

**MAKINSON d'APICE**  
L A W Y E R S

**DATED: 16 November 2018**

## Constitution

AUSTRALIAN PHYSIOTHERAPY COUNCIL LIMITED  
ABN 28 108 663 896  
(Company)

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## 1. NAME OF THE COMPANY

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The name of the Company is Australian Physiotherapy Council Limited.

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## 2. TYPE OF COMPANY

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- (a) The Company is a not-for-profit public company limited by guarantee.
  - (b) Subject to this Constitution, each Member and each Past Member undertakes to contribute to the property of the Company for:
    - (i) payment of debts and liabilities of the Company;
    - (ii) payment of the costs, charges and expenses of winding up; and
    - (iii) any adjustment of the rights of the contributories among Members.
  - (c) The amount that each Member or Past Member is liable to contribute is limited to \$10.00.
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## 3. DEFINITIONS AND INTERPRETATION

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- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:

**Accreditation** means assessing programs of study, and the education providers that provide the programs of study, to determine whether they meet relevant health profession accreditation standards.

**Act** means the *Corporations Act 2001*.

**Appointed Director** has the meaning given to that term in **clause 34(a)(ii)**.

**Assessment** means assessing health practitioners to determine whether their education, knowledge, clinical skills and professional attributes meet relevant health profession practice standards.

**Board** means the Board of Directors of the Company.

**CEO** has the meaning given to that term in **clause 51**.

**Chairperson** means the person appointed as the chairperson of the Company under **clause 20** and includes any acting chairperson.

**Committee** means a committee established in accordance with **clause 48**.

**Company** means Australian Physiotherapy Council Limited.

**Constitution** means this Constitution as amended or supplemented from time to time.

**Deputy Chairperson** means the person appointed as the deputy chairperson of the Company under **clause 20** and includes any acting deputy chairperson.

**Director** means any person holding the position of a director of the Company and includes both Appointed Directors and Member Elected Directors and **Directors** means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

**Financial Year** means the financial year of the Company ending on 30 June.

**Member** means a member of the Company.

**Member Elected Director** has the meaning given to that term in **clause 34(a)(i)**.

**Office** means the registered office for the time being of the Company which must be located in Australia.

**Officer** has the same meaning as given to that term in section 9 of the Act.

**Past Member** means a person who was a Member within 12 months from the day the winding up of the Company commences.

**Register** means the register of Members to be kept pursuant to the Act.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

**Representative** means a person authorised in accordance with section 250D of the Act to act as a representative of a Member.

**Secretary** means the person appointed as the secretary of the Company under **clause 52** and includes any acting secretary.

**Special Resolution** has the meaning given to that term in the Act.

- (b) In this Constitution, unless there is something in the subject or context which is inconsistent:
- (i) the singular includes the plural and vice versa;
  - (ii) each gender includes the other gender;
  - (iii) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
  - (iv) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
  - (v) 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;
  - (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;

- (vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (c) A word or expression used or defined in the Act has, unless the contrary intention appears, the same meaning in this Constitution where it relates to the same matters, as in the Act.
- (d) The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.
- (e) Headings do not form part of or affect the construction or interpretation of this Constitution.

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#### 4. OBJECTS AND PURPOSES

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- (a) The Objects of the Company are to advance health profession education including, without limitation, physiotherapy education, and provide assurance of standards for the benefit of the public by:
  - (i) Identifying, developing, monitoring and reviewing health profession standards for Accreditation and Assessment, including, without limitation, developing physiotherapy Accreditation standards;
  - (ii) Identifying, developing and delivering best practice health profession Accreditation and Assessment services, including, without limitation, reviewing and Accrediting physiotherapy education programs and Assessment of overseas-qualified physiotherapists;
  - (iii) Providing advice, recommendations and consulting services to the Physiotherapy Board of Australia and other relevant organisations in relation to Accreditation and Assessment;
  - (iv) Improving the quality and expertise of health profession Accreditation and Assessment;
  - (v) Liaising with other organisations, regulators and educators, within Australia and internationally, on matters related to standards of education and practice, and global recognition and mobility of health profession qualifications.
- (b) The Company can only exercise the powers in section 124(1) of the Act to:
  - (i) carry out the objects of the Company set out in **clause 4(a)**; and
  - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 4(b)(i)**.
- (c) The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 4(a)** and anything incidental or convenient to the promotion of those objects.

