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Constitution of Positive Life NSW Inc.

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Constitution of Positive Life NSW Inc.

Introduction

1. Definitions and interpretation

1.1 Definitions

In this Constitution:

Act means the *Associations Incorporation Act 2009 (NSW)* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Adoption Date means the date on which this Constitution is adopted by the Association as its constitution.

Annual General Meeting means a general meeting of Members duly convened and held at least once every calendar year.

Associate Member means any person who applies and is eligible for membership of the Association:

- (1) who has not disclosed their HIV status;
- (2) who lives in New South Wales, identifies as a person affected by HIV, but is under the age of 18 years (subject to the consent of the parent or guardian, as appropriate); or
- (3) who, regardless of age, identifies as a person affected by HIV, but does not ordinarily reside in New South Wales.

Association means Positive Life NSW Inc. ABN 42 907 908 942.

Auditor means any person or body corporate appointed by the Directors to perform the duties of an auditor of the Association.

Chief Executive Officer means any person appointed to perform the duties of chief executive officer of the Association.

Director means any person or persons appointed to the position of director of the Association or a number of directors assembled as a board.

Distinguished Member means any person who is nominated and has been elected by the Directors for their significant contribution to the rights and wellbeing of persons affected by HIV / AIDS in New South Wales.

Executive Director means, any person appointed to the position of president, vice-president, treasurer or secretary.

Full Member means any person who is eligible for membership of the Association, lives in New South Wales, identifies as a person living with HIV and is aged 18 years or over.

Member means any person entered in the register of members as a Full Member, Associate Member or Distinguished Member of the Association from time to time.

Previous Constitution means the constitution of the Association immediately before the Adoption Date.

Regulation means the *Associations Incorporation Regulation 2016 (NSW)* under the Act.

Public Officer means any person holding office under this Constitution as the public officer of the Association.

Special General Meeting means a general meeting of Members, other than the Annual General Meeting.

Staff Representative means any person appointed to perform the duties of the staff representative of the Association.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the other;
 - (b) either gender may include persons that identify as gender expansive;
 - (c) the singular includes the plural and the plural includes the singular;
 - (d) a thing includes the whole and each part separately;
 - (e) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced.
- (2) Except so far as the contrary intention appears in this Constitution an expression in this Constitution the same meaning as in the Act.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Constitution or affect its interpretation.
- (5) The provisions of the *Interpretation Act 1987* apply to this Constitution in the same manner as those provisions would so apply if this Constitution were an instrument made under the Act.

2. Transitional

2.1 This Constitution has the effect that:

- (1) every Director in office as at the Adoption Date continues in office, and is taken to have been appointed or elected under this Constitution;
- (2) any register maintained by the Association immediately before the Adoption Date is taken to be a register maintained under this Constitution; and
- (3) any seal adopted by the Association before the Adoption Date is taken to be a seal until another seal is adopted under this Constitution.

2.2 This Constitution supersedes any previous constitution on and after the Adoption Date.

Objects

3. Objects of the association

3.1 The objects of the Association shall be to:

- (1) empower people living with HIV / AIDS in New South Wales with information, referral and advice on relevant issues and, in particular, with information dealing with health promotion and significant life issues.
- (2) advocate on behalf of people living with HIV / AIDS and to lobby government, business and non-government organisations about issues of concern to people living with HIV / AIDS, with the aim of ensuring the optimum wellbeing, care and support for people living with HIV / AIDS, their partners, family members and significant others.
- (3) promote a positive image of people living with and affected by HIV / AIDS, with the aim of eliminating prejudice, isolation, stigmatisation and discrimination.
- (4) promote the inclusion of people living with HIV / AIDS and their views in the development and delivery of policies and programs which affect those people.
- (5) work closely with HIV specific and mainstream health and community sectors and other relevant organisations in the pursuit of these objectives.
- (6) receive donations, grants and bequests from persons and institutions including governments and to engage in such fundraising activities which achieve the objectives of the Association.

4. Alteration of objects

4.1 The objects of the Association shall not be altered except in accordance with the Act and as approved by the Commissioner of Taxation for the purpose of Section 78(1)(a)(i) or (ii) of the *Income Tax Assessment Act 1997* (or any amendment thereof).

Membership

5. Application for membership

5.1 An application of a person for membership of the Association:

- (1) shall be made in writing;
- (2) shall be submitted by post, unless the Directors decide to allow applications to be made by email or other electronic means; and
- (3) shall be lodged with the secretary.

5.2 As soon as practicable after the receipt of an application for membership, the secretary shall refer the application to the Directors who shall determine whether to approve or reject the application.

5.3 The Directors shall cause to keep the names of all applicants strictly confidential.

5.4 The secretary shall, on approval of the application for membership, designate the entry of the approved applicant's name in a register of members and, upon the name being entered on the register, the applicant becomes a Member.

