



**Epilepsy
Action
Australia**

life changing impact

***Constitution of
Epilepsy Action Australia***
(ACN 000 533 791)

A Public Company Limited by Guarantee

Adopted: 26 November 2019

Amended: 26 October 2020

Signed by the Chair

Prepared with the support of:



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1. *Preliminary*

1.1 Definitions

In this Constitution, unless the subject or context indicates a contrary intention, the following words and expressions will have the following meanings:

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

Board means the board of Directors.

Charities Act means the *Charities Act 2013* (Cth).

Chief Executive Officer means the person duly appointed and holding the position of Chief Executive Officer from time to time (if any).

Company means the company named Epilepsy Action Australia ACN 000 533 791 registered under the Corporations Act and formerly known as Epilepsy Association.

Constitution means the constitution of the Company in force and as amended from time to time.

Corporate Representative means in relation to a Member that is a body corporate, a natural person appointed by that Member as its representative to attend any or specified Meetings of Members.

Corporate Representative Certificate means a certificate evidencing the appointment of a Corporate Representative, which complies with this Constitution.

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

Directors means the directors of the Company who are in office, or a quorum of the directors present at a Board meeting.

Document includes, without limitation, any document, agreement, deed, instrument, notice, form, consent, notice of meeting, written resolution or determination, minutes of meeting or communication.

Electronic Signature means:

- a) an encrypted signature applied using a proprietary program (for example DocuSign or AdobeSign) which is applied following verification of an individual's identity;
- b) the digital image of an individual's manuscript signature (regardless of whether it is a digitally generated image, or a scanned copy of a physically signed Document);
- c) use of a click button on a website or electronic program to indicate a user has accepted or agreed to the terms of a Document; or
- d) any other electronic or digital process by which an individual accepts the terms of a Document for them self or on behalf of another person.

Meeting of Members means a general meeting of Members as provided in this Constitution and any adjourned holding of such meeting.

Member means any person entered in the Register as a member of the Company.

Objects means the objects of the Company as set out in rule 3.2.

Ordinary Resolution means a resolution of a Meeting of Members where more than one half of the total votes cast on the resolution are in favour of the resolution.

Proxy means a person duly appointed under a Proxy Form by a Member, who is entitled to attend and vote at a Meeting of Members on behalf of that Member.

Proxy Form means an instrument for appointing a Proxy, which complies with this Constitution.

Register means the register of Members kept under the Corporations Act.

Registered Office means the registered office of the Company.

Related Body Corporate has the meaning in the Corporations Act.

Seal means the common seal of the Company (if any).

Secretary means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as company secretary temporarily.

Special Resolution means a resolution of a Meeting of Members passed in accordance with section 9 of the Corporations Act.

Subsidiary has the meaning in the Corporations Act.

Tax Law means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), as relevant.

1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

- (a) the words 'including', 'for example' or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (b) an expression importing a natural person includes any individual, company, partnership, joint venture, association, corporation, other body corporate or trust and any government agency;
- (c) words denoting any gender include all genders;
- (d) words importing the singular include the plural and vice versa;
- (e) all monetary amounts are in Australian currency;
- (f) references to any legislation or to any section or provision of any legislation include any statutory modification, replacement or re-enactment of it or any statutory provision substituted

for it, any ordinances, by-laws, regulations and other statutory instruments issued under it and any determination, exemption or modification made pursuant to it;

- (g) a reference to time refers to time in the place of the Company's registration;
- (h) "month" means calendar month and "year" means 12 months;
- (i) a reference to writing includes any communication sent by post, facsimile transmission or email;
- (j) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning; and
- (k) the headings used in this Constitution do not form part of, or affect the construction or interpretation of, this Constitution.

1.3 **Application of Corporations Act to this Constitution**

- (a) If the Company is registered as a charity under the ACNC Act, the Corporations Act will apply to the Company as modified by section 111L of the Corporations Act whilst the Company is so registered.
- (a) An expression or term used in this Constitution shall, unless the contrary intention appears, have the same meaning as that expression has in a Part, Chapter or Division of the Corporations Act dealing with the same matter if that expression has been given a special meaning for the purposes of the Part, Chapter or Division in question.

1.4 **Guidance Notes**

Any guidance notes used in this Constitution do not form part of or affect the construction or interpretation of this Constitution.

1.5 **Exclusion of Replaceable Rules**

To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company.

1.6 **Execution by Electronic Signature**

- a) The Company and any Director, secretary, officer or Member (or any signatory or attorney on behalf of any of them) may sign or execute any Document under this Constitution or in relation to the Company by Electronic Signature.
- b) The Company and any Director, secretary, officer or Member:
 - (i) consents to the use of Electronic Signature and receiving any Document in electronic or digital form;
 - (ii) acknowledges that the use of Electronic Signature is an appropriately reliable method for the purposes of this Constitution to identify each signatory for any Document and to indicate that signatory's intention in respect of the contents of the Document;

- (iii) acknowledges that a requirement for writing or written form or physical or vellum form may be satisfied in electronic or digital form;
- (iv) acknowledges that a requirement for any Document to be signed or executed may be satisfied by Electronic Signature;
- (v) warrants that, if a Document has been signed or executed using their Electronic Signature, they have applied (or their duly authorised signatories have applied) the Electronic Signature to the Document, or approved the application of the Electronic Signature to the Document on their behalf; and
- (vi) agrees that Electronic Signature is legally effective execution and conclusive as to their intention to be bound by this Constitution, or a Document as if signed by that person (or any of its duly authorised signatory's) manuscript signature.

2. Company limited by guarantee

2.1 Type of Company

The Company is a not-for-profit public company limited by guarantee. The Company may only pursue charitable purposes associated with its Objects, and must do so predominantly in Australia.

2.2 Exercise of Power

Subject to this Constitution, the Company may exercise, by Ordinary Resolution or Special Resolution as the Corporations Act requires, any power which under the Corporations Act may be exercised by a company limited by guarantee if authorised by its constitution. Where this Constitution refers to a power exercisable by resolution of Members, such resolution shall be deemed to be by way of Ordinary Resolution.

2.3 Limited liability of members

The liability of Members is limited to the amount of the guarantee in rule 2.4.

2.4 The guarantee

Each Member undertakes to contribute such amount as may be required, but not exceeding \$10.00 (the guarantee) to the property of the Company if the Company is wound up while they are a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for:

- (a) the debts and liabilities of the Company incurred before it ceased to be a Member; or
- (b) costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

3. Formation

3.1 Name

The name of the Company is **Epilepsy Action Australia** ACN 000 533 791 formerly known as Epilepsy Association.