- (d) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend or otherwise to any Members of the Company. However, nothing in this Constitution will prevent payment in good faith to a Member:
- (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
  - (iii) of reasonable and proper rent for premises leased by any Member to the Company,

where the Board has approved such a payment.

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## 5. NUMBER OF MEMBERS

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The maximum number of Members of the Company is unlimited but may be altered by the Board from time to time.

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## 6. ELIGIBILITY AND APPLICATION FOR MEMBERSHIP

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### 6.1 Eligibility for Membership

A person is eligible for membership of the Company if that person:

- (a) is a company or registrable body; and
- (b) in the opinion of the Board holds the ideals of the promotion of the objects of the Company as set out in **clause 4**.

### 6.2 Application for Membership

- (a) Every application for membership of the Company must be lodged with the Secretary and must set forth the name, address, and specify the relevant credentials of the applicant as a Member.
- (b) Applications for membership of the Company must be made in writing on a form approved by the Board for that purpose and signed by the applicant.
- (c) At the first meeting of the Board after an application for membership has been received the Board will in its absolute discretion:
  - (i) determine the admission or rejection of the applicant; or
  - (ii) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- (d) An applicant will be admitted to membership of the Company if 75% of Directors present and entitled to vote at a meeting of the Board agree by resolution to admit the applicant.

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- (e) If the Board approves an application for membership:
    - (i) the Board must also determine whether the applicant represents the professional sector or the education sector; and
    - (ii) the Chairperson must, as soon as practicable, notify the applicant in writing of their approval for membership and which sector they represent.
  - (f) If the Board rejects an application for membership the Chairperson must, as soon as practicable, notify the applicant in writing that their application has been rejected. The Chairperson is not bound to give reasons why the application was rejected.

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## 7. MEMBERS' RIGHTS

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- (a) Members of the Company will be entitled to:
  - (i) receive notice of and attend and vote at general meetings of the Company; and
  - (ii) receive annual reports of the Company including financial reports in relation to each Financial Year.
- (b) All other rights, privileges and obligations of Members are in accordance with the Act.

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## 8. REGISTER OF MEMBERS

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- (a) Upon approval of an application for membership by the Board, the Chairperson will cause to be entered into the Register the name, address, date of admission to membership and any other information as the Board may from time to time determine of the new Member.
- (b) The Secretary will cause to be entered the date of cessation of membership into the Register when the Member ceases to hold that position in accordance with **clause 12**.
- (c) The Secretary will hold all signed applications and produce them if required to verify the identity of any person voting at any election or meeting of the Company.
- (d) The Register shall be available for inspection by Members at the Office at times and on reasonable conditions the Board thinks fit.

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## 9. VARIATION OF MEMBERSHIP

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The Board may:

- (a) create a new class of Member;



- (b) vary or cancel rights of Members in a class; or
- (c) transfer a Member or class of Members from one class to another,  
if:
  - (d) 75% of the Directors present and entitled to vote at a Board meeting, vote by resolution in favour of such creation, variation, cancellation or transfer; and
  - (e) such creation, variation, cancellation or transfer is not oppressive conduct or would not unfairly prejudice that class of Members.

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## 10. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

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

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

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## 11. ENTRANCE FEE AND SUBSCRIPTIONS

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- (a) A Member must on admission to membership, pay any amount as determined by the Board from time to time.
- (b) In addition to any amount payable by the Member under **clause 11(a)**, a Member must pay to the Company an annual membership fee as determined by the Board:
  - (i) before 1 January in each calendar year; or
  - (ii) if the member becomes a Member on or after 1 January in any calendar year, then before 1 January in each succeeding calendar year.
- (c) For completeness, the Board may determine that no entrance fee or annual membership fee shall be payable (in whole or in part) in a given year and may extend the time for payment by any Member.

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## 12. CESSATION OF MEMBERSHIP

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A Member's membership will cease:

- (a) on the date that the Secretary receives written notice of resignation from that Member;
- (b) if the Company in general meeting resolves by a resolution with a 75% majority of Members, to terminate the membership of a Member whose

conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company;

- (c) if the Directors in a meeting of the Board resolve to remove a Member where the Member is more than 120 days in arrears of payment of their annual membership fee. The Member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed; or
- (d) if the person is expelled from the Company in accordance with **clause 13(a)**.