- 5.5 Where the Directors reject an application for membership, the secretary shall as soon as practicable, provide written notice to applicant:
- (1) setting out the decision of the Directors and the grounds on which the decision was based;
 - (2) stating that the applicant may address the Directors at a meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after notice was deemed served;
 - (3) stating the date, place and time of that meeting; and
 - (4) inform the applicant that they may do either or both of the following:
 - (a) attend and speak at a meeting convened for this purpose; and/or
 - (b) submit to the Directors at, or prior to the meeting, written representations relating to the decision.
- 5.6 At the meeting, the Directors shall:
- (1) give to the applicant an opportunity to make oral representations;
 - (2) give due consideration to any written representations submitted to the Directors by the applicant at or prior to the meeting; and
 - (3) by way of resolution, determine whether to confirm or revoke their prior decision.
- 5.7 In the event that the Directors reconfirm their decision to reject the application, the secretary shall within seven (7) days inform the applicant in writing of their decision to reject the application and of the applicant's right to appeal that decision.
- 5.8 An applicant may appeal against the Directors' decision to reject an application to a general meeting by submitting written notice to the secretary that effect within fourteen (14) days from receiving the notice.
- 5.9 On receipt of a notice of appeal from an applicant, the secretary shall seek the Directors' approval to convene a general meeting to be held within forty-two (42) days after the date on which the secretary received the notice of appeal.
- 5.10 At a general meeting convened under clause 5.9 above:
- (1) no special business other than the business of the applicant's appeal shall be transacted;
 - (2) the Directors and the applicant shall be given the opportunity to put their respective cases forward;
 - (3) only Full Members present or represented must form a quorum of no less than nine (9) and shall vote by secret ballot on the question of whether the appeal shall be upheld or disallowed;
 - (4) if the general meeting disallows the appeal by a 2/3 majority, the decision of the Directors shall be final and binding; and
 - (5) if the general meeting allows the appeal by a 2/3 majority, the decision of the Directors will be overturned and the secretary shall forthwith enter the applicant's name in the register of members. Upon the name being entered, the applicant becomes a Member of the Association.

6. Register of members

- 6.1 The secretary shall oversee the maintenance of a register of members in which shall be entered the full name, contact details (including their residential address, email address and telephone number, if so required), the date of commencement of their membership and where applicable, the date of either any change in the category of membership or the cessation of membership of each Full Member, Associate Member and Distinguished Member. The register of members may be kept in written or electronic form.
- 6.2 The secretary shall keep the names on the register of all members strictly confidential.
- 6.3 Any person who is eligible to be a Member but who does not wish to be identified by their name on the register of members should apply under their name, but may request to be registered under an alias.

7. Rights, privileges or obligations

- 7.1 Any right, privilege or obligation of any Member of the Association:
- (1) may not be transferred to another person; and
 - (2) terminates upon the cessation of the person's membership.

8. Fees

- 8.1 The Association shall not charge a joining fee or a membership fee.

9. Variation of membership

- 9.1 A Full Member's membership may be altered to that of an Associate Member if their normal place of residence is not in New South Wales.
- 9.2 An Associate Member's membership may be altered to that of a Full Member, so long as the criteria for such membership is met.
- 9.3 The Directors may at any time require a Member to provide satisfactory proof of their eligibility for membership. Failing to provide proof within twenty-one (21) days or such other period as the Directors may permit, may result in their membership being cancelled.

10. Cancellation and revocation of membership

- 10.1 All Members may resign from the Association by first giving one (1) months' notice to the secretary of their intention to cancel their membership. Upon the expiration of that notice period, the person shall cease to be a Member.
- 10.2 Upon notification that any Member has died, the secretary shall make an entry in the register of members recording the date that their membership ceased.
- 10.3 A person ceases to be a Member:
- (1) if the person dies, resigns or is expelled from the Association's membership; or
 - (2) Association fails to successfully contact a Member after all reasonable attempts have been made.

10.4 The Directors may by resolution:

- (1) expel a Member from the Association; or
- (2) suspend a Member's membership for a specified period if the Directors determine that the Member has:
 - (a) refused or neglected to comply with the Association's grievance or mediation processes;
 - (b) refused or neglected to comply with a provision or provisions of this Constitution; or
 - (c) behaved in such a way that is unbecoming a Member or prejudicial to the interests of the Association.

11. Complaints and grievances

11.1 The Directors may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.

11.2 If the Association decides to deal with the complaint, the Directors must:

- (1) cause written notice of the complaint to be served on the Member concerned;
- (2) give the Member at least fourteen (14) days from the date the notice is deemed served to make a written or oral submissions to the Directors in connection with the complaint;
- (3) take into consideration any submissions made by the Member in connection with the complaint; and
- (4) provide the Member with the Association's Complaints Policy and the procedure for dealing with complaints and grievances. This shall be in a non-ambiguous form and can be easily understood by the grievant / complainant.

11.3 The Directors may dismiss a complaint or by resolution, expel a Member from the Association or suspend a Member's membership if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted given the circumstances.

11.4 In the event that the Directors expel or suspend a Member, the secretary must, within seven (7) days after the action is taken, provide written notice to the Member outlining the reasons given by the Directors for having taken that action and to inform the Member of their right of appeal.

11.5 Expulsion of a Member or suspension of a Member's membership does not take effect:

- (1) until the expiry of the period within which the Member is entitled to appeal against the decision; or
- (2) if within the period the Member exercises the right of appeal, unless and until the Association in general meeting confirms the resolution, whichever is the later.

11.6 A Member may appeal to the Association in general meeting against a resolution of the Directors, by providing written notice to the secretary to that effect within fourteen (14) days from receipt of the notice.

11.7 If the Member appeals the Director's decision, the procedure to be identical to that prescribed in clause 5.10.

11.8 With the exception of complaints resolution, which are the subject to the Association's Complaints Policy and for the purpose of providing a mechanism for the resolution of disputes between Members (that is, in their capacity as Members) and between Members and the Association, the parties to the dispute should make a bona fide attempt to resolve any dispute they may have.