3.2 Objects

The objects of the Company are to advance the health and understanding of the community in connection with epilepsy including without limitation:-

- (a) enhancing the quality of life of persons living with epilepsy;
- (b) improving opportunities for community participation for persons living with epilepsy;
- (c) improving community understanding of, and responses to epilepsy;
- (d) improving access to effective treatment options for people living with epilepsy;
- (e) undertaking, co-ordinating, promoting and funding research into epilepsy including:
 - (i) the condition of epilepsy, its incidence, causes and treatments;
 - (ii) models of care for people with epilepsy;
 - (iii) community awareness, attitudes and understanding; and
 - (iv) the social burden and the reduction of the social burden, associated with epilepsy;
- (f) providing leadership in connection with epilepsy including as a peak health body in connection with epilepsy;
- (g) developing and implementing, whether alone or with collaborators and partners (including allied medical and community agencies):
 - (i) evidence-based epilepsy related guidance, education, research and support services for individuals, organisations and the broader community; and
 - (ii) epilepsy strategy and action planning on epilepsy issues;
- (h) identifying and participating in opportunities, including co-ordinating collective participation, to contribute to and/or influence the development of Government policy for the advancement of public health through measures to address epilepsy;
- (i) identifying and participating in opportunities for the development, understanding, acceptance and availability of treatments and therapies for epilepsy including owning, licensing or otherwise distributing and developing intellectual property relevant to improved outcomes for epilepsy sufferers;
- (j) improving the diagnosis path of epilepsy, including by keeping abreast of worldwide developments in diagnosing, managing and treating epilepsy, by identifying and supporting the

uptake of opportunities for the development of treatments and by disseminating information, including to families and carers and the research and medical communities in Australia;

- (k) developing, collecting and making available data on epilepsy in Australia;
- (l) conducting campaigns to promote awareness of epilepsy and its consequences in the community;
- (m) implementing mechanisms and processes to enable the activities of the Company in carrying out its objects to be informed by people having direct experience with epilepsy including people with epilepsy, carers of people with epilepsy and family members and other relatives of people with epilepsy; and
- (n) pursuing opportunities to raise financial and in-kind support to apply to the pursuit of the objects of the Company.

3.3 Powers

Solely for the purposes of carrying out the Objects, the Company has all the powers of a natural person including without limitation:

- (a) purchasing, selling, leasing, hiring or otherwise acquiring assets, plant, equipment, furniture and furnishings and giving, selling, leasing, hiring or otherwise allowing such assets, plant, equipment, furniture and furnishings to be used by a third party;
- (b) raising funds by any means and inviting and receiving contributions, gifts of money or property, sponsorships, loans, and deposits from any persons to secure sufficient funds for the purposes of the Company;
- (c) carrying on, alone or jointly with others, any business or an interest in any business;
- (d) charging fees in connection with any of its activities;
- (e) borrowing, raising capital and entering into any form of financial arrangement (whether or not secured) and incurring all types of obligations and liabilities for the purposes of the Company;
- (f) granting securities of any nature over the assets of the Company, including debentures, guarantees, bills of sale, charges and mortgages for the purposes of carrying out the Objects;
- (g) receiving funds and distributing these funds and other material benefits by way of grant, donation or otherwise to further the Objects;
- (h) investing the monies of the Company not immediately required for any of the Objects in such a manner as may from time to time be determined by the Company;
- (i) drawing, making, accepting, endorsing, discounting, executing and issuing bills of exchange, promissory notes, debentures and negotiable securities; and
- (j) doing all such other acts, matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of all or any Objects and the exercise of the powers of the Company.

3.4 **Restriction on use of income**

The assets and income of the Company must:

- (a) only be used to pursue its Objects; and
- (b) not be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member or Director.

For clarity, this rule 3.4 does not prevent the Company from using its income to pay in good faith:

- (i) remuneration for services to the Company;
- (ii) reasonable and proper remuneration to employees of the Company;
- (iii) for goods supplied to the Company in the ordinary course of business;
- (iv) for services provided to the Company including services provided in a professional or technical capacity;
- (v) prizes and trophies to successful competitors in any competition held or supported by the Company in pursuit of its Objects;
- (vi) a commercial rate of interest on borrowed funds which has the prior approval of the Board;
- (vii) a commercial rent for property used by the Company which has the prior approval of the Board; or
- (viii) out of pocket expenses incurred by a Director, a Member, an employee or contractor of the Company, on business of the Company and substantiated in accordance with procedures approved by the Board;

even if the recipient of the remuneration or the reimbursement is a Member or Director (subject to rule 20).

3.5 **Amendment of Constitution and name of Company**

- (a) Any addition, alteration or amendment to the Company's Constitution will be made in accordance with the provisions of the Corporations Act and the Company must notify the Australian Charities and Not-for-profits Commission thereof, where required by law.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

3.6 **Dissolution of the Company**

The Company may only be dissolved by a Special Resolution.

3.7 Surplus Property on Winding Up

- (a) If the Company is to be wound up and or dissolved and there is surplus property available after all liabilities of the Company have been discharged, any surplus property must not be paid or distributed to a Member or former Member of the Company, unless that Member or former Member is a charity described in rule 3.7(b).
- (b) Subject to rule 3.8, the Corporations Act and any other applicable Act, and any court order, any surplus property that remain after the Company is wound up must be given or transferred to a fund, authority or institution approved by the Members that:
 - (i) is charitable at law;
 - (ii) has objects similar to, or inclusive of, the Objects of the Company; and
 - (iii) which also prohibits the distribution of any surplus property to its Members to at least the same extent as the Company.
- (c) If the Members at a Meeting of Members do not approve a fund, authority or institution to be given the surplus assets, the Supreme Court of New South Wales may make an order deciding which organisation will be given the surplus property.

3.8 Deductible Gift Recipient Status

If the Company is endorsed as a deductible gift recipient under applicable provisions of the Tax Law, and the Company is wound up or that endorsement is revoked under applicable law (whichever occurs first), the Company must transfer in accordance with rule 3.7 to a fund, authority or institution which is charitable at law and to which income tax deductible gifts can be made, any surplus of the following assets:

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

4. Records

4.1 Financial and related records

- (a) The Company must make and keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance, and
 - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The Company must also keep written records that correctly record its operations.
- (c) The Company must retain its records for at least 7 years.
- (d) The Directors must take reasonable steps to ensure that the Company's records are kept safe.

4.2 **Inspection of records**

The Directors will determine whether and to what extent and at what times and places and under what conditions the financial records and other Documents or records of the Company or any of them will be open to inspection by Members other than Directors and a Member, other than a Director does not have the right to inspect any Document of the Company except as authorised by the Directors, the Members Meeting or in accordance with the Corporations Act.

