

# CONSTITUTION OF Breastfeeding Advocacy Australia



## VISION:

Breastfeeding will be culturally and politically enabled, protected and promoted as the ultimate achievable norm of infant and young child feeding in Australia

Australian Business Number (ABN): 58 637 390 295

A company limited by guarantee registered as Breastfeeding Advocacy Australia Ltd

Version 2 | 30/04/24

# CONSTITUTION OF BREASTFEEDING ADVOCACY AUSTRALIA

*Corporations Act 2001*

Company Limited by Guarantee

Version 1 30/10/19

Version 2 30/04/24 (Amended to comply with ACNC requirements and minor corrections)

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# Constitution of Breastfeeding Advocacy Australia

## Preliminary

### 1. Name of the company

The name of the company is Breastfeeding Advocacy Australia Ltd

### 2. Type of company

The company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a non-profit organisation.

### 3. Limited liability of members

The liability of members is limited to the amount of the guarantee in rule 4.

### 4. The guarantee

Each member must contribute an amount not more than \$1 (the guarantee) to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the company incurred before the member stopped being a member, or
- (b) costs of winding up.

### 5. Definitions and Interpretation

#### 5.1. Definitions

- 1) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012*.
- 2) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.
- 3) **breastfeeding** – the biological norm of feeding and nurturing a baby at the breast.
- 4) **breastmilk substitute** – any food being marketed or otherwise presented as a partial or total replacement for breast milk, whether or not suitable for that purpose.
- 5) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the company has its registered office.
- 6) **company** means Breastfeeding Advocacy Australia Limited.
- 7) **direct vote** includes a vote delivered to the company by post, facsimile, electronically or by any other technology approved by the directors that gives the members entitled to vote a reasonable opportunity to participate in the voting.
- 8) **directors** means the directors for the time being of the company or the directors assembled as a board.

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- 9) **formula** – artificial baby milk either powdered or ready-to-feed that acts as a replacement for breastmilk until 36 months of age.
- 10) **Foundation Members** means the persons who consent to be the first directors of the company on the registration of the company.
- 11) **GDP** –Gross Domestic Product.
- 12) **Government** – local state and federal elected officials, their public servants and the departments within their purview.
- 13) **Health worker** – a person working in a component of such a health care system, whether professional or non-professional, including voluntary unpaid workers.
- 14) **Informed decision** – to receive and understand information about infant feeding, including risks of not breastfeeding and harm associated with breastmilk substitutes and formula including evidence-based information about how breastfeeding works and normal infant behaviour. This information should be free from commercial influence and offered without threat of harm to the mother or infant.
- 15) **International WHO Code** – World Health Organization (WHO) International Code of Marketing of Breast-milk Substitutes and all subsequent World Health Assembly (WHA) resolutions herein after referred to as ‘the Code’.
- 16) **IYCF** – Infant and Young Child Feeding.
- 17) **predatory marketing** – marketing strategies that take advantage of vulnerable families and health workers in order to make a profit.
- 18) **secretary** means the secretary referred to in rule 52 and any other person appointed to perform the duties of a secretary of the company.
- 19) **The First 1000 Days** – the life-long importance of the first 1,000 days of a child’s life, from conception through to the child’s second birthday.
- 20) **WHA** – World Health Assembly.
- 21) **WHO** – World Health Organization.

### 5.2. Interpretation

- 1) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular; and
  - (c) a person includes a body corporate.
- 2) Except so far as the contrary intention appears in this constitution:
  - (a) an expression has in this constitution the same meaning as in the Act; and
  - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- 3) ‘Including’ and similar expressions are not words of limitation.
- 4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

## Charitable Purposes and Powers

### 6. Objects

Breastfeeding will be culturally and politically enabled, protected and promoted as the ultimate achievable norm of infant and young child feeding in Australia. Breastfeeding Advocacy Australia is established to be a non-profit organisation whose purpose is to advance health by undertaking any of the following activities:

- 6.1. creating public and government awareness of the role of successful breastfeeding as the single most important public health measure a country can implement;
- 6.2. providing education to government agencies, health workers and the public about critical barriers to achieving breastfeeding and strategies to make positive change;
- 6.3. providing a forum for interested parties to interact and be informed;
- 6.4. participation in opportunities that affect policy related to breastfeeding;
- 6.5. recognise and advocate for the human rights of families and their infants in Australia to enact an informed decision to breastfeed without the existing barriers legislative and informational barriers that exist;
- 6.6. advocate for legislation to enforce the *International Code of Marketing of Breast-milk Substitutes* and the subsequent WHA resolutions (the Code);
- 6.7. identify and expose products and practices that undermine informed decision making about breastfeeding that fall outside the Code;
- 6.8. record breaches of the Code and report them to international, federal and state governing bodies whose role is to protect, promote and support breastfeeding;
- 6.9. expose predatory marketing practices and report them to international, federal and state governing bodies whose role is to protect, promote and support breastfeeding;
- 6.10. create cognisance of how attitudes towards infant feeding have been affected by commercial influence amongst those who work with families including, but not limited to health professionals, childcare workers, legal representatives, the media and politicians;
- 6.11. advocate for families to be given information about biologically normal sleep in the first 1000 days of life;
- 6.12. advocate for breastmilk, breastfeeding and unpaid carers work to be recorded numerically in the GDP figures.

### 7. Powers

- 7.1. The company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 7.2. Despite rule 7.1 the powers of the company are ancillary to and exercisable only to pursue the objects of the company set out in rule 3.

**8. Not-for-profit**

- 8.1. The company must not distribute any income or assets directly or indirectly to its members, except as provided in rules 8.2 and 85.
- 8.2. Rule 8.1 does not stop the company from doing the following things, provided they are done in good faith:
  - (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or
  - (b) the payment of reasonable and proper rent by the company for premises leased by a member to the company, or
  - (c) making a reimbursement of expenses to a member in carrying out the company's charitable purpose(s).

**9. Amending the constitution**

- 9.1. Subject to rules 9.2 and 9.3, the members may amend this constitution by passing a special resolution.
- 9.2. The members must not pass a special resolution that changes the innate purpose of the company as described in rule 6.
- 9.3. The members must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.

**Members**

**10. Number of members**

The number of members for which the company proposes to be registered is unlimited.

**11. Membership and register of members**

- 11.1. A register of members of the company must be kept in accordance with the Act.
- 11.2. The following must be entered into the register of members in respect of each member:
  - (a) for each current member:
    - (i) name
    - (ii) address
    - (iii) any alternative address nominated by the member for the service of notices, and
    - (iv) email address
    - (v) date the member was entered on to the register.
  - (b) for each person who stopped being a member in the last 7 years:
    - (i) name
    - (ii) address
    - (iii) any alternative address nominated by the member for the service of notices, and
    - (iv) dates the membership started and ended.



- 11.3. The company does not give current members access to the register of members.
- 11.4. For a member to access any member details, a request in writing must be made to the secretary including:
  - (i) Purpose of the request
  - (ii) How the information will be used
  - (iii) How the information will be kept secure.
- 11.5. The Board must approve any release of member details in writing and members notified of any release of information to other members.
- 11.6. Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members and limited to the purpose described in the written request.

## **12. Who can be a member**

- 12.1. A person who supports the purposes of the company is eligible to apply to be a member of the company under rule 14.
- 12.2. In this rule, 'person' means an individual only.
- 12.3. Membership will not be granted to those who have affiliations with entities considered inconsistent with the objects of the company.
- 12.4. The company reserves the right to refuse membership to those who have affiliations with entities considered inconsistent with the objects of the company.

## **13. Categories of membership**

- 13.1. The categories for membership are:
  - 1) ordinary members
  - 2) life members; and
  - 3) honorary members.
- 13.2. Additional categories of members, if recommended by the directors, may be created from time to time by the members at a general meeting.