11.9 If the Members involved in a dispute are unable to resolve their differences, then the following shall apply:

- (1) the complainant should approach the president or, if the president is a party to the dispute, the vice-president, with a request for assistance in resolving the dispute;
- (2) the request for assistance must contain a written summary of the matters giving rise to the dispute, together with any supporting documents or such relevant written material as may assist in clarifying the matters in dispute;
- (3) where appropriate, the president or vice-president) should provide such assistance to the complainant to adequately prepare and present their complaint; and
- (4) the president or vice-president will as soon as practicable, notify the other party/ parties in writing of the dispute and must:
 - (a) with the complainant's consent, provide the respondent with copy of the complainant's written materials;
 - (b) inform the respondent that they may reply in such manner as they may choose, including written material;
 - (c) offer such assistance as the party may reasonably need in the circumstances to adequately prepare and present any reply; and
 - (d) nominate a mediator who has no conflict of interest, is a Member of the Association and a person chosen by agreement between the parties, or in the absence of such agreement (i) in the case of a dispute between Members, the mediator will be appointed by the Directors; or (ii) in the case of a dispute between a Member and the Association, a person who is a mediator appointed or employed by the Community Justice Centre operated by the NSW Attorney General's Department

convene a meeting as soon as possible at a mutually agreed time and place and failing their mutual agreement, within seven (7) days of the appointment of the mediator at the office of the Association.

11.10 At any mediation, the mediator shall:

- (1) determine the procedure for the mediation, ensuring that each party shall be accorded procedural fairness;
- (2) attempt to bring the parties to a satisfactory resolution of their dispute;
- (3) record the terms of any resolution or agreement reached between the parties which shall be signed by all the parties involved; and
- (4) notify the president or vice-president of the agreement and its terms.

11.11 In the event that the parties fail to reach an agreement, the mediator shall notify the president or vice-president of the failure of the mediation.

11.12 On receipt of any notification given under clause 11.11, the president or vice-president shall at the next directors' meeting refer the dispute to the Directors for its consideration. In this event, the Directors may:

- (1) at its discretion, appoint a committee of no less than two (2) Directors who shall have no conflict of interest, for the purposes of determining the dispute; and
- (2) for the purposes of determining the dispute, the committee shall:
 - (a) as soon as reasonably practicable, appoint a time and place for a hearing of the dispute;
 - (b) provide the parties with the opportunity to present such oral and/or written material they may choose to present;
 - (c) ensure that written notes of the hearing are taken and kept; and
 - (d) after hearing and considering all the material presented by the parties, give an oral decision with a brief summary of the committee's reasons, together with any recommendations the committee determines to be appropriate.

11.13 The committee will inform the board at its next meeting of the outcome of the hearing.

Meetings of members

12. Calling general meetings

12.1 A Director may call a general meeting of Members.

12.2 A general meeting may only be convened by Members if:

- (a) at least five (5) per cent of Full Members requisition the board to call a general meeting; and
- (b) the Directors receive the requisition either in written or in electronic form.

13. Notice of meeting

13.1 A notice of a general meeting must:

- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the electronic communication method that will be used);
- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (4) be worded and presented in a clear and concise manner.

13.2 At least fourteen (14) days' notice of a general meeting must be given to Members.

13.3 Notice of a general meeting must be given to:

- (1) each Member entitled to vote at the meeting;
- (2) each Director; and
- (3) the Auditor, in the case of the Annual General Meeting.

14. Business of an annual general meeting

- 14.1 The business of an Annual General Meeting may include any of the following, even if not referred to in the notice of the meeting:
- (1) to confirm the minutes of the last Annual General Meeting and of any Special General Meeting held since that meeting;
 - (2) to receive reports from the board on the activities of the Association during the last financial year;
 - (3) to consider the annual financial report, Directors' report and Auditor's report;
 - (4) the election of the Directors; and
 - (5) the appointment of auditor.
- 14.2 All other business not transacted at an Annual General Meeting, including that of a Special General Meeting, is considered special business.

15. Business of a special general meeting

- 15.1 The business of a Special General Meeting shall be any matter which is not ordinary business transacted at an Annual General Meeting. This may include, but is not limited to:
- (1) changing the name of the Association;
 - (2) changing the constitution of the Association;
 - (3) changing the Association's objects;
 - (4) an amalgamation with another incorporated association;
 - (5) to voluntarily wind up the Association and distribute its property;
 - (6) to apply for registration as a company or as a co-operative; and
 - (7) any other matter required under the Act.
- 15.2 Members shall receive no less than twenty-one (21) days prior notice of a Special General Meeting.
- 15.3 The notice referred to in clause 15.2 must include the resolution(s) to be proposed as a special resolution and may include an explanatory note, should this be needed.
- 15.4 Unless Members are advised otherwise, voting on a special resolution shall be by postal vote.
- 15.5 For a special resolution to be passed, it must be supported by 3/4 of the votes cast by Members who are entitled to vote under this Constitution.
- 15.6 The board may at any time convene a Special General Meeting.
- 15.7 A Special General Meeting requisitioned by Members must be held within three (3) months of receiving the initial request. A requisitioned Special General Meeting must:
- (1) state the purpose of the meeting;
 - (2) be signed by those Members making the requisition;
 - (3) must be submitted in person with the secretary;

- (4) may consist of several documents in a similar form, each signed by one or more of the Members making the requisition; and
- (5) be convened as soon as possible, in the same way as those meetings convened by the Directors.

