
Corporations Act
A Company limited by guarantee

**Constitution of The
Medical Benevolent
Association of New
South Wales
(ABN 34 000 033 830)**



SINCE 1896

MEDICAL BENEVOLENT
ASSOCIATION OF NSW

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1. Preliminary

1.1. Replaceable rules

All of the replaceable rules set out in the Act which the Association is entitled to displace, are displaced by the rules set out in this Constitution.

1.2. Definitions

The following expressions in this Constitution have the meaning below:

- (a) *Act* means the *Corporations Act 2001 (Commonwealth)* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
- (b) *Association* means The Medical Benevolent Association of New South Wales (ABN 34 000 033 830);
- (c) *ATO* means the Australian Taxation Office;
- (d) *ATO Endorsed Entity* means an entity which is endorsed by the ATO as a deductible gift recipient in accordance with Division 30 of the Income Tax Assessment Act 1997;
- (e) *Auditor* means the auditor for the time being of the Association;
- (f) *Constitution* means this constitution of the Association and any supplementary, substituted or amended constitution for the time being in force;
- (g) *Council* means the council of the Association;
- (h) *Councillor* means any person formally and lawfully appointed as a councillor of the Association and who shall be the directors of the Association from time to time;
- (i) *General Meeting* means meetings of Members and includes annual general meetings.

- (j) *Honorary Life Member* means has the meaning set out in **rule 8.3(c)**;
- (k) *Material Personal Interest* has the same meaning as given in the Act;
- (l) *Members* means the persons who for the time being are members of the Association and whose names are entered in the Register as members; *Member* means any one of them; and *Membership* has a corresponding meaning;
- (m) *Office* means the registered office from time to time of the Association;
- (n) *Register* means the register of Members of the Association to be kept in accordance with the Act; and
- (o) *Secretary* means any person appointed to perform the duties of a secretary of a Association.

1.3. Interpretation

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.
- (c) Words or expressions defined in the Act have those meanings.
- (d) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) A reference to:
 - (i) a party includes its administrators, successors, substitutes by novation, and assigns;
 - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
 - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and

- (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

2. Objects of the Association

2.1. The objects for which the Association is established are (subject to the Act) to:

- (a) assist either by donations or otherwise the following persons:
 - (i) Necessitous Members and their wives or husbands and all or any of their children;
 - (ii) Necessitous members of the medical profession and their wives or husbands and all or any of their children (not being Members of the Association); and
 - (iii) Such other necessitous persons as the Council in its discretion may from time to time determine.
- (b) accept donations and bequests (whether of real or personal property) for all or any of the objects of the Association;
- (c) engage (or discharge) such officers as required for the proper working and carrying on of the Association;
- (d) acquire, erect construct, maintain improve, manage, alter and carry on all buildings works and conveniences which may seem directly or indirectly conducive to or necessary or convenient for any of the objects of the Association and to contribute to subsidise or otherwise do or take part in any such operation;
- (e) purchase, take on lease, or exchange or otherwise acquire for the purpose of the Association any real or personal property necessary or convenient for the purposes of the Association;
- (f) buy, sell, improve, manage, develop, exchange, hire, lease, mortgage, charge, turn to account, or otherwise deal with any real, or personal property, assets, credits, effects, rights or privileges. In case the Association shall take or hold any property which shall be subject to any trusts the Association shall only deal with the same in such manner as allowed by law having regard to such trusts.

- (g) give any guarantee or enter into any bond in connection with the affairs of the Association and to indemnify any person or persons acting in the interests of the Association and under direction of the Council who may incur or may have incurred any personal liability for the benefit of the Association and for that purpose to give to such person or persons any security by way of mortgage or otherwise over the whole or any of the property and assets of the Association;
- (h) advance money (with or without security) and to invest and deal with the moneys and credits of the Association with any Bank or Corporation carrying on business in the State of New South Wales or in such other manner and upon such terms and conditions as may from time to time be determined by the Council and from time to time to vary and realise such investments or securities;
- (i) make, draw, accept, endorse, and negotiate cheques, promissory notes, bills of exchange, and other negotiable instruments. And also to effect policies of insurance and to endorse and negotiate such policies.
- (j) receive money on deposit and to borrow or raise money in such a manner as the Association may think fit and in particular, by mortgages or debentures (terminable or perpetual) or other securities of the Association with power if need be to charge such mortgages debentures or other securities upon the floating assets or upon all or any of the property (both present and future) of the Association;
- (k) if at any time it may be found desirable so to do for the purpose of carrying out the objects of the Association to found take over and carry on or amalgamate with any other Association or association having objects altogether or in part similar to those of the Association and which shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on this Association under or by virtue of **rule 4.3** of this Constitution;
- (l) enter into any arrangement with any Government or authority supreme municipal local or otherwise that may seem conducive to the attainment of the objects of the Association or any of them and to obtain from such Government or authority any rights privileges or concessions which the Association may think advisable to obtain and to carry out exercise and comply with any such arrangements rights privileges or concessions;
- (m) to make gifts for all or any of the objects of the Association; and
- (n) to do all such acts deeds, matters and things and to enter into and make such agreements as may be deemed incidental or conducive to the attainment of the above objects or any of them.