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### 13. DISCIPLINARY PROCEDURES

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- (a) If any Member or any Representative of a Member wilfully refuses or neglects to comply with the provisions of this Constitution or is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company, the Board will have the power by resolution to censure, fine, suspend or expel the Member from the Company.
- (b) For the avoidance of doubt, conduct will be considered to be unbecoming if it
  - (i) causes a majority of the Board to think less of the Member's integrity; or
  - (ii) brings the Company into disrepute; or
  - (iii) breaches any of the Company's codes of conduct.
- (c) Any action taken by the Board in accordance with **clause 13(a)** is effective only after the Member has been given 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed.

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### 14. RIGHT OF APPEAL AGAINST DISCIPLINE OR SUSPENSION

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A Member has a right to appeal against their expulsion under **clause 13** in accordance with the Company's guidelines on disciplinary and dispute resolution procedures.

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### 15. ANNUAL GENERAL MEETING

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- (a) Subject to the Act, an annual general meeting must be held at least once in every calendar year and within the period of five (5) months after the end of the Company's Financial Year at such time and place as may be determined by the Directors to be called the "annual general meeting";
- (b) Meetings of the Company other than the annual general meeting shall be called "general meetings".

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- (c) The business of the annual general meeting may include any of the following, even if not referred to on the notice of meeting:
    - (i) consideration of the
      - (A) annual financial statements; and
      - (B) Directors' declaration; and
      - (C) Directors' report; and
      - (D) auditor's report (if the accounts have been audited);
    - (ii) the election of Member Elected Directors;
    - (iii) the appointment of the auditor; and
    - (iv) the fixing of the auditor's remuneration.

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## 16. CONVENING OF GENERAL MEETINGS

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- (a) Any three Directors may whenever those Directors think fit convene a general meeting of the Company.
- (b) Members with at least 5% of the votes that may be cast at a general meeting shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act. A general meeting called in this way must be held not later than 2 months after the request was lodged.
- (c) A general meeting of the Company may be convened at two or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting and be heard.
- (d) If a failure in communication leads to the number of participants falling below that required for a quorum, the meeting will be suspended until a quorum is re-established. If a quorum is not reached within 15 minutes, the meeting is deemed to have terminated.

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## 17. NOTICE OF GENERAL MEETING

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- (a) Subject to consent to shorter notice being given in accordance with the Act, at least 21 days' notice of any general meeting must be given to every Member, Director and auditor of the Company specifying:
  - (i) the place, day and hour of the meeting;
  - (ii) the general nature of any business to be transacted at the meeting;
  - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;

- (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
  - (v) any other information required by the Act; and
  - (vi) notice must be given to all Members in accordance with **clause 56**.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

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## 18. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

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- (a) Subject to the provisions of the Act and this Constitution the Board may cancel a general meeting of the Company:
  - (i) convened by the Board; or
  - (ii) which has been convened by a Member or Members pursuant to the Act upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting for a period not greater than 60 days or change the venue at which it is to be held provided that sufficient notice is provided to the Members. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for the same is changed:
  - (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
  - (ii) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

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## 19. QUORUM FOR GENERAL MEETINGS

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- (a) No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- (b) A majority of Members entitled to vote constitute a quorum for all general meetings. In determining a majority, a Member may be counted once including if attending by proxy.

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- (c) If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
    - (i) the meeting if convened upon the requisition of Members shall be dissolved;
    - (ii) in any other case:
      - (A) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
      - (B) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting the meeting shall be dissolved.

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## 20. CHAIRPERSON

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- (a) The Board must elect from its number a Chairperson and may elect from its number a Deputy Chairperson.
- (b) The Chairperson and Deputy Chairperson shall be elected for a term of two years and that term shall commence from the conclusion of the meeting at which the results of the election are declared.
- (c) Where a person ceases to be a Director that person automatically ceases to be a Chairperson or Deputy Chairperson (as appropriate).
- (d) There is no limit to the number of terms a Director may be elected in accordance with **clause 20(a)**.
- (e) The Chairperson shall be entitled to preside as chairperson at every general meeting.
- (f) Where a general meeting is held and:
  - (i) there is no Chairperson; or
  - (ii) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chairperson of the meeting, the Deputy Chairperson shall preside as Chairperson of the meeting; or
  - (iii) if there is no Deputy Chairperson or the Deputy Chairperson is not present or is unwilling to act then the other Members present may choose by majority another Director as Chairperson of the meeting by two-thirds majority; or
  - (iv) if all the nominated Directors present decline to take the chair, the Members present may choose one of their number to be Chairperson of the meeting.