## **14. Application for ordinary membership**

Any individual who:

- (a) is not less than 18 years at the date of application
- (b) supports the purpose(s) of the company, and
- (c) agrees to declare in writing there are no conflicts of interest relating to rule 12.3
- (d) agree to comply with the company's constitution, including paying the guarantee under rule 4 if required.

**15. Directors decide whether to approve membership**

- 15.1. The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 15.2. If the directors approve an application, the secretary must as soon as possible:
  - (a) enter the new member on the register of members, and
  - (b) communicate to the applicant to tell them that their application was approved, and the date that their membership started (see rule 16).
- 15.3. If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 15.4. For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in rules 14(a), 14(b), 14(c) or 14(d). In that case, by applying to be a member, the applicant agrees to those three matters.

**16. When a person becomes a member**

Other than foundation members, an applicant will become a member when they are entered on the register of members.

**17. Foundation members**

- 17.1. Foundation members who have agreed to be the first directors of the company before the company is registered become ordinary members of the company on Registration of the company.
- 17.2. Foundation members are not required:
  - 1) to have qualification for membership
  - 2) to pay an application fee
  - 3) to pay the first annual subscription fee

**18. Life membership**

- 18.1. If, in the opinion of the directors, an ordinary member has made over a period of years a significant contribution to the company, the directors may nominate the member as a life member of the company.
- 18.2. A member nominated under rule 18.1 becomes a life member of the company on the nomination being approved by an ordinary resolution of members at a general meeting.
- 18.3. A life member has all the rights and privileges of membership and is otherwise subject to this constitution.
- 18.4. The company at a general meeting, on the recommendation of the directors, may make provision for the granting to ordinary members of life membership (paid life membership) on payment of an amount recommended by the directors, and approved by the company at a general meeting, as a reasonable equivalent of payment in advance of an annual subscription over a period of years.
- 18.5. If the company provides for paid life membership, it is open to any member and the amount to be paid is the same for any member, whatever the member's age.

- 18.6. The company at a general meeting may, on the recommendation of the directors, remove the provision for paid life membership, or change the amount to be paid for it, but this does not affect the rights of members who were granted paid life membership while the provision was in force.

## **19. Honorary membership**

- 19.1. If, in the opinion of the directors, a person, not being a member of the company, has made over a period of years a significant contribution to the company, or to the objects of the company as described in rule 6, the directors may nominate that person as an honorary member of the company.
- 19.2. A person nominated under rule 19.1 becomes an honorary member of the company on the later to occur of:
- 1) the person consenting in writing to be an honorary member; and
  - 2) the nomination being approved by an ordinary resolution of members at a general meeting.
- 19.3. An honorary member has no rights and privileges of membership, other than the right to receive notices of and attend and be heard at any general meeting, and is otherwise subject to this constitution.

## **Application fee and annual subscription**

### **20. Application fee**

- 20.1. The application fee payable by each applicant for membership is the sum the directors determine for each category of membership.
- 20.2. No application fee is payable by any honorary member.

### **21. Annual subscription**

- 21.1. The annual subscription payable by a member of the company is the sum the directors determine for each category of membership.
- 21.2. Annual subscriptions are valid for 12 months from the date of admission to the membership register as per rule 16.
- 21.3. No annual subscription is payable by any life member or honorary member.

### **22. Unpaid annual subscriptions**

If the annual subscription of a member remains unpaid for 2 months after it becomes payable the member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the directors see fit.

## Cessation of membership

### 23. When a person ceases being a member

- 23.1. A person immediately stops being a member if they:
- (a) die
  - (b) resign, by writing to the secretary
  - (c) have not paid their subscription as per rule 22
  - (d) are expelled by the directors for not meeting criteria described in rule 14.
- 23.2. A life member or honorary member ceases to be a member:
- (a) in accordance with rule 23.1 or
  - (b) if the directors, for any reason, request in writing the resignation of the member and the member does not resign within 1 month after the request is sent.