2.2. The objects of the Association specified in each sub-rule paragraph of this **rule 2** shall (except where otherwise expressed in such sub-rule) be in no way limited by reference to any other sub-rule.

3. Limitation of powers

3.1. The Association:-

- (a) is prohibited from making distributions to Members;
- (b) is prohibited from paying fees (or other remuneration) to the Councillors; and
- (c) must exercise its powers conferred on it under section 124(1) of the Act in a manner which is consistent with the objects of the Association set out in **rule 2**.

3.2. The Councillors must approve all other payments the Association makes to Councillors.

4. Association

4.1. Company limited by guarantee and name

- (a) The Association is a company limited by guarantee pursuant to the Act.
- (b) The name of the Association is *'The Medical Benevolent Association of New South Wales'*.
- (c) The registered office of the Association will be situated at Sydney in the State of New South Wales.

4.2. Restriction on shares

The Association does not have the power to issue or allot shares or securities of any kind.

4.3. Non-profit

- (a) The income, property, profits and financial surplus of the Association, whenever derived, must be applied solely towards the promotion of the objects of the Association as set out in this Constitution.

- (b) The Association is a non-profit organisation and must not carry on business for the purpose of profit or gain to its Members. Further, no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Councillors, or their relatives, except as provided by this Constitution.
- (c) Nothing in this Constitution prevents:
 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Association, or to any Member or the Council, in return for any services actually rendered to the Association or for goods supplied in the ordinary and usual course of business; or
 - (ii) the payment of interest at the rate not exceeding interest at the minimum rate for the time being charged by the Association's bankers for overdrawn accounts of a similar amount on money borrowed from a Councillor or a Member.

4.4. Winding up

The Association may only be wound up if:-

- (a) 75% of Members have approved the winding up; and
- (b) A simple majority of Councillors have approved the winding up.

4.5. Association wound up

If the Association is wound up:

- (a) Each Member; and
- (b) Each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Association for the:

- (i) Payment of debts and liabilities of the Association (in relation to **rule 4.5(b)**, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and

- (ii) Adjustment of the rights of contributories amongst themselves,

Such amount as may be required, not exceeding \$10.

5. Surplus on winding up

If any surplus remains following the winding up of the Association, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another body corporate which, by its constitution, is:

- (a) Required to pursue objects similar to objects of the Association;
- (b) Required to apply its profits (if any) or other income in promoting the objects of that body corporate;
- (c) Prohibited from making any distribution of its income or property to its members; and
- (d) Is an ATO Endorsed Entity,

such corporation to be determined by the Council at or before the winding up, and in default, by application to the Supreme Court of New South Wales for determination.

6. Legal scope of the Association's powers

- 6.1. Subject to rules 2, 3, 4, 5 and 7 in pursuing the objects of the Association, the Association has, both within Australia and outside Australia, the legal capacity of a natural person and all the powers provided by the Act.

7. Income and property

7.1. Application of income and property

The income and property under the control of the Association when so ever derived must be applied solely in and towards the promotion and achievement of the objects of the Association as set out in this Constitution, and no portion will be paid or transferred, directly or indirectly, by way of dividend, bonus, profit or otherwise to the Members or Councillors.

7.2. Travel expenses for Councillors

Notwithstanding **rule 7.1**, the Association may pay in good faith reasonable travelling and other expenses properly incurred by any Councillor of the Association:

- (a) in attending and returning from:
 - (i) meetings of the Councillors;
 - (ii) meetings of any committee of the Councillors; or
 - (iii) general meetings of the Association,in accordance with any travel guidelines the Council may establish; or
- (b) otherwise in connection with the business of the Association.

7.3. Establishment and Operation of Gift Fund

If the Association is, at any stage, an ATO Endorsed Entity, the Association must maintain for the purpose of pursuing its objects and purpose a fund ('**Gift Fund**')

- (a) to which gifts of money or property are to be made;
- (b) to which any money received by the Association because of those gifts is to be credited;
- (c) that does not receive any other money or property; and
- (d) will maintain a separate bank account solely in respect of the Gift Fund.

7.4. Winding up of the Gift Fund

At the first occurrence of the:

- (a) winding up of the Gift Fund; or
- (b) Association ceasing to be an ATO Endorsed Entity,

any surplus assets of the Gift Fund, remaining after payment of liabilities attributable to it must be transferred to one or more ATO Endorsed Entities (whether or not such ATO Endorsed Entities are Members) as the Council in its discretion determines.

8. Membership

8.1. Number of Members

- (a) There must be at least 1 Member.
- (b) The Council may set a limit of on the maximum number of Members.

8.2. Criteria for and Admission to Membership

- (a) Any person who is a registered or retired medical practitioner practising or resident in New South Wales or the Australian Capital Territory is eligible to become a Member if they pay the applicable subscription (if any).
- (b) Persons who are admitted to Membership of the Association by the Councillors pursuant to **rule 8.2(a)** will be Members of the Association and will be deemed to be bound by this Constitution and shall be entered in the Register.
- (c) Any person becoming a Member of the Association must pay to the Association the then current subscription fee (if any).