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- (g) The rulings of the Chairperson on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

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## 21. ADJOURNMENTS

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- (a) The Chairperson of a general meeting at which a quorum is present:
- (i) may adjourn a meeting with the consent of the meeting; and
  - (ii) must adjourn the meeting if the meeting so directs, to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

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## 22. WRITTEN RESOLUTIONS OF MEMBERS

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- (a) Regardless of any clause in this Constitution to the contrary, a written resolution signed by the requisite number of Members entitled to vote on the resolution is valid and effectual as if it had been passed as a resolution at a general meeting or annual general meeting.
- (b) A draft of the proposed written resolution must be provided to all Members, Directors and the auditor of the Company at least 14 days before a final copy is issued to all Members of the Company, unless all recipients of the draft written resolution agree in writing to a short notice period.
- (c) A final written resolution of the Members becomes effective when the last Member signs.
- (d) For completeness, both a Special Resolution and an ordinary resolution may be passed by a written resolution of the Members, provided that every Member entitled to vote on the resolution signs a resolution to that effect and lodges it with the Secretary.
- (e) The written resolution may consist of a series of identical documents each signed by one or more Members.
- (f) An electronically transmitted document received by the Company and apparently signed by one or more Members is taken to be a document signed by such Member or Members.

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- (g) A written resolution of Members appointing or removing an auditor will be invalid.

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## 23. DETERMINATION OF QUESTIONS

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- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
- (i) the Chairperson of the meeting; or
  - (ii) at least two Members entitled to vote on the resolution.
- (b) Before a vote on a resolution is taken, the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chairperson of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

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## 24. POLLS

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- (a) A poll may be demanded:
- (i) before a vote on a resolution is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chairperson of the meeting directs subject to **clause 24(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chairperson or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

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## 25. VOTING RIGHTS

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- (a) A Member entitled to vote has one vote, both on a show of hands and a poll.
- (b) No person other than a Member shall be entitled to a vote at a general meeting.

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## 26. OBJECTION TO QUALIFICATION TO VOTE

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Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairperson whose decision shall be final and conclusive and a vote allowed by the Chairperson shall be valid for all purposes.

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## 27. CHAIRPERSON DOES NOT HAVE A CASTING VOTE

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In the case of an equality of votes whether on a show of hands or on a poll the Chairperson of the meeting of Members at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

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## 28. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

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- (a) The Chairperson may invite any person who is not a Member to attend and/or address a general meeting.
- (b) Any auditor of the Company shall be entitled to attend and/or address a general meeting.

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## 29. RIGHT TO APPOINT PROXIES

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- (a) A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.
- (b) If a Member appoints a proxy the proxy is entitled to one vote per proxy.

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## 30. APPOINTING A PROXY

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- (a) The instrument appointing a proxy must be in writing signed by the appointing Member or the appointing Member's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised officer or attorney of the corporation.



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- (b) The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
    - (i) the name and address of the Member;
    - (ii) the name of the Company;
    - (iii) the proxy's name or the name of the office of the proxy; and
    - (iv) the meetings at which the instrument of proxy may be used.
  - (c) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
  - (d) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 30(b)**.
  - (e) An instrument of proxy may be revoked at any time by notice in writing to the Company.

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### 31. LODGEMENT OF PROXIES

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- (a) An instrument appointing:
  - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form via whatever means the notice of meeting permits at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the document was received at that place. For completeness, a legible copy of the document will be sufficient for the purposes of this **clause 31**.

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## 32. VALIDITY OF PROXIES

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- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death or unsoundness of mind of the Member;
  - (ii) the bankruptcy or liquidation of the Member;
  - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,
- if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.
- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

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## 33. RIGHTS OF PROXIES AND ATTORNEYS

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- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish their identity they may be excluded from voting either upon a show of hands or upon a poll.

