is recorded as being sent by the device from which the sender sent it,

unless the sender knows or could reasonably be expected to know that an electronic communication system has failed and as a result, the communication was not received, and provided that if the document is sent after 5.00 pm on a Business Day in the place of receipt or at any time on a non-Business Day, that document is taken to be given at 9.00 am on the next Business Day in the place of receipt.

- (e) A document given to a Member under clause 14.2(a)(iv) is taken to be given on the day on which the Member is notified that the document is available.

14.7 Signatures

Where, by a provision of this Constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Directors.

15. Proceedings involving officers

15.1 Indemnity

- (a) Company to indemnify officers and other persons
 - (i) Subject to clause 15.1(a)(ii), the Company must indemnify any current or former Director, Secretary, executive officer or Auditor of the Company or of a related body corporate of the Company or any person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company, out of the property of the Company against:
 - (A) every liability incurred by the person in that capacity (except a liability for legal costs); and
 - (B) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity.
 - (ii) Clause 15.1(a)(i) does not apply to the extent that:
 - (iii) the Company is forbidden by the Act or other statute to indemnify the person against the liability or legal costs; or
 - (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by the Act or other statute.

- (b) Company may indemnify employee

The Company may indemnify any employee of the Company at the discretion of Directors.

15.2 Payments and advances to officer

- (a) Payment of costs, losses and expenses

Subject to this Constitution (including, without limitation, clause 5.7(b)), the Act, or other statute, the Company may pay all costs, losses and expenses which a person referred to in clause 15.1(a)(i) might incur or become liable to pay by reason of any contract entered into or act or thing done by them as such a person or in any way in discharge of their duties.

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- (b) Advances on account of costs, losses and expenses
- (i) Subject to clause 5.7(b), the Act or any other relevant statute, the Company may make an advance, on account of anticipated costs, losses and expenses, to a person referred to in clause 15.1(a)(i) to assist the person in defending any proceeding brought against the person in that capacity.
 - (ii) If the Company makes an advance to a person under clause 15.2(b)(i) the person must repay that advance if:
 - (A) judgment is not given in the person's favour;
 - (B) the person is not acquitted; or
 - (C) a court subsequently determines that the indemnification is not permitted.

15.3 Insurance

- (a) Company may pay premium

Subject to clauses 5.7(b) and 15.3(b), the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer or Auditor of the Company or of a related body corporate of the Company, or any person who takes or has taken part in, or is or has been concerned with, management of the Company or a related body corporate of the Company, against liability incurred by the person in that capacity, including a liability for legal costs.

- (b) Payment of premium prohibited in certain circumstances

Clause 15.3(a) does not apply to the extent that:

- (i) the Company is forbidden by the Act or other statute to pay or agree to pay the premium; or
- (ii) the contract would, if the Company paid the premium, be made void by the Act or other statute.

15.4 Deed

The Company may enter into a deed or a deed poll with any person referred to in clause 15.1(a)(i) to give effect to the rights conferred by clause 15.1 on the terms the Directors think fit (as long as the terms are consistent with clause 15).

16. Winding up

16.1 Wind-up and distribution of surplus assets or property in circumstances where clause 16.2 does not apply:

If:

- (a) the Members determine that the Company is to be wound up or dissolved; or
- (b) the Company is wound up or dissolved,

then:

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- (c) the Members have no right to participate in any distribution or payment of the assets or property of the Company; and
 - (d) any surplus of assets or property of the Company remaining after the satisfaction of all debts and liabilities must, at the direction of the Members, be given or transferred to another charitable organisation or institution which has similar objects to those of the Company.