### 24. Effect of cessation of membership

If any member ceases to be a member under this constitution, the member remains liable to pay to the company for any money which, at the time of the member ceasing to be a member, the member owes to the company on any account and for any sum not exceeding \$1.00 for which the member is liable under rule 4 of this constitution.

## Dispute resolution and disciplining of members

### 25. Dispute resolution

- 25.1. The dispute resolution procedure in this rule applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
  - (b) one or more directors, or
  - (c) the company.
- 25.2. A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under rule 26 until the disciplinary procedure is completed.
- 25.3. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 25.4. If those involved in the dispute do not resolve it under rule 25.3, they must within 10 days:
- (a) tell the directors about the dispute in writing
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.

- 25.5. The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - (i) for disputes between members, a person chosen by the directors, or
    - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.
- 25.6. A mediator chosen by the directors under rule 25.5(b)(i):
- (a) may be a member or former member of the company
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 25.7. When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
  - (b) allow those involved a reasonable chance to review any written statements
  - (c) ensure that those involved are given natural justice, and
  - (d) not make a decision on the dispute.
- 25.8. Disputes that have not reached a mutually agreed outcome will go to the Board for a decision.

## **26. Disciplining members**

- 26.1. In accordance with this rule, the directors may resolve to warn, suspend or expel a member from the company if the directors consider that:
- (a) the member has breached this constitution, or
  - (b) the member's behaviour is causing or has caused harm to another member
  - (c) the member's behaviour is causing, has caused, or is likely to cause harm to the company.
- The directors may resolve to censure, suspend or expel the member from the company and in the case of expulsion, to remove the name from the company's register of members.
- 26.2. At least 7 days before the directors' meeting at which a resolution under rule 26.1 will be considered, the directors must give the member notice of:
- (a) the meeting
  - (b) what is alleged against the member
  - (c) the intended resolution.
- 26.3. At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.

- 26.4. After considering any explanation under rule 26.3 the directors may:
- (a) take no further action
  - (b) warn the member
  - (c) suspend the member's rights as a member for a period of no more than 12 months
  - (d) expel the member
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this rule), or
  - (f) require the matter to be determined at a general meeting.
- 26.5. Disciplinary procedures must be completed as soon as reasonably practical.
- 26.6. There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this rule.
- 26.7. If any member ceases to be a member under the constitution, the member remains liable to pay the company for any money which, at the time the member ceasing to be a member, the member owes to the company on any account.

## Directors

### 27. Number of directors

- 27.1. The company must have at least three and no more than five directors.
- 27.2. The company at a general meeting may by resolution increase or reduce the number of directors referred to in rule 27.1 but the number may not be reduced to below 3.
- 27.3. If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

### 28. First directors

- 28.1. The first directors are those named in the application for registration of the company.
- 28.2. The first directors hold office until the end of an initial 5-year term.
- 28.3. Subsequent to the initial 5-year term, terms shall be 3 years as per rule 29.

### 29. Retirement and Election of directors

- 29.1. At the first general meeting other directors can be added to the board.
- 29.2. At each annual general meeting of the company held after the first annual general meeting one-third of the directors for the time being, or if their number is not a multiple of 3 then the nearest to but not exceeding one-third, retire from office.
- 29.3. The director or directors to retire at an annual general meeting are those who have been longest in office since their election or appointment to office, as the case may be.

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- 29.4. As between or among 2 or more directors who became directors on the same day, the director or directors to retire are determined by lot unless they otherwise agree between or among themselves.
- 29.5. Subject to rule 29.7, a retiring director is eligible for re-election in accordance with rule 30 and 31.
- 29.6. Despite rules 31.1 and 31.2, no director who is elected at an annual general meeting may retain office for more than 3 consecutive years without submitting himself or herself for re-election, even though the submission results in more than the number of the directors who are to retire from office in accordance with rule 31.1.
- 29.7. Despite rules 30 and 31, as from the date of the first annual general meeting, no director may retain office for more than 6 consecutive years. However, such a person may be re-elected or re-appointed as a director after he or she person has ceased to be a director for not less than 1 year. Apart from the first directors and directors appointed under rule 37.1, the members may elect a director by a resolution passed at a general meeting.