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## 34. BOARD OF DIRECTORS

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- (a) The Board of the Company shall consist of not less than seven and not more than nine Directors, comprising of no more than:
- (i) five Directors elected by the Members (**Member Elected Directors**) in accordance with **clause 35**; and

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- (ii) four Directors appointed by the Board in accordance with **clause 36 (Appointed Directors)**.
  - (b) A majority of Directors must hold general registration as a physiotherapist in Australia without conditions.
  - (c) The Member responsible for the election of that Director (in the case of a Member Elected Director) or the Board (in the case of an Appointed Director) may appoint an alternate to exercise some or all of the Director's powers for a specified period and may request the Company to give the alternate notice of Directors' meetings. When an alternate exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director. The appointing person may terminate the alternate's appointment at any time. An appointment and its terms or a termination must be in writing and given to the relevant regulatory body and the Company.
  - (d) A Director will serve a term of 3 years from the effective date of appointment or election (as appropriate) and may be eligible for re-election or appointment (as appropriate) as a Director provided that this appointment or election will not result in the Director serving more than three consecutive terms. For the avoidance of doubt, a period of less than 3 years served by a person as a Director filling a casual vacancy will not be considered to be a term for the purposes of this clause. A Director who has served as a Director for three consecutive terms will be eligible for re-election or re-appointment after a period of 12 months after the last of those terms.
  - (e) The Directors may appoint a person as a Director to fill a casual vacancy if that person:
    - (i) is nominated by a Member entitled to vote under **clause 35** or possesses the governance skills pursuant to **clause 36** to which the casual vacancy relates;
    - (ii) gives the Company their signed consent to act as a Director of the Company, and
    - (iii) is not ineligible to be a director under the Act or the ACNC Act.
  - (f) A person appointed to fill a casual vacancy holds office for the balance of the term of the Director whose vacancy has been filled.

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## 35. MEMBER ELECTED DIRECTORS

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- (a) A call for nominations for Member Elected Directors shall be made by the Board no later than 30 days before a general meeting or annual general meeting of the Company specifying each category for which a vacancy or vacancies exist in accordance with **clause 35(b)** and the commencement date of the term.
- (b) Member Elected Directors must include no more than:
  - (i) three Directors who are elected by and from the Members of the Company; and

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- (ii) one Director who is elected by and from those Members of the Company representing the professional sector; and
  - (iii) one Director who is elected by and from those Members of the Company representing the education sector.
- (c) Member Elected Directors shall be nominated:
- (i) by a Member; and
  - (ii) in the form approved by the Board specifying which category in **clause 35(b)** the nominee is nominated for, signed by the nominee and nominating Member and delivered to the Office of the Company no later than 14 days before the general meeting or annual general meeting.
- (d) A list of the nominees' names in alphabetical order for each category in **clause 35(b)** with the name of the nominating Member must be provided to each Member in the respective category at least 10 days before the general meeting or annual general meeting.
- (e) If there are no nominations for a particular category for which a vacancy exists in accordance with **clause 35(b)**, nominations will be accepted from the floor, and if no nominations are received, the position will be declared vacant.
- (f) If the number of nominations for a category in **clause 35(b)** equals the number of vacancies in that category, the nominee(s) will be declared elected at the general meeting or annual general meeting.
- (g) If the number of nominations for a category in **clause 35(b)** exceeds the number of vacancies in that category, voting will occur at the general meeting, and each Member will have one vote for each vacancy in a category for which they are entitled to vote in accordance with **clause 35(b)**.
- (h) The successful nominees will be declared at the meeting and take office as Member Elected Directors on their respective term commencement dates specified pursuant to **clause 35(a)**.
- (i) The Members who are eligible to elect a nominee for the particular category in accordance with **clause 35(b)** may in accordance with **clause 22** (but excluding **clause 22(b)**) elect the nominee by written resolution and no meeting may be held.

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## 36. APPOINTED DIRECTORS

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- (a) Appointed Directors shall be appointed by 75% of the Board in attendance at a Board meeting having regard to the governance skills those Directors would contribute to the Board which may include, without limitation, regulation, law, finance, marketing, business development, consumer (non-physiotherapist) or other as determined by the Board from time to time.
- (b) The term for an Appointed Director set out in **clause 34(d)** will commence on a date determined by the Board with the consent of the Director.