4.3 **Auditor**

If required by applicable law, at least once in every year, the accounts of the Company must be examined by one or more properly qualified auditor or auditors who must report to the Members in accordance with the provisions of the Corporations Act.

5. Membership

5.1 **Eligibility**

The Directors may from time to time adopt guidelines in relation to eligibility to be a Member.

5.2 **Becoming a Member**

A person becomes a Member if:

- (a) their application for membership:
 - (i) includes agreement to become a Member and to comply with the Constitution; and
 - (ii) is approved at the meeting of the Directors following the date of the application;
- (b) subject to rule 5.6, they have paid the amount of the annual subscription for the year commencing 1 July in which the person applies for membership; and
- (c) their name is entered in the Register.

5.3 **Discretion to admit**

Notwithstanding any guidelines adopted under rule 5.1, the Directors may refuse to admit any person as a Member and are not bound to give any reason for so refusing.

5.4 **Expulsion**

Subject to rule 9, the Directors may at any time, despite the payment of the subscription by a Member, reprimand, suspend or expel and remove from the Register, a Member who is not a Director. If the removal is before the term has expired for which the Member's subscription has been paid, the Member is entitled to a proportionate refund of the subscription from the date of removal to the time when the membership would expire.

5.5 **Life Members**

Persons who have been admitted as Life Members prior to the date of adoption of this Constitution may remain Life Members on the basis they were admitted as Life Members and subject to cessation of their membership but no new Life Members will be admitted.

5.6 **Patrons**

The Directors may appoint and remove persons as a patron or any other honorary title-holder of the Company on any terms the Directors think fit. A patron (or other honorary title-holder) may, in the discretion of the Directors, be given the right to:

- (a) attend and speak (but not vote) at any Meeting of Members and be given notice of the meeting as if a Member; and
- (b) receive accounts of the Company when available to Members.

6. *Membership Fees*

6.1 **Entrance fee**

The entrance fee payable by a Member is the amount payable under rule 5.2(b).

6.2 **Annual subscription**

- (a) The Board may determine each year the annual subscription fee for membership payable for the following year commencing on 1 July.
- (b) If a determination is not made in one year for the following year, the annual subscription fee for the following year will be the same as the annual subscription fee in the year the determination could have been made.
- (c) Subject to the terms upon which persons have been admitted to Life membership, Members must pay the annual subscription fee.

7. *Joint Members*

Joint membership is not permitted.

8. *Cessation Of Membership*

8.1 **Cessation**

A Member ceases to be a Member if the Member:

- (a) is dissolved, where the Member is a body corporate; or
- (b) dies, or becomes bankrupt, where the Member is a natural person; or
- (c) is expelled in accordance with rule 5.4; or

- (d) cannot be contacted or their whereabouts are unknown for more than 12 months and the Directors resolve they should cease to be a Member; or
- (e) resigns such membership; or
- (f) the Member fails to pay the subscription fee in respect of a year of membership by 1 July in that year or such later date as the Board determines.

8.2 **Membership not transferable**

A right, privilege or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of that person's membership.

9. ***Expulsion Process***

9.1 **Initial resolution of Directors**

For the purposes of rule 5.4, where the Directors are of the opinion that a Member of the Company:

- (a) has refused or neglected to comply with a provision of this Constitution;
- (b) has acted in a manner prejudicial to the interests of the Company; or
- (c) has been guilty of conduct unbecoming a Member,

the Directors may, by resolution (**Initial Resolution**):

- (i) reprimand the Member;
- (ii) suspend the Member from membership of the Company for a specified period; or
- (iii) terminate the membership of the Member.

9.2 **Suspended operation**

An Initial Resolution is of no effect unless the Directors, at a meeting of the Directors held not earlier than 14 days and not later than 28 days after service on the Member of a notice under rule 9.3, confirms the Initial Resolution in accordance with the following rules of this section.

9.3 **Notice to Member**

The Secretary must, as soon as practicable following the passing of the Initial Resolution, cause a notice in writing to be served on the Member that notice:

- (a) setting out the Initial Resolution of the Directors and the grounds on which it is based;
- (b) stating that the Member may personally address the Directors at a meeting of the Directors to be held not earlier than 14 days and not later than 28 days after service of the notice;

- (c) stating the date, place and time of that meeting of the Directors; and
- (d) informing the Member that the Member may do either or both of the following:
 - (i) personally attend and speak at that meeting of the Directors; and
 - (ii) submit to the Directors at or prior to the date of that meeting written representations relating to that resolution.

9.4 **Confirming resolution of Directors**

At a meeting of the Directors held as referred to in rule 9.3, the Directors must:

- (a) give to the Member an opportunity to make personal oral representations;
- (b) give due consideration to any written representations submitted to the Directors by the Member at or prior to the meeting; and
- (c) by resolution passed by not less than two thirds of the Directors present and entitled to vote at the meeting (**Confirming Resolution**) confirm or revoke the Initial Resolution.

9.5 **Notice to Member**

The Secretary must, within 7 days of the passing of the Confirming Resolution, by notice in writing inform the Member of the fact and of the Member's right of appeal under this Constitution.

9.6 **Suspended operation**

A Confirming Resolution does not take effect:

- (a) until the expiration of the period within which the Member is entitled to appeal against the Confirming Resolution if the Member does not exercise the right of appeal within that period; or
- (b) if within that period the Member exercises the right of appeal, unless and until a Meeting of Members confirms the resolution pursuant to this Constitution.

9.7 **Right of appeal**

A Member may appeal to the Company in a Meeting of Members against a Confirming Resolution, within seven days after notice of the Confirming Resolution is served on the Member, by lodging with the Secretary a notice to that effect.

9.8 **Calling of Meeting of Members**

Upon receipt of a notice from a Member under rule 9.7, the Secretary must immediately notify the Directors of the receipt of the notice of appeal. The Directors must then call a Meeting of Members of the Company to be held within 21 days after the date on which the Secretary received the notice.

9.9 Business of Meeting

At a Meeting of Members called under rule 9.8:

- (a) no business other than the question of the appeal may be transacted;
- (b) the Directors and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and
- (c) the Members present may vote by secret ballot on the question of whether the Confirming Resolution should be confirmed or revoked.

9.10 Confirmation by Members

If the Meeting of Members passes an Ordinary Resolution in favour of the confirmation of the Confirming Resolution, the resolution is confirmed.