15.8 If a Special General Meeting is not held within twenty-eight (28) days from the date the request was submitted to the secretary, any one or more of the eligible Members who made the request may convene a Special General Meeting to be held no later than ninety (90) days after that date.

16. Accidental omission to give notice

16.1 The accidental omission to give notice of any general meeting or the non-receipt of the notice by any person entitled to receive such notice under this Constitution does not invalidate the proceedings or any resolution passed at the meeting.

17. Cancellation or postponement of general meeting

17.1 The Directors may change the meeting venue of or cancel the general meeting. However:

- (1) a meeting which is not called by resolution of the Directors; and
- (2) a meeting which is called in accordance with a Members' requisition

may not be cancelled without the prior consent of the Members who requisitioned the meeting.

17.2 The Directors may postpone the holding of a general meeting at their discretion (other than a meeting requisitioned by eligible Members).

17.3 Whenever a meeting is postponed, the same notice period to re-convene a meeting must be given to persons entitled to receive such notice.

18. Electronic communication

18.1 The Association may hold a general meeting at 2 or more venues using any method of electronic communication that gives Members as a whole a reasonable opportunity to participate.

18.2 Members who participate at a general meeting using an electronic form of communication have the same rights as Members who are physically present, including voting rights.

19. Admission to general meetings

19.1 Any persons in possession of placards, banners or articles considered by the chair to be dangerous, offensive or liable to cause disruption, or who refuse to produce or to permit examination of any articles in their possession or the contents of the articles, or who otherwise behave or threaten to behave in a dangerous, offensive or disruptive manner, may be refused admission to the meeting or may be required to leave and remain out of the meeting.

19.2 Any persons in possession of pictorial recording or sound recording devices shall be refused admission to the meeting or may be required to leave and remain out of the meeting.

19.3 The chair of the meeting may in their absolute discretion refuse admission to, or require to leave and remain out of the meeting, any person who is not a Member, Director or Auditor of the Association.

20. Other persons to be present at meetings

- 20.1 Whilst the Auditor and/or any person delegated to represent the Auditor may not be a Member, they shall be entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the Auditor.
- 20.2 Any professional adviser of the Association (including without limitation, a solicitor or financial adviser) shall at the request of the Executive Directors be entitled to attend and, at the request of the chair, speak at any general meeting. However, the Association is not obliged to send a notice of meeting to any professional adviser.

21. Quorum

- 21.1 The quorum for a general meeting is five (5) Members (being Members under this Constitution entitled to vote at a general meeting) and the quorum must be present at all times during the meeting
- 21.2 If a quorum is not present within 30 minutes after the meeting was due to be convened, set out in the notice of meeting:
- (1) where the meeting was called on the requisition of Members, the meeting shall be dissolved; or
 - (2) in other cases, the meeting is adjourned to the date, time and place that the Directors may determine. If the Directors do not specify one (1) or more of those things, the meeting is adjourned to:
 - (a) the same day in the next week, if the date is not specified,;
 - (b) the same time, if the time is not specified; and
 - (c) the same place, if the place is not specified.
- 21.3 If no quorum is present at the resumed or re-adjourned meeting within 30 minutes after the commencement time for that meeting, the meeting shall be dissolved.

22. Chair at general meetings

- 22.1 The president, or in their absence, the vice-president, shall preside as chairperson at each general meeting.
- 22.2 If the president and the vice-president are absent or unwilling to act, the Members present may elect another Director to preside as chairperson of the meeting.
- 22.3 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings shall be accepted.
- 22.4 At their absolute discretion, the chair may terminate discussion or debate on any matter if the chair considers this necessary or desirable for the proper conduct of the meeting.

23. Resolutions proposed by members

- 23.1 A Member may not at any general meeting move any resolution relating to special business unless:
- (1) three (3) months have elapsed since the notice was given; or
 - (2) the resolution had previously been approved by the Directors.

24. Conduct of postal or electronic ballots

- 24.1 The Association shall hold ballots in either postal form or in electronic form, (but never as a combination of both forms) to determine the following:
- (1) the election of Directors; and
 - (2) any special resolution of which the necessary notice has been given in accordance with this Constitution.
- 24.2 Voting shall be conducted in accordance with the *Associations Incorporation Regulation 2016 (NSW)*, as amended from time to time.
- 24.3 The Directors must:
- (1) cause the details of the proposal to be stated on the ballot; and
 - (2) fix the dates for:
 - (a) the forwarding of ballots to Members; and
 - (b) the closing of the ballot; and
 - (c) appoint a returning officer for the ballot.
- 24.4 Every ballot must be conducted by the returning officer appointed by the Directors.
- 24.5 A Director may not be appointed as a returning officer.
- 24.6 The returning officer may be assisted in the performance of their duties by any person appointed to do so.
- 24.7 The returning officer must prepare a roll of the full names and addresses of the Members who are eligible to vote.
- 24.8 A person whose name is on the roll is entitled to vote in the ballot.
- 24.9 The returning officer must cause ballot papers to be prepared in a form which is in accordance with the *Associations Incorporation Regulation 2016 (NSW)*.

25. Electronic voting

- 25.1 This clause applies to a ballot for determination of a matter by the Association that is to be conducted by means of electronic voting.
- 25.2 Electronic voting shall be by means of email or other electronic means determined by the Directors.
- 25.3 The returning officer must ensure that the form for the electronic ballot paper contains:
- (1) instructions for completing the voting paper;
 - (2) the resolution or proposal being made; and
 - (3) the means of indicating the Members choice to vote on the proposals.