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## 37. VACATION OF OFFICE

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- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
  - (i) resigns in accordance with **clause 37(a)**;
  - (ii) becomes an insolvent under administration (within the meaning of the Act); or
  - (iii) becomes prohibited from being a director of a company by reason of any order made under the Act or is otherwise disqualified by law from being a Director;
  - (iv) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
  - (v) in accordance with **clause 34(d)** has served a maximum number of terms;
  - (vi) is absent without permission of the Board from meetings of the Board held for more than 6 months and the Directors resolve that his or her office be vacated;
  - (vii) was elected as a Member Elected Director and is removed from office by a Special Resolution of the Members in a general meeting; or
  - (viii) was appointed by the Board as an Appointed Director and is removed by resolution of 75% of the Board.

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## 38. POWERS OF DIRECTORS

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All day to day control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.

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## 39. PAYMENTS TO DIRECTORS

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- (a) With the approval of the Board, the Company may pay a Director for the Director's service to the Company as a Director a reasonable remuneration in an amount or calculated using a methodology agreed by a majority of the Members.
- (b) This clause does not limit any payment for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity of Director, where the provision of the service has the prior

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approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service.

- (c) The Directors shall be entitled to be paid or reimbursed for all travelling and other expenses reasonably incurred by them in connection with any meeting of the Directors, any meeting of a committee, general meetings of the Company and otherwise in connection with fulfilment of their duties as a Director.

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#### **40. FUNDS AND ACCOUNTS**

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- (a) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least two Directors. The Directors may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.
- (b) The bank accounts of the Company shall be operated by such person, or persons as determined by the Board from time to time.
- (c) The Company may have any number of separate accounts.

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#### **41. CONFERMENT OF POWERS**

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- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

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#### **42. CONTRACTS AND CONFLICTS OF INTEREST**

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- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions that apply to such contracts or arrangements.
- (b) A Director must disclose an interest as soon as they become aware of that interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.

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- (c) A Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board subject to compliance with section 195 and related provisions of the Act still may:
    - (i) vote on the matter;
    - (ii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
    - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
    - (iv) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
  - (d) A Director's failure to make disclosure under this clause does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
  - (e) A general notice given to the Board by a Director that the Director is an Officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

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### 43. MEETINGS OF DIRECTORS

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- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit provided that they shall meet together not less than four times each calendar year.
- (b) The Board may act even if there are vacancies on the Board.
- (c) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least 48 hours' notice of the meeting to all Directors.
- (d) Notice of a meeting of the Board need not be in writing.
- (e) A Board meeting may be convened or held using any technology consented to by all Directors so long as all Directors can be heard. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently

agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

- (g) If the number of Directors falls below the number set out in **clause 34(a)**, the Board may meet for the purpose of appointing an Appointed Director (if any vacancies exist), or convening a general meeting for the Members to elect a Member Elected Director.

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#### 44. QUORUM FOR BOARD MEETINGS

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- (a) A majority of Directors entitled to attend a meeting of the Board who are personally present (or in conference in accordance with **clause 43**) including at least one Member Appointed Director form a quorum.
- (b) A quorum must be present at all times during the meeting.
- (c) A Director who is disqualified from voting on a matter pursuant to **clause 42** shall be counted in the quorum despite that disqualification.

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#### 45. CHAIRPERSON

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- (a) The Chairperson shall, if present, preside as chairperson of every meeting of the Board.
- (b) If a meeting of Board is held and the Chairperson has notified that he or she will not be attending or is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the Deputy Chairperson shall preside as chairperson of the meeting.
- (c) If there is no Deputy Chairperson or the Deputy Chairperson is not present or is unwilling to act then the other Directors present may choose by majority another Director as Chairperson for the meeting.

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#### 46. VOTING AND BOARD SPECIAL RESOLUTIONS

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- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chairperson does not have a casting vote in addition to a deliberative vote and the resolution is taken to have been rejected.



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## 47. RESOLUTIONS BY DIRECTORS

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- (a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document. The resolution is passed when the last Director signs.
- (b) A document which is received by the Company in legible form via whatever means and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the document by the Company in legible form.
- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.

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## 48. COMMITTEES OF THE BOARD

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- (a) The Board may form and delegate any of its powers to any number of Committees consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. The terms of reference of each Committee will be determined by the Board.
- (b) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (c) The Board shall elect a chairperson of each Committee.
- (d) The meetings and proceedings of any Committee will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution to the extent that they are not inconsistent with any other directions of the Board.
- (e) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made entered and signed.