### **30. Nomination for election**

- 30.1. Each candidate for election as a director must:
  - 1) be proposed by an ordinary member; and
  - 2) be seconded by another ordinary member; both of which members must be current financial members of the company at the time of nomination.
- 30.2. A nomination of a candidate for election must:
  - 1) be in writing;
  - 2) be signed by the candidate; and
  - 3) be signed by the proposer and seconder.
- 30.3. A nomination of a candidate for election must be received at the registered office of the company not later than 5 pm on the day — which is 28 days prior to the annual general meeting at which the candidate seeks election.
- 30.4. A list of the candidates' names in alphabetical order, together with the proposers' and seconders' names, must be sent to members with the notice of the annual general meeting.

### **31. Election procedure**

- 31.1. If the number of candidates for election as directors is equal to or less than the number of vacancies on the board, the chair of the annual general meeting must declare those candidates to be duly elected as directors.
- 31.2. If the number of candidates for election as directors is greater than the number of vacancies on the board, a ballot must be held for the election of the candidates.
- 31.3. If a ballot is required, balloting lists must be prepared listing the names of the candidates in alphabetical order.
- 31.4. At the annual general meeting, each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.

- 31.5. Subject to rules 31.6 and 31.7, the candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.
- 31.6. If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:
- 1) does not exercise a casting vote; or
  - 2) one of the candidates who received the same number of votes;
- then the names of the candidates who received the same number of votes must be put to a further ballot immediately.
- 31.7. Nothing in this rule 31 prevents the election of the directors by ballot being conducted by a direct vote. If a ballot is conducted by a direct vote the directors may determine that the chosen method of voting is:
- 1) to the exclusion of voting at the meeting; or
  - 2) in addition to members being also entitled to vote on the ballot at the meeting.
- 31.8. A direct vote is only valid if received by the company at least 48 hours before the general meeting. However, a direct vote is taken to have been exercised and given at the meeting.

### **32. Time appointment or retirement takes effect**

- 32.1. Directors who are appointed at a meeting of members take office immediately after the end of the meeting.
- 32.2. Directors who retire at a meeting of members continue to hold office until the end of the meeting.

### **33. Office bearers**

The office bearers of the company are:

- 1) the chairperson;
- 2) the treasurer; and
- 3) the secretary.

### **34. First office bearers and subsequent election at board meeting**

- 34.1. The first office bearers of the company are elected by the first directors appointed under rule 28. They hold office until the end of the first meeting of the directors held after the first annual general meeting of the company.
- 34.2. Subsequent office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the third annual general meeting held after their appointment.
- 34.3. The directors present must appoint one of their number to act as chair of the meeting for the purpose of the election.



**35. Eligibility and nomination**

- 35.1. Only directors may be office bearers. Any director is eligible for election to any office bearer position.
- 35.2. Each director standing for election as an office bearer must be proposed by another director.
- 35.3. If a director stands for election for more than 1 position as an office bearer separate nominations must be received in respect of each position.
- 35.4. A nomination may be:
  - 1) in writing, received by the secretary not less than 24 hours prior to the board meeting at which the election is to take place and signed by the candidate and the proposer; or
  - 2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

**36. Election procedure – office bearers**

- 36.1. The election of the office bearers is held in the order in which the positions are listed in rule 33.
- 36.2. If there is only 1 candidate for election to any office bearer position that person is declared elected to that position. If there is no candidate for election to an office bearer position, the position remains vacant until filled by the directors at any subsequent meeting of the board. However, until that position is filled, a director, whether or not elected to an officer bearer position may at the request of the directors agree to act as a temporary holder of that position until it is filled.
- 36.3. If there is more than 1 candidate for election to any office bearer position a ballot must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- 36.4. In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 36.5. If a director is elected to a position as office bearer then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 36.6. Subject to this rule 36, a ballot is conducted in the manner the directors determine.