- 25.4 The returning officer must, at least fourteen (14) days (or twenty one (21) days in the case of a special resolution) before the date fixed for the closing of the ballot, give each Member:
- (1) access to an electronic ballot paper, or to a voting website or electronic application containing an electronic ballot paper, that complies with this clause;
 - (2) access to information about:
 - (a) how the ballot paper must be completed; and
 - (b) the closing date of the ballot; and
 - (c) if voting is by email, the address where the ballot paper is to be returned; and
 - (d) if voting is by other electronic means, the means of access and instruction on how the completed ballot paper is to be sent to the returning officer.
- 25.5 Each Member must vote in accordance with the instructions contained with the ballot paper.
- 25.6 If the ballot is a secret ballot, the returning officer must ensure that the identity of the voter cannot be ascertained by others from the form of the electronic ballot paper.
- 25.7 The returning officer must ensure that all electronic ballot papers are stored securely until such time as they can be counted.

26. Postal voting

- 26.1 The returning officer must prepare ballot papers that contain:
- (1) instructions for completing the voting paper; and
 - (2) the resolution or proposal being made; and
 - (3) a box for each a 'for' and 'against' vote against each matter being proposed.
- 26.2 The returning officer must, at least fourteen (14) days (or twenty one (21) days in the case of a special resolution) before the date fixed for the closing of the ballot, give each Member:
- (1) a ballot paper prepared for postal voting; and
 - (2) a notice describing:
 - (a) how the ballot paper must be completed; and
 - (b) the closing date of the ballot; and
 - (c) the address where the ballot paper is to be returned; and
 - (d) an envelope addressed to the returning officer. If the ballot is a secret ballot, an envelope should be marked "Voting Paper".
- 26.3 Each Member must vote by marking the ballot paper in accordance with the instructions contained in the notice.
- 26.4 If the ballot is a secret ballot, a Member must after completing the ballot paper:
- (1) enclose and seal the ballot paper in the envelope marked "Voting Paper"; and
 - (2) enclose and seal that envelope in the envelope addressed to the returning officer; and
 - (3) ensure that the returning officer receives the envelope no later than the close of the ballot.

- 26.5 If the ballot is not a secret ballot, a Member must, after completing the ballot paper:
- (1) enclose and seal the ballot paper in the envelope addressed to the returning officer; and
 - (2) give the envelope to the returning officer so that it is received no later than the close of the ballot.
- 26.6 On receipt of a returned postal ballots, the returning officer must:
- (1) compare the information on the ballot with the information on the register of members that the vote was validly cast by a person entitled to vote; and
 - (2) ensure that the ballot papers are securely stored until the counting of the votes begins.
- 26.7 A Member may return their ballot by post or in person, if delivered.

27. Validity of votes

- 27.1 A ballot paper indicating that a Member has failed to vote in accordance with the instruction provided by the returning officer shall not be deemed valid.
- 27.2 If in the opinion of the returning officer, the Member cast a valid vote, but the ballot paper (in the case of postal ballots) contained an unnecessary or inadvertent mark, the vote shall be deemed valid.
- 27.3 If electronic voting which uses a voting website or other electronic application (but not if voting is by email), the website or application should provide a warning message to the Member that the vote was not validly cast.
- 27.4 If electronic voting allows voting by email, a vote that is not made in accordance with the instruction provided by the returning officer shall be deemed invalid.

28. Voting entitlement and proxy voting

- 28.1 At a general meeting, only Full Members shall be entitled to vote.
- 28.2 An Associate Member has no right to vote at a general meeting, but may with the leave of the chair have speaking rights on any particular matter, subject to that Member having been confirmed as an Associate Member or their representative under clause 29.1.
- 28.3 Subject to any rights or restrictions relating to the voting rights of the Member and to this Constitution, at a general meeting on a show of hands (whether attending in person or by electronic means), each Member shall have one (1) equal vote.
- 28.4 Proxy voting is not permitted by Members at or in respect of any general meeting of the Association.

29. Members of unsound mind and minors

- 29.1 If a Member is:
- (1) of unsound mind; or
 - (2) a minor,

the Member's trustee or any other person who has proper authority, management or guardianship of the Member's estate or affairs may exercise any rights of the Member in relation to a general meeting as if the trustee or other person were a Member.

- 29.2 Any person with powers of authority, management or guardianship cannot exercise any rights unless the person has provided the Directors with satisfactory evidence of the person's appointment or status.

30. Objections to right to vote

- 30.1 A challenge to a right to vote at a meeting of Members:
- (1) may only be made at the meeting; and
 - (2) must be determined by the chair, whose decision is final.
- 30.2 A vote not disallowed following the challenge is valid for all other purposes.

31. Decisions

- 31.1 A resolution put to the vote at a meeting of Members must be decided on a show of hands by Members whether physically present or if attending by electronic means.
- 31.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes either for or against the proposal.

32. Resolutions to be decided on a show of hands

- 32.1 Any resolution to be considered at a general meeting shall be decided on a show of hands by Members whether physically present or if attending by electronic means.
- 32.2 On a show of hands, a declaration by the chair that a resolution is conclusive evidence of the result provided that the declaration reflects the show of hands. Neither the chair nor the minutes need to state the number or proportion of those votes recorded in favour or against the proposal.