10. Meetings of Members

10.1 Meetings of Members called by Directors

- (a) The Directors may call a Meeting of Members.
- (b) If Members with at least 5% of the votes that may be cast at a Meeting of Members make a written request to the Company for a Meeting of Members to be held, the Directors must:
 - (i) within 21 days of the Members' request, give all Members notice of a Meeting of Members; and
 - (ii) hold the Meeting of Members within 2 months of the Members' request.
- (c) The percentage of votes that Members have (in rule 10.1(b)) is to be worked out as at midnight before the Members request the meeting.
- (d) The Members who make the request for a Meeting of Members must:
 - (i) state in the request any resolution to be proposed at the meeting;
 - (ii) sign the request; and
 - (iii) give the request to the Company.
- (e) 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.

10.2 Meetings of Members called by Members

- (a) If the Directors do not call the meeting within 21 days of being requested under rule 10.1(b), 50% or more of the Members who made the request may call and arrange to hold a Meeting of Members.
- (b) To call and hold a meeting under rule 10.2(a) the Members must:

- (i) as far as possible, follow the procedures for a Meeting of Members set out in this Constitution;
 - (ii) call the meeting using the list of Members on the Register, which the Company must provide to the Members making the request at no cost; and
 - (iii) hold the Meeting of Members within three months after the request was given to the Company.
- (c) The Company must pay the Members who request the Meeting of Members any reasonable expenses they incur because the Directors did not call and hold the meeting.

10.3 Annual general meeting

- (a) A Meeting of Members, called the annual general meeting, must be held:
- (i) within 18 months after registration of the Company; and
 - (ii) after the first annual general meeting, at least once in every calendar year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (i) a review of the Company's activities;
 - (ii) a review of the Company's finances;
 - (iii) any auditor's report;
 - (iv) the election of Directors; and
 - (v) the appointment and payment of auditors, if any.
- (c) 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.
- (d) 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.

10.4 Notice of meetings

- (a) Notice of a Meeting of Members must be given to:
- (i) each Member entitled to vote at the meeting;
 - (ii) each Director; and
 - (iii) the auditor (if any).
- (b) Notice of a Meeting of Members must be provided in writing at least 21 days before the meeting.

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- (c) Subject to rule 10.4(d), notice of a meeting may be provided less than 21 days before the meeting if:
 - (i) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (ii) for any other Meeting of Members, Members with at least 80% of the votes that may be cast at the meeting agree beforehand.
 - (d) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a Director;
 - (ii) appoint a Director in order to replace a Director who was removed; or
 - (iii) remove an auditor.
 - (e) Notice of a Meeting of Members must include:
 - (i) 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);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - (iv) a statement that Members have the right to appoint proxies and that, if a Member appoints a Proxy:
 - (A) (unless the law requires otherwise) the Proxy must be a Member of the Company;
 - (B) 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
 - (C) the Proxy Form must be delivered to the Company at least 48 hours before the meeting.
 - (f) If a Meeting of Members is adjourned (put off) for 30 days or more, the Members must be given new notice of the resumed meeting.

10.5 Using technology to hold meetings

- (a) The Company may hold a Meeting of Members 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.
- (b) Anyone using this technology is taken to be present in person at the meeting.

10.6 **Entitlement to Proxy Form**

A Proxy Form (in a form determined by the Directors) must be given to each Member entitled to receive a notice of a Meeting of Members.

10.7 **Omission to give notice**

The accidental omission to give notice of a Meeting of Members (or Proxy Form) to, or the non-receipt of any such notice (or Proxy Form) by a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

10.8 **Cancellation or postponement of meeting**

The Directors may cancel or postpone the holding of any Meeting of Members. If the meeting was called by requisitioning Members or in response to a requisition by Members, the Directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Members. The Directors may notify the Members of such cancellation or postponement by such means as they see fit. If any meeting is postponed for 30 days or more, then no less than five days' notice must be sent to the Members of the postponed meeting but it is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

11. *Representation at Meetings*

11.1 **Persons entitled to attend**

The right to attend a Meeting of Members is as follows:

- (a) each Member may attend, apart from any Member who under this Constitution or by the terms of issue of any membership is not entitled to attend;
- (b) each Director, Secretary and auditor may attend;
- (c) each person who is a Proxy, Corporate Representative or attorney of a Member may attend; and
- (d) other persons may attend only with leave of the meeting or its chairperson and then only while the leave is on foot and in accordance with the terms of the leave.

The right of a person to attend is subject to the powers of the chairperson of the meeting, both under the Corporations Act and this Constitution.

11.2 **Proxy recognition**

A Proxy is recognised as having been duly appointed by a Member and entitled to act as a Proxy for that Member if, and only if, the Proxy Form complies with the requirements of this Constitution concerning form, execution and lodgement.

11.3 **Proxy Form**

The Proxy Form must be in the form determined by the Directors for the relevant Meeting of Members, or as similar to it as the circumstances permit. The Directors may at any time accept a

Proxy Form which is not in the required form. Unless the Directors specifically determine otherwise at any time, the Proxy Form:

- (a) is operative only for a single Meeting of Members (and any adjournment of that meeting) and must specify the proposed date of that meeting;
- (b) may make provision for the chairperson of the Meeting of Members to act as the Proxy either in the absence of any other appointment or if the Proxy primarily appointed fails to attend the Meeting of Members; and
- (c) must enable the Member to at least instruct the Proxy to vote for or against each notified resolution.

11.4 **Chairperson as fall-back Proxy**

If a Proxy Form is otherwise effective except that it does not specify the Proxy, the Member is treated as validly appointing the chairperson of the Meeting of Members as Proxy.

11.5 **Proxy execution**

A Proxy Form must be executed:

- (a) in the case of a Member who is a natural person, by the:
 - (i) Member; or
 - (ii) attorney of the Member;
- (b) in the case of a Member which is a body corporate:
 - (i) under the common seal of the body;
 - (ii) by a duly authorised officer of the body; or
 - (iii) by the attorney of the body.

11.6 **Proxy lodgement**

- (a) A Proxy Form must be lodged in person, by post, email or facsimile at the Registered Office (or at such other place as is specified for that purpose in the notice calling the Meeting of Members) at least 48 hours before the time appointed for the meeting.
- (b) A Proxy received at an electronic address of the Registered Office of the Company will be taken to be signed by the Member if:
 - (i) a personal identification code allocated by the Company to the Member has been included with the appointment; or
 - (ii) the appointment is verified or authorised by the Member in another manner approved by the Board.

11.7 Proxy executed by attorney

If a Proxy Form is executed by the attorney of the Member the relevant power of attorney (or a copy of it) must also be lodged at the place, and by the deadline, required for the Proxy Form.