16.2 Wind-up and distribution of surplus assets or property (in special circumstances):

- (a) Wind up or dissolution

If when the Company is wound up or dissolved (**Wind-up Time**) it is:

- (i) endorsed or otherwise eligible under the Tax Acts to be an entity that is exempt from taxation (as an income tax exempt charity or otherwise); and/or
- (ii) endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise); and/or
- (iii) registered (or otherwise recognised) under the ACNC Act for registration as a registered charity,

then any surplus of assets or property of the Company representing:

- (iv) gifts or contributions of money or property for the objects of the Company; and
- (v) money received by the Company because of such gifts and contributions,

and which is available for distribution after satisfaction of all debts and liabilities must, at the direction of the Members:

- (vi) be given or transferred to another organisation or institution which has similar objects to those of the Company (**Recipient Organisation**); and
- (vii) if at the Wind-up Time, the Company is endorsed or otherwise eligible under the Tax Acts to be an entity that is exempt from taxation (as an income tax exempt charity or otherwise) the Recipient Organisation must also be endorsed under the Tax Acts to be an entity that is exempt from taxation (as an income tax exempt charity or otherwise); and
- (viii) if at the Wind-up Time, the Company is endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise) the Recipient Organisation must also be endorsed under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise); and
- (ix) if at the Wind-up Time, the Company is registered or otherwise eligible under the ACNC Act for registration as a registered charity, the Recipient Organisation must also be registered under the ACNC Act for registration as a registered charity.

- (b) Identification of organisation or institution

For the purposes of clause 16.2, the Members shall identify the organisation, institution or institutions at the time of dissolution.

- (c) Failure to identify institution

If the Members fail to identify the institution or institutions under clause 16.2 the Supreme Court of Victoria shall make that determination.

16.3 Wind-up event

If at any time the Company is:

- (a) endorsed or otherwise eligible under the Tax Acts to be exempt from taxation (as an income tax exempt charity or otherwise); and/or
- (b) endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise); and/or
- (c) registered (or otherwise recognised) under the ACNC Act as a registered charity,

and the Company's status under any of these categories ceases or is revoked, the directors and/or the members must cause the Company to be wound-up or dissolved and its assets are to be dealt with in the manner prescribed at clause 16.2 as if the above endorsements or registrations were still in effect.

17. Public fund requirements

17.1 Application

This clause 17 only applies in the event that the Company is required to meet the public fund rules requirements as provided in Taxation Ruling TR 95/27 (or equivalent rulings and guidance materials).

17.2 Receipts

Any receipts generated and issued by the Company in respect of a gift or contribution to the Company must be issued in the name of the Company.

17.3 Contributions

The Company must invite the public to make gifts or contributions to the Company.

17.4 Notice to the Commissioner

The Company must provide written notice to the Commissioner of any alteration, variation or amendment to this Constitution within 30 days of it being made.

17.5 Establishment of a Gifts Committee

The Company must establish a committee (**Gifts Committee**) to manage all money and property received by the Company in the form of a gift for the objects of the organisation and contributions of money or property made to the Company in relation to an eligible fundraising event held for the objects of the Company.

Schedule 1

Initial Members

Blind Sports Australia (ABN 68 008 621 252);

Australian Deaf Sports Federation Limited (ABN 18 006 071 147);

Disability Sports Australia Limited (ABN 96 104 461 814);

Disabled Wintersports Australia Inc. (ABN 64 571 062 301);

Special Olympics Australia (ABN 28 050 738 728);

Sport Inclusion Australia (ABN 54 961 189 101); and

Transplant Australia Limited (ABN 39 107 428 615).

Initial Directors

[insert]

Schedule 2 - Members Special Decisions

Subject to the Act, the Company must not do, or commit to do, any of the following without a Special Resolution:

- (a) **change in business:** any decision to establish any new business of the Company, or any material alteration in the nature and/or direction of the Company;
- (b) **new members:** admission of new members to the Company;
- (c) **expulsion of members:** expulsion of any Member from the Company;
- (d) **membership categories:** any variation to the categories or class of Members;
- (e) **composition of board:** any change of Board composition to have Member appointed Directors in substitution for independent Directors;
- (f) **constitution:** any alteration to this Constitution;
- (g) **business / strategic plan:** the adoption of the initial business / strategic plan for the Company;
- (h) **charity or DGR status:** the undertaking of any activity which may impact on the Company's charitable or DGR status;
- (i) **related party transaction:** any decision for the Company to enter into any contract or arrangement or to vary or terminate any contract or arrangement with any Director or Member; and
- (j) **winding up:** any proposal to cease to carry on the business or a substantial part of the business of the Company or to wind up or dissolve the Company.