Directors

33. Number of directors

- 33.1 Subject to the Act, the Directors assembled as a board shall consist of:
- (1) not more than nine (9) Directors, each of whom shall be a Full Member of the Association and of these, four (4) Directors shall be elected at the Annual General Meeting at the first anniversary of their appointment, and five (5) shall be elected on the second anniversary of their first appointment at the Annual General Meeting, and thereafter each year;
 - (2) a Staff Representative shall be elected annually by the staff of the Association at the first staff meeting held after the Annual General Meeting; and
 - (3) the Chief Executive Officer.
- 33.2 Each Director shall hold office for a two (2) year term on a rotating basis in the following order:
- (1) at the first anniversary of their appointment, four (4) Directors must stand down and be replaced by four (4) new Directors; and
 - (2) on the second anniversary of their first appointment, the remaining five (5) Directors must stand down and be replaced by five (5) new Directors.

- 33.3 A Director standing down is eligible for re-election for an additional term. There are no maximum number of consecutive terms for which a Director may hold office.
- 33.4 A resolution proposed at a special general meeting may seek to increase the total number of Directors referred to in clause 33.1(1).

34. Appointment of directors

- 34.1 The Association may appoint a person qualified to be a Director to the board only if the number of Directors does not exceed the maximum number fixed in accordance with this Constitution.

35. Elections of directors

- 35.1 Nominations of candidates for election as Directors must:
- (1) be made in writing, signed by two Full or Distinguished Members of the Association and accompanied by an expression of interest by the candidate; and
 - (2) be delivered to the secretary before the closing date.
- 35.2 A person nominated for election as a Director must be a Full Member of the Association.
- 35.3 If insufficient nominations are received to fill all vacancies, the candidates nominated are taken to be elected and any remaining vacant positions are considered casual vacancies.
- 35.4 If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are deemed to be elected.
- 35.5 If the number of nominations received exceeds the number of vacancies to be filled, a ballot shall be held.
- 35.6 The Board shall determine whether to use either a postal or electronic ballot for the election of Directors.
- 35.7 The president, vice-president, treasurer and secretary shall be elected at the first directors' meeting following the Annual General Meeting by the elected Directors.
- 35.8 If a Director becomes temporarily incapable of performing their duties, the Directors may appoint a Full Member to act as an alternative during the period of incapacity and the Member so appointed shall be deemed to be the occupant of the position during that period.
- 35.9 The oversight of any election ballot will be managed by a returning officer nominated by the Directors.

36. Casual vacancies and additional directors

- 36.1 The Directors may at any time appoint, or second, a Full Member of the Association to fill a casual vacancy and the Member so appointed may continue to hold office until the conclusion of the Annual General Meeting following their appointment. Until such time as their appointment can be formalised, the Director shall have no voting rights until such time as they are appointed by Members at the Annual General Meeting.

37. Insufficient directors

37.1 In the event of a vacancy or a number of vacancies exist for Director(s) or the number of Directors remaining on the board is not sufficient to constitute a quorum, the Directors shall appoint, in order of priority:

- (1) the Chief Executive Officer;
- (2) the Staff Representative; and
- (3) a Full Member of the Association who is free from conflict of interest and/or is willing to act as a Director

for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or to convene a general meeting .

38. Resignation and removal of directors

38.1 A Director may resign from the Association by giving prior written notice of their intention to resign either by post or in person, if delivered.

38.2 The Executive Directors may by resolution remove a Director from office.

39. Vacation of office of director

39.1 In addition to any other circumstances in which a Director's position may become vacant under this Constitution, the board shall determine whether a casual vacancy has arisen if the Director:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind;
- (3) is not present at three (3) consecutive meetings of Directors without special leave of absence from the president and the board have declared that their seat has become vacant;
- (4) being the Chief Executive Officer, ceases to be employed by the Association; or
- (5) becomes disqualified from being a Director.

40. Executive directors

40.1 For purposes of this Constitution, the Executive Directors of the Association shall include:

- (1) the president;
- (2) the vice-president;
- (3) the treasurer; and
- (4) the secretary.

40.2 The Executive Directors may exercise certain powers and authorities that the Directors may confer upon them from time to time.

40.3 Subject to any applicable election cycle, the Executive Directors shall be elected by the Directors from among the pool of Directors at the first directors' meeting following the Annual General Meeting.

41. Chief executive officer

- 41.1 The Directors may by resolution appoint a person as Chief Executive Officer of the Association.
- 41.2 The Chief Executive Officer's appointment may only be revoked or terminated by resolution of the Association.
- 41.3 Except as permitted by clause 58.4, the Chief Executive Officer shall not be entitled to vote at a directors' meeting.
- 41.4 The Directors may, but shall not be obliged, define the terms, conditions and any restrictions they see fit, to confer on the Chief Executive Officer any of the powers that the Directors themselves may exercise.
- 41.5 The Directors may at any time vary or withdraw any of the powers conferred on the Chief Executive Officer.

42. Public officer

- 42.1 The Executive Directors shall appoint a Public Officer.
- 42.2 The Public Officer must, as soon as practicable after being appointed notify the Association of his or her address.
- 42.3 The Public Officer may be heard on any matter at any meeting of Members' or the Directors'.
- 42.4 Except as required under clause 41.2, the Directors may at any time suspend or terminate the appointment of the Public Officer.
- 42.5 In the event of a vacancy arising, the Directors must within fourteen (14) days appoint a replacement Public Officer.

43. Staff representative

- 43.1 Except as permitted by clause 58.4, the Staff Representative shall not be entitled to vote at a directors' meeting.