11.8 Corporate representative recognition

A Corporate Representative is recognised as having been appointed by a Member (which is a body corporate) and entitled to act as a Corporate Representative of that Member if, and only if:

- (a) the appointment is evidenced by a Corporate Representative Certificate which complies with this Constitution concerning form, execution and lodgement; or
- (b) the appointment is evidenced by some other form of documentation satisfactory to the Directors which is lodged at the place, and by the deadline, required for Corporate Representative Certificates.

11.9 Form and execution of Corporate Representative Certificate

The Corporate Representative Certificate:

- (a) must specify one natural person, by name or description, to act as the body's representative at specified meetings that the body would be entitled to attend as a Member;
- (b) may specify another natural person, by name or description to act as Corporate Representative if the person primarily nominated fails to attend; and
- (c) must be executed:
 - (i) under the common seal of the body corporate;
 - (ii) by a duly authorised officer of the body; or
 - (iii) by the attorney of the body.

11.10 Corporate Representative Certificate lodgement

The Corporate Representative Certificate (or a copy of it) must be lodged in person, by post, email or facsimile at the Registered Office (or at such other place as is specified for that purpose in the notice calling the Meeting of Members) at least 48 hours before the time appointed for the meeting.

11.11 Power of attorney lodgement

An attorney is recognised as entitled to act as attorney for a Member at a Meeting of Members if, and only if, the relevant power of attorney (or a copy of it) is lodged at the place, and by the deadline, required for Proxy Forms.

12. Proceedings at Meetings of Members

12.1 Quorum

No business may be transacted at any Meeting of Members unless a quorum of Members is present at the time when the meeting proceeds to business. Except as provided in rule 12.2, five (5) Members present in person and entitled to vote is a quorum, unless there is only one Member of the Company, in which case a quorum will be that Member present in person or by Proxy.

12.2 Failure of quorum

If a quorum is not present within 30 minutes from the time appointed for a Meeting of Members:

- (a) where the meeting was called by, or in response to, the requisition of Members, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week following at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Members present constitute a quorum or if no Members are present, the meeting is dissolved.

12.3 Chairperson of meeting

The chairperson of the Company, or in that person's absence the vice chairperson of the Company (if any), is entitled to take the chair at each Meeting of Members. If neither of those persons is present at any Meeting of Members within 30 minutes after the time appointed for holding such meeting, or neither of them is willing to take the chair, the Directors present may choose one of their number as a chairperson and if no Director present is willing to take the chair the Directors may choose a person, whether a Member or not, as chairperson of the meeting, failing which the Members present must elect a person, whether a Member or not, to be chairperson of the meeting.

12.4 Passing the chair

If the chairperson of a Meeting of Members is unwilling or unable to be the chairperson for any part of the business of the meeting:

- (a) that chairperson may withdraw as chairperson for that part of the business and may nominate any person who would be entitled under rule 12.3 to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairperson and the prior chairperson is entitled to resume as the chairperson of the meeting.

12.5 Responsibilities of chairperson

The chairperson of a Meeting of Members is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning the business transacted at it. For these purposes the chairperson of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

12.6 **Adjournment of meeting**

The chairperson of a Meeting of Members at which a quorum is present:

- (a) must, in accordance with the direction of the Meeting of Members;
- (b) may, without the consent of the Meeting of Members where it is impractical to seek consent, adjourn the meeting from time to time and from place to place.

12.7 **Business at adjourned meeting**

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment or of the business to be transacted at an adjourned meeting, unless it is adjourned for 30 days or more, in which event notice of the adjourned meeting must be given.

13. Members' Resolutions and Statements

13.1 **Members' resolutions and statements**

- (a) Members with at least 5% of the votes that may be cast on a resolution may give:
 - (i) written notice to the Company of a resolution they propose to move at a Meeting of Members (**members' resolution**); and/or
 - (ii) 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 Meeting of Members (**members' statement**).
- (b) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- (c) A request to distribute a members' statement must set out the statement to be distributed and be signed by the Members making the request.
- (d) 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.

- (e) The percentage of votes that Members have (as described in rule 13.1(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a members' resolution under rule 13.1(a)(i), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- (g) This rule does not limit any other right that a Member has to propose a resolution at a general meeting.

13.2 **Company must give notice of proposed resolution or distribute statement**

- (a) If the Company has been given a notice or request under rule 13.1:
 - (i) 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
 - (ii) 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.
- (b) The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
 - (i) it is more than 1,000 words long;
 - (ii) the Directors consider it may be defamatory;
 - (iii) rule 13.2(a)(ii) 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
 - (iv) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a Meeting of Members or is otherwise not a valid resolution able to be put to the Members.

13.3 **Circular resolutions of Members**

- (a) Subject to rule 13.3(c), the Directors may put a resolution to the Members to pass a resolution without a general meeting being held (a circular resolution).
- (b) 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.
- (c) Circular resolutions cannot be used:
 - (i) for a resolution to remove an auditor, appoint a Director or remove a Director;
 - (ii) for passing a Special Resolution; or

- (iii) where the Corporations Act requires a meeting to be held.
- (d) 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 13.3(e) or rule 13.3(f).
- (e) Members may sign:
 - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (f) 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.

14. Voting at Meetings of Members

14.1 Entitlement to vote

Subject to this Constitution and the terms of any membership, each natural person who is present at a Meeting of Members may vote if he or she is a Member who has paid all amounts due in respect of their membership or a recognised Proxy, attorney or Corporate Representative of such a Member.

14.2 Number of votes

Each natural person who is, under rule 14.1, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote, regardless of how many Members the person may represent; and
- (b) on a poll one vote for the membership held by that person and one vote for each membership held by Members for whom the person is the recognised Proxy, attorney or Corporate Representative.

14.3 Voting restrictions

If, to ensure that a resolution on which the Corporations Act requires that particular persons do not cast a vote so that the resolution has a specified effect under the Corporations Act, the notice of a Meeting of Members specifies that in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company, the Company must take no account in determining the votes cast on a resolution relating to that business (whether a Special Resolution or an Ordinary Resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution.

14.4 Attendance of Member suspends the Proxy

If a Member is present at any Meeting of Members in person (or in the case of a body corporate, by its Corporate Representative), the Proxy or attorney of that Member may not exercise the voting rights of the Member while the Member is present.

14.5 **Revocation of proxies**

A vote given or act done in accordance with the terms of a Proxy Form or power of attorney is valid despite the previous death of the principal, or revocation of the Proxy or power of attorney, provided no intimation in writing of the death or revocation has been received at the Registered Office or by the chairperson of the meeting before the vote is given or act done. Any Proxy may be revoked at any time. The decision of the chairperson as to whether a Proxy has been revoked is final and conclusive.