**37. Casual vacancies and additional directors**

- 37.1. The company at a general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- 37.2. Any director appointed under this rule 37 holds office until the termination of the next annual general meeting of the company and is then eligible for re-election.

**38. When a director stops being a director**

A director stops being a director if they:

- (a) give written notice of resignation as a director to the company
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of the company
- (e) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (f) become ineligible to be a director of the company under the Corporations Act or the ACNC Act.

**Powers of directors**

**39. Powers of directors**

- 39.1. The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in rule 6.
- 39.2. The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 39.3. The directors must decide on the responsible financial management of the company including:
  - (a) any suitable written delegations of power under rule 40, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 39.4. The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

**40. Delegation of directors' powers**

- 40.1. The directors may delegate any of their powers and functions to a committee, a director, an employee of the company or any other person, as they consider appropriate.
- 40.2. The delegation must be recorded in the company's minute book.

**41. Payments to directors**

- 41.1. The company must not pay fees to a director for acting as a director.
- 41.2. The company may:
  - (a) pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- 41.3. Any payment made under rule 41.2 must be approved by the directors.
- 41.4. The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

#### 42. Execution of documents

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

- (a) two directors of the company, or
- (b) a director and the secretary.

### Duties of directors

#### 43. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
- (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in rule 6.
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 44
- (f) to ensure that the financial affairs of the company are managed responsibly, and
- (g) not to allow the company to operate while it is insolvent.

#### 44. Conflicts of interest

- 44.1. A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
  - (a) to the other directors, or
  - (b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- 44.2. The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 44.3. Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under rule 44.4, :
  - (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 44.4. A director may still be present and vote if:
  - (a) their interest arises because they are a member of the company, and the other members have the same interest
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see rule 81)

- (c) their interest relates to a payment by the company under rule 80 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

### 45. When the directors meet

The directors may decide how often, where and when they meet.

### 46. Calling directors' meetings

46.1. A director may call a directors' meeting by giving reasonable notice to all of the other directors.

46.2. A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 47. Chairperson for directors' meetings

47.1. The elected chairperson is entitled to chair directors' meetings.

47.2. The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) present but does not want to act as chairperson of the meeting.

### 48. Quorum at directors' meetings

48.1. Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.

48.2. A quorum must be present for the whole directors' meeting.

### 49. Using technology to hold directors' meetings

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

49.2. The directors' agreement may be a standing (ongoing) one.

49.3. A director may only withdraw their consent within a reasonable period before the meeting.

**50. Passing directors' resolutions**

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

**51. Circular resolutions of directors**

- 51.1. The directors may pass a circular resolution without a directors' meeting being held.
- 51.2. A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in rule 51.3 or 51.4.
- 51.3. Each director may sign:
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 51.4. The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 51.5. A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in rule 51.3 or 51.4.

## Secretary

**52. Appointment and role of secretary**

- 52.1. The company must have at least one secretary, who may also be a director.
- 52.2. A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- 52.3. The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 52.4. The role of the secretary includes:
  - (a) maintaining a register of the company's members, and
  - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

## General meetings of members

### 53. General meetings called by directors

- 53.1. The directors may call a general meeting.
- 53.2. If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:
  - (a) within 21 days of the members' request, give all members notice of a general meeting, and
  - (b) hold the general meeting within 2 months of the members' request.
- 53.3. The percentage of votes that members have (in rule 53.2) is to be worked out as at midnight before the members request the meeting.
- 53.4. The members who make the request for a general meeting must:
  - (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the company.
- 53.5. Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 54. General meetings called by members

- 54.1. If the directors do not call the meeting within 21 days of being requested under rule 53.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 54.2. To call and hold a meeting under rule 54.1 the members must:
  - (a) as far as possible, follow the procedures for general meetings set out in this constitution
  - (b) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost, and
  - (c) hold the general meeting within three months after the request was given to the company.
- 54.3. The company is not required to pay the members who request the general meeting any expenses they incur because the directors did not call and hold the meeting.