44. Treasurer

- 44.1 The treasurer of the Association shall be responsible for ensuring that:
 - (1) all monies due to the Association are collected and received and that all payments authorised by the Association are made; and
 - (2) correct books and accounts are kept, showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the Association's activities.

45. Other officers

- 45.1 The Directors may create other positions within the Association, with powers, duties and authorities as they may choose to confer upon them from time to time.
- 45.2 The Directors may at any time suspend or terminate the appointment of a person holding a position created under clause 45.1 and may abolish the position.

Remuneration of directors

46. Remuneration for services offered by members

- 46.1 A Director may be remunerated for services provided to the Association in their capacity as a Full Member.

47. Remuneration of the chief executive officer

- 47.1 The Chief Executive Officer shall be paid such remuneration that the Executive Directors determine appropriate for the purpose of attracting and retaining a suitably qualified individual.
- 47.2 The remuneration of the Chief Executive Officer shall be a fixed sum, and must not include commission on or a percentage of any income however derived.
- 47.3 The Association shall pay the Chief Executive Officer superannuation contributions of an amount necessary to meet the minimum level of superannuation contributions required under any applicable legislation to avoid penalty, charge, tax or impost, provided that the making of that payment is permitted at all times, without recourse to a general meeting.

48. Payment of expenses

- 48.1 The Association shall cause to pay the Directors' travelling and other reasonable expenses that they properly incur:
- (1) for attending directors' meetings or meetings of board committees;
 - (2) for attending general meetings; and
 - (3) in connection with the Association's business, in general.

Powers and duties of directors

49. Responsibility of the directors

- 49.1 The Association shall be governed by the Directors.
- 49.2 Subject to the Act, the Regulations and this Constitution and to any decision made by Members in general meeting, the Directors:
- (1) shall control and govern the affairs of the Association;
 - (2) may exercise all duties as may be required by the Association, other than those functions that are required under this Constitution to be exercised by a general meeting; and
 - (3) have the authority to perform all acts and do such things as is necessary or desirable for the proper management of the Association.
- 49.3 A resolution passed in general meeting does not invalidate any prior act of the Directors, which would have been valid if that resolution had not been made or passed.

50. General business management

- 50.1 The general business of the Association shall be managed by, or under the direction of the Chief Executive Officer.

51. Committee of directors

- 51.1 The meetings and proceedings of any board committee shall be governed by the provisions in this Constitution regulating meetings.
- 51.2 The board may by instrument of delegation, constitute one (1) or more working group to report on such matters as are specified in the working group's instrument.
- 51.3 The working group membership shall be determined by the board, taking into account the skills and expertise deemed necessary to fulfil the objective of the instrument. In any event, the members shall as a guide include:
- (1) at least two (2) Directors; and
 - (2) the president (or their delegate).

Directors' interests

52. Director to disclose interests

- 52.1 A Director who has a material personal interest in a matter which conflicts or has the potential to conflict with the interests of the Association must give the other Directors notice of their interest as soon as they become aware of the conflict.

53. Prohibition on being present or voting

- 53.1 A Director who has a material personal interest in a matter being considered at a directors' meeting or during a meeting of Members':
- (1) must not be counted in the quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.

Directors' meetings

54. Meetings of directors

- 54.1 The Directors may meet together for the despatch of business, adjourn or otherwise regulate their meetings as they see fit.
- 54.2 A Director may at any time requisition, and the secretary must on receiving such notice, call a meeting of the Directors.

55. Notice of meeting

- 55.1 Reasonable notice of every directors' meeting must be given to each Director, except to those who:
- (1) have been given special leave of absence; or
 - (2) are absent from Australia and have not left contact details where they may be given notice.
- 55.2 A notice of a meeting of directors may be given in writing or orally, telephone, electronic mail or any other means of communication.

56. Electronic communications use at meetings of directors

- 56.1 A directors' meeting may be held using telephone or, if consented to by all Directors, by other means or forms of technology. The consent may be a standing one.
- 56.2 The following provisions apply to a meeting held by electronic means:
- (1) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
 - (2) at the commencement of the meeting, each Director must announce his or her presence to all the other Directors taking part in the meeting.
- 56.3 Where a directors' meeting is held using any electronic means:
- (1) the participants will be taken to be assembled together at a meeting and to be present at that meeting;
 - (2) the meeting will be taken to be held at the place agreed to by the participants so long as at least one Director is physically present at that place; and
 - (3) all proceedings of those meetings are deemed as valid and effective as if conducted at a meeting at which all of them were physically present.
- 56.4 If the secretary of the meeting is not present at a meeting held by electronic communication, one (1) of the Directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- 56.5 A Director may not leave an electronic communication meeting by disconnecting his or her link to the meeting unless that Director has previously obtained the express consent of the chair of the meeting.
- 56.6 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a meeting held by electronic communication unless that Director has previously obtained the express consent of the chair to leave the meeting.

57. Chairing directors' meetings

- 57.1 The president or failing him or her, the vice-president shall chair directors' meetings.
- 57.2 The Directors must elect another Director present to chair a meeting, or part of it, if the president or vice-president is not present within thirty (30) minutes after the time appointed for the holding of the meeting.