14.6 **Proxy must vote as directed**

A recognised Proxy must vote (or abstain if instructed) on behalf of a Member in the manner instructed by the Member on the Proxy Form. If no instruction is given the Proxy may vote, or abstain, as the Proxy sees fit.

14.7 **Method of voting**

Every resolution put to a vote at a Meeting of Members (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the chairperson of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

14.8 **Demand for poll**

A demand for a poll under rule 14.7 may not be made in relation to the election of the chairperson of the meeting or on a question of adjournment but in other circumstances may be made by:

- (a) the chairperson of the meeting;
- (b) at least five (5) Members present in person and entitled to vote on the resolution; or
- (c) Members present in person or by proxy who together have at least 5% of the total voting rights of all the Members having the right to vote at the meeting.

14.9 **Declaring result of vote on show of hands**

At any Meeting of Members (unless a poll is so demanded) a declaration by the chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

14.10 **Conduct of poll**

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

14.11 Casting vote of chairperson

If, on a show of hands or on a poll, the votes are equal, the chairperson of the meeting has a casting vote in addition to the deliberative vote, if any, of the chairperson.

14.12 Objections

No objection may be made as to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll.

14.13 Ruling on votes

The chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairperson is final and conclusive.

15. *Advisory Council and Management Committee*

15.1 Advisory councils

- (a) The Directors may establish, and may disband, any advisory councils for the purpose of providing guidance and advice to the Directors and for any other informal purposes as the Directors may decide from time to time. The advice of any council is not binding on the Directors.
- (b) The Directors have a discretion as to the composition, functions and rules for proceedings and frequency of meetings of any advisory council.
- (c) Without limiting the generality of rules 15.1(a) and 15.1(b), an advisory council may be established for the purposes of informing the carrying out of any or all of the Objects through the experience, knowledge and needs of community members with a direct connection with epilepsy, including people with epilepsy, carers of people with epilepsy and family members and other relatives of people with epilepsy.

15.2 Management committee

The Directors may establish a management committee for the purposes of administering any public fund established in furtherance of the Objects of the Company. The money in any public fund will be kept separate from other funds of the Company and must be used only for the purposes of the public fund.

16. *By-laws*

16.1 By-laws

- (a) The Directors may pass a resolution to make by-laws to give effect to this Constitution, including to provide for the rules of any ballot.
- (b) Members and Directors must comply with by-laws as if they were part of this Constitution.

17. Money and Property Received by the Company

All money received by or on behalf of or as a result of the activities of the Company must be applied for the promotion of the Objects.

18. Appointment and Removal of Directors

18.1 Number of Directors

The number of Directors must be no less than five (5) and no more than 12.

18.2 Directors

- (a) The qualification of a Director is that he or she must be a Member, provided that the Company may from time to time by Ordinary Resolution adopt additional criteria for eligibility to be a Director.
- (b) In appointing a person as a Director to fill a casual vacancy and in recommending or proposing to Members persons to be elected to act as a Director, the Board may give weight to including representation on the Board of persons with direct experience with epilepsy. Without limiting the matters that the board may consider, this direct experience may include personal experience with epilepsy or as a carer for, or a family member or other relative of, a person with epilepsy.

18.3 Term of office

- (a) At each annual general meeting:
 - (i) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire; and
 - (ii) any Director due for re-election under rule 18.3(c) must retire.
- (b) Other than a Director appointed by the other Directors to fill a casual vacancy or as an additional Director, a Director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- (c) Subject to rule 18.6, at each annual general meeting one third of the Directors for the time being, or if their number is not a multiple of three (3) then the nearest number to one third, must retire from office. The Directors to retire at an annual general meeting are those who have been longest in office since their election, but, as between persons who became Directors on the same day, those to retire will (unless they otherwise agree amongst themselves) be determined by lot. A Director must not hold office without re-election past the third annual general meeting following the Director's appointment or three (3) years, whichever is longer.
- (d) A Director who retires under this rule is eligible for re-election and may nominate himself as a candidate for re-election, subject to rule 18.3(e).
- (e) A Director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a Special Resolution of the Members.

18.4 Election of Directors

- (a) If at an annual general meeting the number of candidates for election as a Directors:
- (i) is more than the number of positions to be filled, the Members may elect Directors by Ordinary Resolution passed at that meeting or by a ballot conducted at that meeting; or
 - (ii) is the same as the number of positions to be filled, all candidates are deemed elected without the need for a vote; or
 - (iii) is less than the number of positions to be filled, all candidates are deemed elected without the need for a vote and the unfilled positions are deemed to be casual vacancies.
- (b) A person is eligible for election or appointment as a Director of the Company if they:
- (i) give the Company their signed consent to act as a Director of the Company;
 - (ii) are not ineligible to be a Director under the Corporations Act or the ACNC Act; and
 - (iii) satisfy any eligibility criteria adopted by the Company.

18.5 Casual appointment

The Directors may at any time appoint any person as a Director, either to fill a casual vacancy or as an addition to the Directors. Until that person is re-elected at a Meeting of Members, that Director is a “casual appointee”.

18.6 Retirement of casual appointee

A casual appointee holds office only until the conclusion of the next annual general meeting of Members following his or her appointment by the Directors and is eligible for re-election at that meeting. A casual appointee is not taken into account in determining the number of Directors, if any, who are to retire by rotation at such meeting.

18.7 Voluntary Resignation of Directors

Any Director may retire from office by giving notice in writing to the Company of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date three months from the giving of the notice, whichever is the earlier.

18.8 Vacation of office

In addition to the circumstances in which the office of Director becomes vacant by virtue of the Corporations Act or other provisions of this Constitution, the office of Director is vacated if the Director:

- (a) dies;
- (b) ceases being a Member;

- (c) becomes mentally incapable or the Director's estate is liable to be dealt with in any way under the law relating to mental health; or
- (d) is absent from meetings of Directors for a continuous period of six months without leave of absence from the Directors.

18.9 **Less than minimum number of Directors**

The continuing Directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a Meeting of Members; or
- (c) in an emergency.

18.10 **Continuation at adoption of constitution**

At the date of adoption of this Constitution, notwithstanding any provision of this Constitution:

- (a) a person who has been previously elected by the Directors to chair their meetings shall continue as chairperson in accordance with the resolution by which that person was appointed;
- (b) the Secretary and Directors holding office continue in office subject to retirement, rotation and election as provided in this Constitution;
- (c) the appointment of any person as Chief Executive Officer continues in accordance with its terms;
- (d) without limiting the foregoing, prior resolutions of the Directors, any sub-committee of the Directors and the Meeting of Members continue in effect in accordance with their terms.