### 55. Annual general meeting

- 55.1. A general meeting, called the annual general meeting, must be held:
  - (a) within 18 months after registration of the company, and
  - (b) after the first annual general meeting, at least once in every calendar year.

- 55.2. Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the company's activities
  - (b) a review of the company's finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment of any directors under rule 37
  - (f) the appointment and payment of auditors, if any.
- 55.3. Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.
- 55.4. The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

**56. Notice of general meetings**

- 56.1. Notice of a general meeting must be given to:
- (a) each member entitled to vote at the meeting
  - (b) each director, and
  - (c) the auditor (if any).
- 56.2. Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 56.3. Subject to rule 56.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
  - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 56.4. Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.

- 56.5. Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
  - (b) the general nature of the meeting's business
  - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - (i) the proxy does not need to be a member of the company
    - (ii) the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - (iii) the proxy form must be delivered to the company at least 48 hours before the meeting.
- 56.6. If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- 56.7. The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not invalidate the proceedings at or any resolutions passed at the meeting.

## **57. Quorum at general meetings**

- 57.1. For a general meeting to be held, at least 3 members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 57.2. No business may be conducted at a general meeting if a quorum is not present.
- 57.3. If there is no quorum present within 30 minutes after the starting time stated in the notice of a general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 57.4. If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **58. Auditor's right to attend meetings**

- 58.1. The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 58.2. The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.



**59. Using technology to hold meetings**

- 59.1. The company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 59.2. Anyone using this technology is taken to be present in person at the meeting.

**60. Chairperson for general meetings**

- 60.1. The elected chairperson is entitled to chair general meetings.
- 60.2. The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
  - (a) there is no elected chairperson, or
  - (b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

**61. Role of the chairperson**

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

**62. Adjournment of meetings**

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

## **Members' resolutions and statements**

**63. Members' resolutions and statements**

- 63.1. Members with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the company of a resolution they propose to move at a general meeting (members' resolution), and/or
  - (b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 63.2. A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 63.3. A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 63.4. Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

- 63.5. The percentage of votes that members have (as described in rule 63.1) is to be worked out as at midnight before the request or notice is given to the company.
- 63.6. If the company has been given notice of a members' resolution under rule 63.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 63.7. This rule does not limit any other right that a member has to propose a resolution at a general meeting.

**64. Company must give notice of proposed resolution or distribute statement**

- 64.1. If the company has been given a notice or request under rule 63:
  - (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost, or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.
- 64.2. The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
  - (a) it is more than 1,000 words long
  - (b) the directors consider it may be defamatory
  - (c) rule 64.1(b) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
  - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

**65. Circular resolutions of members**

- 65.1. Subject to rule 65.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 65.2. The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 65.3. Circular resolutions cannot be used:
  - (a) for a resolution to remove an auditor, appoint a director or remove a director
  - (b) for passing a special resolution, or
  - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 65.4. A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in rule 63.6 or 65.5.

- 65.5. Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 65.6. The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## Voting at general meetings

### 66. How many votes a member has

Each member has one vote.

### 67. Challenge to member's right to vote

- 67.1. A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 67.2. If a challenge is made under rule 67.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 68. How voting is carried out

- 68.1. Voting must be conducted and decided by:
- (a) a show of hands
  - (b) a vote in writing, or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 68.2. Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 68.3. On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 68.4. The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 69. When and how a vote in writing must be held

- 69.1. A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five members present
  - (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
  - (c) the chairperson.
- 69.2. A vote in writing must be taken when and how the chairperson directs, unless rule 69.3 applies.