58. Quorum

- 58.1 The quorum for a meeting of the Directors is five (5). The quorum must be present at all times during the meeting.
- 58.2 Each Director shall have one equal vote.
- 58.3 Except as permitted by clause 58.4, the Chief Executive Officer and/or Staff Representative shall not be counted towards a quorum at a meeting of the Directors.
- 58.4 Pursuant to clause 37.1, in the event that the Chief Executive Officer and/or the Staff Representative attend a meeting for purposes of constituting a quorum, the board must cause to note with the meeting minutes that their attendance is solely for the purpose of constituting a quorum, as permitted under the Act, and that their eligibility to vote at the meeting is as a result of their being Full Members of the Association.

59. Passing of directors' resolutions

- 59.1 A resolution of the directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 59.2 The chair shall not have a casting vote in addition to any vote they have as a Director.
- 59.3 If there is an equality of votes cast by Directors entitled to vote on a resolution, the Directors must put the matter back to the entire board to resolve upon.

60. Minutes to be kept

- 60.1 The secretary must keep minute books in which they record, within one (1) month:
- (1) proceedings and resolutions of meetings of Members;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a board committee);
 - (3) resolutions passed by Members without a meeting; and
 - (4) resolutions passed by Directors without a meeting.
- 60.2 The Directors must ensure that minutes of a meeting, whether kept in written or electronic form are able to be signed by the chair of the meeting in whichever form they take.

Financial year, accounts, audit, funds and records

61. Financial year

- 61.1 The financial year of the Association shall:
- (1) end on the 30 June each year; and
 - (2) be each period of 12 months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

62. Accounts

- 62.1 The Directors must cause proper accounting and other records to be kept.
- 62.2 The Association shall on an annual basis prepare financial statements.
- 62.3 The Association shall have copies of the printed financial statements available to provide to Members attending an Annual General Meeting.
- 62.4 Notwithstanding clause 62.3 above, the Association shall upon the request of a Member, provide a printed copy of the financial statements of the Association.

63. Audit

- 63.1 A registered auditor must be appointed.
- 63.2 The remuneration of the Auditor must be fixed.

64. Funds

- 64.1 The funds of the Association shall be derived from and may include donations, grants, and non-monetary gifts and in such other sources as may be determined by the Directors from time to time.
- 64.2 All monies received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank or other authorised deposit-taking institutional account.
- 64.3 If appropriate, the Association must as soon as practicable after receiving any monies, issue an appropriate receipt.
- 64.4 Funds shall be used in pursuance of the objects of the Association in such manner as the Directors determine appropriate.
- 64.5 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by a duly authorised representative of the Association. All other payments and incidental expenses being made through a petty cash system.
- 64.6 Subject to the Act, the funds of the Association shall not be used to provide pecuniary gain for the benefit of any Member.

65. Records

- 65.1 The Public Officer of the Association must keep in his or her custody and under his or her control all records, books and other documents relating to the Association.
- 65.2 Except as permitted by the Directors, the following documents may be inspected by Members at the office of the Association, free of charge, during normal business hours:
- (1) records, books and other financial documents of the Association;
 - (2) this Constitution; and
 - (3) minutes of all meetings of Directors' and general meetings of Members'.
- 65.3 A Member may obtain a copy of any of the documents referred to in clause 65.2 on payment of the reasonable costs of photocopying.

Indemnity and insurance

66. Indemnity

- 66.1 To the extent permitted by law, the Association may indemnify:
- (1) any person who is a Director, Chief Executive Officer or Public Officer of the Association; and
 - (2) where the Directors considers it appropriate to do so, any person who has been a Director, Chief Executive Officer or Public Officer of the Association
- against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as public officer.
- 66.2 The indemnity does not extend to any amount which would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of a Director, Chief Executive Officer or Public Officer to the extent that liability is covered by insurance.

67. Insurance

- 67.1 The Association may pay or agree to pay a premium in respect of a contract insuring a person who is or has been a Director, Chief Executive Officer or Public Officer of the Association against any liability incurred by the person as a Director, Chief Executive Officer or Public Officer except a liability (other than for legal costs) arising out of conduct involving a wilful breach of duty in relation to the Association.

68. Liability

- 68.1 A Director, Chief Executive Officer or Public Officer of the Association is not liable for the act, neglect or default of any other Director, Chief Executive Officer or Public Officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office, unless it arises through his or her own negligence, default, breach of duty or breach of trust.

Winding up

69. Distribution of assets

- 69.1 If the Association is wound up or caused to be deregistered, after debts are paid, any remaining assets of the Association shall be transferred to another incorporated association that has similar objects to the Association.
- 69.2 Transfers of assets must be made to an organisation approved by the Commissioner of Taxation under sub-sections (i) or (ii) of section 78 (1)(a) of the Income Tax Assessment Act 1997 (or any amendment or re-enactment thereof).
- 69.3 The organisation to which the transfer is being made to shall be determined in accordance with a special resolution, or in the absence of a special resolution, by the Registrar of Incorporated Associations.

70. Limitation of liability

- 70.1 Members shall have no liability to contribute towards the payments of debts and liabilities of the Association or the cost, charges and expenses of the winding up of the Association.

71. Confidential information

- 71.1 Only the Executive Directors shall be entitled to require information concerning Members.

Execution of documents

72. Common seal

- 72.1 The Association may, but need not have a common seal.

73. Use of common seal

- 73.1 If the Association has a common seal, the secretary must provide for its safe custody.
- 73.2 The Association shall execute a document with its common seal if the fixing of the seal is signed by two (2) Directors or one (1) Director and the secretary.

74. General execution of documents

- 74.1 A document not requiring the use of a common seal may be executed by a duly authorised representative of the Association or as required by law.