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## 49. VALIDATION OF ACTS OF DIRECTORS

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All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

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shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

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## **50. MINUTES**

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- (a) The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:
  - (i) the names of the Directors present at each meeting of the Directors;
  - (ii) the name of the Chairperson of the meeting;
  - (iii) all orders, resolutions and proceedings of general meetings and of meetings of Directors;
  - (iv) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the Chairperson of the meeting, or the Chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

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## **51. CHIEF EXECUTIVE OFFICER**

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- (a) The Board may appoint a Chief Executive Officer (CEO) on any terms it thinks appropriate and may remove the CEO either in writing or if appointed for a fixed term, when the term ends.
- (b) A CEO will report directly to the Board and be accountable to the Board.
- (c) A CEO will receive such remuneration as the Board determines from time to time.
- (d) The powers, duties and responsibilities of a CEO will be determined by the Board and may be amended from time to time.

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## 52. SECRETARY

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- (a) There must be at least one Secretary appointed to that office by the Board. Such Secretary may be an honorary Secretary and need not be a Director.
- (b) The Board may remove any Secretary from that office.

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## 53. AUDIT

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- (a) A registered company auditor must be appointed.
- (b) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

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## 54. EXECUTION OF DOCUMENTS

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- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 127 of the Act, the Company may execute any agreement, deed or other document by:
  - (i) two Directors signing the same; or
  - (ii) one Director and one Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

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## 55. ACCOUNTS AND INSPECTION

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The Board shall cause proper financial records to be kept and must distribute copies of the financial reports of the Company and a Directors' report in accordance with the requirements of the Act and also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

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## 56. SERVICE OF NOTICES

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- (a) A notice may be given by the Company to any Member by:
  - (i) serving it on the Member personally; or
  - (ii) sending it to the Member at an address indicated in the Register.
- (b) An address may include a facsimile, email or any other electronic address supplied by the Member to the Company for the purposes of giving notice to the Member.

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- (c) Any Member who has not provided or sent to the Office a place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
  - (d) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
  - (e) Where a notice is sent by electronic means such as email, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.

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## 57. WINDING UP

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The Company may be dissolved by a Special Resolution of Members at a general meeting of Members. If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which has:

- (a) objects which are similar to the objects of the Company as set out in **clause 4**;
- (b) a governing document which requires its income and property to be applied in promoting its objects; and
- (c) a governing document which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 4(d)**.

The identity of the corporation or institution is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

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## 58. INDEMNITY

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To the extent permitted by law, every Officer and employee (and former Officer or employee) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer or employee (or former Officer or employee) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or

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- (b) it is in respect of a liability for costs and expenses incurred:
    - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or employee (or former Officer or employee) or in which the Officer or employee (or former Officer or employee) is acquitted; or
    - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer or employee (or former Officer or employee).

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## 59. PAYMENT OF INDEMNITY POLICY PREMIUM

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- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer or employee (or former Officer or employee) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
  - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of sections 182 or 183 of the Act.

The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (b) Where an Officer or employee (or former Officer or employee) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer or employee under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

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## 60. INDEMNITY TO CONTINUE

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The indemnity granted by the Company contained in **clauses 58** and **59** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

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## 61. TRANSITIONAL PROVISIONS

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Despite any other provision of this Constitution:

- (a) A person who is a Director of the Company immediately before the commencement of this Constitution is taken to be a Director under this Constitution for the remainder of that Director's then current term.

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- (b) A person who is Chairperson or Deputy Chairperson immediately before the commencement of this Constitution is taken to be Chairperson or Deputy Chairperson (as the case may be) under this Constitution for the remainder of their then current term.
  - (c) A person who is a Secretary of the Company immediately before the commencement of this Constitution is taken to be a Secretary under this Constitution pursuant to the terms of any contract then in place.
  - (d) A person who is CEO of the Company immediately before the commencement of this Constitution is taken to be CEO under this Constitution pursuant to the terms of any contract then in place.
  - (e) A Committee of the Company immediately before the commencement of this Constitution is taken to be a Committee under this Constitution pursuant to any terms of reference then in place.
  - (f) A person who is a Member of the Company immediately before the commencement of this Constitution is taken to be a Member under this Constitution and will be assigned a membership category in accordance with **clause 6.2(e)** by the Board.
  - (g) A person who is an auditor of the Company immediately before the commencement of this Constitution is taken to be the auditor under this Constitution pursuant to the terms of any contract then in place.