- 69.3. A vote in writing must be held immediately if it is demanded under rule 69.1:
- (a) for the election of a chairperson under rule 60.2, or
  - (b) to decide whether to adjourn the meeting.
- 69.4. A demand for a vote in writing may be withdrawn.

**70. Appointment of proxy**

- 70.1. A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 70.2. A proxy does not need to be a member.
- 70.3. A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under rule 69.1.
- 70.4. An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
  - (b) the company's name
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
  - (e) A declaration of any conflicts of interest as defined in rule 12.3 and 14(c).
- 70.5. A proxy appointment may be standing (ongoing).
- 70.6. Proxy forms must be received by the company at the address stated in the notice under rule 56.5(d) or at the company's registered address at least 48 hours before a meeting.
- 70.7. A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 70.8. Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
  - (b) is mentally incapacitated
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 70.9. A proxy appointment may specify the way the proxy must vote on a particular resolution.

**71. Voting by proxy**

- 71.1. A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 71.2. When a vote in writing is held, a proxy:
  - (a) does not need to vote, unless the proxy appointment specifies the way they must vote
  - (b) if the way they must vote is specified on the proxy form, must vote that way, and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

**Minutes and records**

**72. Minutes and records**

- 72.1. The company must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of general meetings
  - (b) minutes of circular resolutions of members
  - (c) a copy of a notice of each general meeting, and
  - (d) a copy of a members' statement distributed to members under rule 64.
- 72.2. The company must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 72.3. To allow members to inspect the company's records:
  - (a) the company must give a member access to the records set out in rule 72.1, and
  - (b) the directors may authorise a member to inspect other records of the company, including records referred to in rule 72.2 and 73.1.
- 72.4. The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
  - (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 72.5. The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

**73. Financial and related records**

- 73.1. The company must make and keep written financial records that:
  - (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 73.2. The company must also keep written records that correctly record its operations.

- 73.3. The company must retain its records for at least 7 years.
- 73.4. The directors must take reasonable steps to ensure that the company's records are kept safe.

## By-laws

### 74. By-laws

- 74.1. The directors may pass a resolution to make by-laws to give effect to this constitution.
- 74.2. Members and directors must comply with by-laws as if they were part of this constitution.

## Notice

### 75. What is notice?

- 75.1. Anything written to or from the company under any rule in this constitution is written notice and is subject to rules 76 to 78, unless specified otherwise.
- 75.2. Rules 76 to 78 do not apply to a notice of proxy under rule 70.6.

### 76. Notice to the company

Written notice or any communication under this constitution may be given to the company, the directors or the secretary by:

- (a) delivering it to the company's registered office
- (b) posting it to the company's registered office or to another address chosen by the company for notice to be provided
- (c) sending it to an email address or other electronic address notified by the company to the members as the company's email address or other electronic address.

### 77. Notice to members

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

**78. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under rule 77.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

**79. Company's financial year**

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

## Indemnity, insurance and access

**80. Indemnity**

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

**81. Insurance**

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

**82. Directors' access to documents**

- 82.1. A director has a right of access to the financial records of the company at all reasonable times.
- 82.2. If the directors agree, the company must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors, and
  - (b) any other documents referred to in those documents.

## Winding up

**83. Winding up voluntarily**

If permitted by law, the company may be wound up voluntarily by special resolution.

**84. Surplus assets not to be distributed to members**

If the company is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects as in rule 6, which is charitable at law, to which income tax deductible gifts can be made:

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

**85. Distribution of surplus assets**

The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

**86. Reading this constitution with the Corporations Act**

- 86.1. The replaceable rules set out in the Corporations Act do not apply to the company.
- 86.2. While the company is a registered charity, the ACNC Act and the Corporations Act override any rules in this constitution which are inconsistent with those Acts.
- 86.3. If the company is not a registered charity (even if it remains a charity), the Corporations Act overrides any rule in this constitution which is inconsistent with that Act.
- 86.4. A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.