19. Chief Executive Officer

19.1 **Appointment of Chief Executive Officer**

The Directors may at any time:

- (a) appoint a person to be the Chief Executive Officer of the Company;
- (b) define, limit and restrict that person's powers;
- (c) fix that person's duties;
- (d) subject to the provisions of any contract between that person and the Company, vary any of the powers so conferred;
- (e) remove that person from that office and appoint another (or others) in that person's place or places;
- (f) appoint the Chief Executive Officer as a Director, subject to rule 19.5.

19.2 **Acting Chief Executive Officer**

If the Chief Executive Officer becomes at any time in any way incapable of acting as such, the Directors may appoint any Director to act temporarily as the Chief Executive Officer.

19.3 **Remuneration of Chief Executive Officer**

- (a) The Company may pay its Chief Executive Officer a reasonable and proper remuneration on an arm's length basis as determined by the Directors.
- (b) In determining the remuneration of the Chief Executive Officer, the Directors must have regard to the following criteria:
 - (i) the services the Chief Executive Officer is to provide to the Company; and
 - (ii) the current market levels of remuneration paid to chief executive officers of not for profit entities.

19.4 **Expenses of Chief Executive Officer**

The Chief Executive Officer is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at meetings of the Board and Meetings of Members, or otherwise in connection with the business of the Company provided such expenses are substantiated and approved in accordance with procedures approved by the Board.

19.5 **Override**

Notwithstanding any other provision of this Constitution where the Chief Executive Officer is a Director, they are not required to be a Member, their tenure as a Director shall be determined in accordance with their terms of appointment as the Chief Executive Officer and they shall not retire by rotation or be included in the number of Directors for the purposes of determining who is to retire by rotation.

20. Remuneration of Directors

20.1 **Directors' Fees**

A Director must not be paid any remuneration for services as a Director. Services as a Director do not include services as a Chief Executive Officer.

20.2 **Expenses of Directors**

Each Director is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at meetings of the Board and Meetings of Members or otherwise in connection with the business of the Company provided such expenses are substantiated and approved in accordance with procedures approved by the Board.

21. Proceedings of Directors

21.1 Mode of meeting

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit.
- (b) For the purposes of the Corporations Act, each Director consents to the use of each of the following technologies for holding a meeting of Directors:
 - (i) video conference;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each Director to communicate with every other Director; or
 - (v) any combination of these technologies.
- (c) A Director may withdraw the consent given under 21.1(b) in accordance with the Corporations Act.
- (d) Where the Directors are not in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
 - (i) the participating Directors are, for the purposes of every provision of this Constitution concerning meetings of Directors, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in one location.

21.2 Quorum

A quorum for a meeting of the Directors is three (3) and such quorum must be present at all times during the meeting.

21.3 Chairperson calling a meeting

The chairperson of the Company may at any time call a meeting of the Directors to be held at such time and place as the chairperson chooses and such meeting is not invalidated by reason only of lack of convenience if a quorum of Directors forms.

21.4 Secretary calling a meeting

The Secretary, upon the request of any other Director, must call a meeting of the Directors to be held at such time and place as is convenient to the Directors.

21.5 **Notice of meeting**

Notice of each meeting of the Directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission;
- (b) must be given to all eligible Directors; and
- (c) must be issued to all eligible Directors at least five days prior to the meeting.

21.6 **Recipients of notice**

For the purposes of rule 21.5:

- (a) the “eligible Directors” are all Directors for the time being but excluding those who have given leave of absence;
- (b) the accidental omission to give notice of any meeting of the Directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

21.7 **Appointment of chairperson**

The Directors may elect one of their number as chairperson to chair meetings of the Directors and may also elect another of their number to chair meetings in the absence of the chairperson (vice chair). The Directors may determine the period for which a Director is to be the chair or vice chair. The Director elected to chair meetings of Directors is to act as chairperson of the Company during their tenure and is entitled to use the title “Chairman”, “Chair” or “Chairperson”. The person (if any) elected to chair meetings of the Directors in the absence of the chairperson is to act as vice chairperson of the Company during their tenure and is entitled to use the title “Vice-Chairman”, “Vice-Chair” or “Vice-Chairperson”. If the chairperson is not present within 15 minutes of the time appointed for holding a meeting of Directors, the vice chair, if present, will act as chairperson of the meeting. If that person is not present the Directors present must choose one of their number to be chairperson of such meeting.

21.8 **Votes of Directors**

Questions arising at any meeting of the Directors must be decided by a majority of votes cast and each Director has one vote. If there is an equality of votes the chairperson has a second or casting vote in addition to their deliberative vote.

21.9 **Circular resolution of Directors**

If all of the eligible Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Directors held on the day on which the document was signed or, if the Directors sign the documents on different days, on the day on which the document was last signed by a Director unless the document, by its terms, is said to take effect from an earlier date.

21.10 **Signing of circular resolution**

For the purposes of rule 21.9:

- (a) the “eligible Directors” are all Directors for the time being but excluding, first, those who, at a meeting of Directors, would not be entitled to vote on the resolution;
- (b) each Director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (d) an electronic transmission purporting to be signed by a Director is treated as being signed in writing by such person; and
- (e) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together treated as constituting one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

21.11 Deemed minute

The document or documents referred to in rules 21.9 and 21.10 are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

21.12 Validity of acts of Directors

All acts done at any meeting of the Directors or of eligible Directors or other persons or by any person acting as a Director or any person purporting to act as an attorney under power of the Company are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

22. Director’s Conflicts of Interest and Contracts with Company

22.1 Disclosure of conflicts of interest

- (a) A Director with a material personal interest in a matter that relates to the affairs of the Company must give notice to the other Directors of that interest unless it is an interest listed as exempt in section 191(1)(a) of the Corporations Act or in circumstances relating to the interest otherwise provided for in section 191 of the Corporations Act.
- (b) The notice from the Director must:
 - (i) give details of the nature and extent of the interest and the relation of the interest to the affairs of the Company;
 - (ii) be declared at the commencement of a Directors meeting as soon as practicable after the Director becomes aware of the interest; and
 - (iii) be recorded in the minutes of the meeting.
- (c) A Director may give standing notice of an interest in a matter as provided in sub-sections 192(1) to 192(5) of the Corporations Act.

22.2 Director's interests

Subject to the provisions of this Constitution and to provisions of the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) despite having an interest in a matter that is being considered at a meeting of Directors, be present at, participate in, vote on and be counted in a quorum at the meeting;
- (g) despite having an interest in a Document, sign or participate in the execution of a Document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this rule is also a reference to any related body corporate of the Company.

22.3 Requirement to leave the meeting

Despite anything in rule 22.2, whether a Director is entitled to vote or be present at a meeting of Directors considering a matter in which the Director has a material personal interest is to be determined in accordance with section 195 of the Corporations Act.

23. Powers and Duties of Directors

23.1 Powers generally

Subject to the Corporations Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Directors who may exercise all such powers of the Company and do all such acts or things as are not by this Constitution or by the Corporations Act expressly required to be exercised or done by a Meeting of Members. No provision adopted by resolution passed by a Meeting of Members invalidates any prior act of the Directors which would have been valid if that provision or resolution had not been adopted or passed.

23.2 Appointment of attorney

The Directors may at any time, by power of attorney, appoint any person to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit.

23.3 Negotiable instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) Directors or in such other manner as the Directors determine.

23.4 Delegation

The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under this Constitution by the Directors as they may think fit for such time and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that respect. They may at any time revoke, withdraw, alter or vary all or any of such powers.

23.5 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid unless it is proved to the satisfaction of the Directors or a majority of them that such omission has directly prejudiced any Member financially. The decision of the Directors is conclusive and final and binds all Members.

23.6 Duties of Directors

The Directors must comply with their duties as directors under legislation and common law (judge-made law), and, while the Company is registered as a charity under the ACNC Act, 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 honestly and fairly in the best interests of the Company and to further the Objects;
- (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 conflicts of interest;
- (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.

24. Sub-Committees

24.1 Delegation to sub-committee

The Directors may:

- (a) delegate any of their powers to sub-committees consisting of such one or more persons, whether Directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of committee members) consisting of such person or persons as they think fit.

24.2 Sub-Committee powers

Any sub-committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Directors including, without limitation, any restriction on the expenditure of a sub-committee.

24.3 Sub-Committee meetings

The meetings and proceedings of any sub-committee consisting of two or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the Directors so far as they are capable of application and not affected by any resolution or regulation made in respect of the sub-committee under rule 24.2.

25. Secretary

- (a) The Company must have at least one Secretary, who may also be a Director.
- (b) 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.
- (c) The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- (d) The role of the Secretary includes:
 - (i) attending meetings of the Directors, any sub-committees and any Meeting of Members;
 - (ii) maintaining a register of the Company's Members, and
 - (iii) maintaining the minutes and other records of Meetings of Members (including notices of meetings), Directors' meetings and circular resolutions.

26. Minutes as Evidence

Any minutes of a Meeting of Members or of the Directors, if purporting to be signed by any person purporting to be either the chairperson of such meeting, or the chairperson of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or

appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

27. Notices

27.1 Service of notices

Where this Constitution, the Corporations Act or other legislation requires or permits a Document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this paragraph referred to as **Served**), the Document may be Served on the person:

- (a) by delivering it to the person personally;
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to the address of the place of residence or business of the person last known to the person serving the Document or, in the case of a Member, to the address of the Member entered in the Register and the Document, by such dispatch, is regarded as left at that address; or
- (c) except in the case of a general meeting, by publication in a newspaper circulating generally in the State in which the Registered Office is located.

27.2 Date of deemed service

A Document Served under rule 27.1 is treated as having been duly Served, irrespective of whether it is actually received:

- (a) where rule 27.1(b) applies - on the day following the day when dispatch occurred; and
- (b) where rule 27.1(c) applies - on the day the newspaper is first published.

27.3 Overseas Members

It is not necessary to give a notice to any Member where that Member's address in the Register is outside Australia and they have not provided an email address. Such a Member may give notice to the Company specifying an address within Australia which is to be treated as the address of the Member for the giving of notices or an email address and the Company may give notice to the Member using either.

27.4 Counting of days

Subject to the Corporations Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

27.5 Service on Company or its officers

Every Document required to be Served upon the Company or upon any officer of the Company may be served by leaving it at the Registered Office.

27.6 Signature

Without limiting rule 29.3, a signature to any Document to be given by the Company may be written, printed, stamped or affixed electronically.

28. Indemnity

28.1 Indemnity for officers

The Company will indemnify any current or former Director, Secretary or other officer of the Company, or of a Related Body Corporate of the Company, out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) reasonable 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; and
- (c) reasonable legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company, or of a Subsidiary of the Company, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

28.2 Insurance

- (a) 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, Secretary or other officer of the Company, or of a Related Body Corporate of the Company, against any liability incurred by the person in that capacity, including a liability for legal costs, unless:
 - (i) the Company is forbidden by law to pay, or agree to pay, the premium; or
 - (ii) the contract would, if the Company paid the premium, be made void by law.
- (b) Any such premium paid by the Company in relation to a Director will not be regarded as remuneration paid or payable to that Director.

28.3 **GST**

For the purposes of this rule 28, with regard to goods and services tax (**GST**) as provided under *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*:

- (a) the amount of any indemnity payable under this rule 28 will include an additional amount (**GST Amount**) equal to any GST payable by the officer indemnified (**Indemnified Officer**) in connection with the indemnity; and
- (b) payment of the GST Amount of any indemnity is conditional on the Indemnified Officer providing the Company with a copy of a tax invoice in accordance with requirements of the GST Act for the GST Amount to be paid to the Indemnified Officer.

29. Execution of Documents

29.1 The Company may have a common seal and duplicate common seal which are to be used by the Company as determined by the Directors.

29.2 **Execution of Documents by officers**

The Company may execute Documents without the Seal. Where a Document is executed by the Company without using the Seal, it must be signed by:

- (a) where the Company has a single Director who is also the only Secretary of the Company, by that person;
- (b) where the Company has a single Director and there is no Secretary, by that person; or
- (c) in any other case, by:
 - (i) a Director and shall be countersigned by a Secretary or by a second Director; or
 - (ii) some other delegate validly appointed by the Directors for that purpose.

29.3 **Execution of Documents by the Company**

For the avoidance of doubt and without limiting rule 29.2:

- (a) the Company (and any signatory for or on behalf of the Company) may execute any Document using Electronic Signatures and rule 1.6 applies to any Document executed by the Company under rule 29.2 and that rule is to be interpreted in accordance with rule 1.6;
- (b) the Company (and any signatory for or on behalf of the Company) may execute any Document in any number of counterparts, including using split execution where different signatories for or on behalf of the Company execute on different counterparts; and
- (c) the signatories for or on behalf of the Company may use any audio-visual link to have their execution of any Document witnessed and to confirm their execution of the Document.

30. Constitutional review

The Board shall procure an independent review of the constitution of the Company at least once every five (5) years for the purpose of ensuring that the constitution of the Company meets contemporary standards and the strategic needs of the organisation