8.3. Council may establish categories of Members

The Council may:

- (a) establish different categories of Membership; and
- (b) prescribe the qualifications, rights and privileges and subscription fees (if any) of persons to become a Member of a class of Membership.
- (c) Any person who in the opinion of the Council has rendered any eminent service to the Association may be elected an Honorary Life Member by the Council and shall be entitled to attend all General Meetings of the Association but shall not have the privilege of voting.

8.4. Address of Member

- (a) Each Member is required to provide to the Association details of an address in Australia where the Association can send notices.

- (b) If a Member fails to provide an address in accordance with **rule 8.4(a)**, the address of the Member is deemed to be the Office.

8.5. **Membership entitlements not transferable**

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

- (a) is not capable of being transferred or transmitted to another person; and
- (b) subject to the Act and this Constitution, terminates on cessation of the person's Membership.

8.6. **Cessation of Membership**

A Member ceases to be a Member if they:

- (a) die;
- (b) resign in writing to the Secretary;
- (c) become of unsound mind or become liable to be dealt with in any way under the law relating to mental health or incapacity;
- (d) are convicted of an indictable offence;
- (e) they fail to pay the subscription (if applicable) in accordance with **rule 8.7** below; or
- (f) their membership is terminated in accordance with **rule 8.8** below.

8.7. **Non-payment of subscription**

- (a) Every Member other than Honorary Life Members shall pay to the Association annually, in advance on the first day of July each year, such subscription (if any) that the Council may from time to time determine.
- (b) If any subscription or other membership fee of a Member remains unpaid, the Member will be debarred from all privileges of membership. The Councillors may, if they think fit, reinstate the Member on payment of all arrears.

8.8. Subject to **rule 8.9** if any Member refuses or neglects to observe any provisions of this Constitution or in the judgement of the Council:

- (a) be guilty of any act, practice or conduct calculated to bring discredit on or lower the status of the medical profession; or
- (b) be prejudicial to the interests of the Association,

he or she shall be liable to be expelled from the Association by a resolution of a meeting of the Council. Any such resolution of the Council must be passed at a meeting at which not less than five members of the Council shall be present in person by a majority of two-thirds of the members present and voting at such meeting.

8.9. If the Council intends to expel a member under **rule 8.8**, that Member must, at least 2 weeks before the meeting of the Council at which such a resolution is passed, be given notice of such meeting which sets out:-

- (a) Date, time and place of the Council meeting;
- (b) what is alleged against the Member;
- (c) the intended Council resolution to expel the Member from the Association; and
- (d) that the Member has an opportunity of giving orally or in writing any explanation or defence and that such explanation must be lodged with the Secretary at least twenty-four hours before the Council meeting.

8.10. **Effect of cessation**

A Member who ceases to be a Member continues to be liable for:

- (a) any subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Association; and
- (c) the guarantee set out in **rule 4.5**

8.11. Any Member who ceases to be a Member shall forfeit all rights and privileges of Membership.

9. Rights and obligations of Members

9.1. Amount of fees and subscriptions payable

Annual subscription fees for the various categories of Membership (if any), sponsorship payments and other periodical payments due from Members will be in such amounts and due at such times as the Council determines.

9.2. Variation of rights of Members

The rights attached to any specific category of Membership (if any) may, whether or not the Association is being wound up, be varied only by resolution of the relevant Membership category.

9.3. The liability of Members is limited.

10. Financial reports and audit

10.1. Association must keep financial records

The Council must cause the Association to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Councillor and the Auditor to inspect those records at all reasonable times.

10.2. Financial reporting

The Council must cause the Association to prepare a financial report and a Councillors' report that comply with the Act and must report to Members in accordance with the Act no later than the deadline set by the Act.

10.3. Audit

The Council must cause the Association's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the Auditor are regulated by the Act.

10.4. **Conclusive reports**

Audited financial reports laid before the Association in general meetings are conclusive except as regards errors notified to the Association within 3 months after the relevant general meeting. If the Association receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

10.5. **Inspection of financial records and books**

A Member who is not a Councillor does not have any right to inspect any document of the Association except as authorised by the Council or as specified in the Act.

11. **General meetings**

11.1. **Annual General Meetings**

An annual general meeting of the Association must be held in accordance with the provisions of the Act.

11.2. **Convening of meetings by Councillors**

A Councillor may convene a general meeting at any time.

11.3. **Convening of meetings by Members**

- (a) The Councillors must call and arrange to hold a general meeting upon the requisition of the Members, if required to do so under the Act.

11.4. **Notice of general meeting**

- (a) Subject to the provisions of the Act the Secretary must give notice of a general meeting, at least 21 days before the date fixed for the holding of a general meeting.
- (b) A notice of a general meeting may be given by any form of communication permitted by the Act. The notice must specify the place, the day and the hour of meeting and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.

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

11.5. Quorum at general meetings

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise set out in this Constitution 10 Members of the Association (including Honorary Life Members) present in person or by proxy or representative is a quorum.
- (b) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson, one of the following procedures must be followed:
 - (i) if the meeting was convened on the requisition of Members – it must be dissolved;
 - (ii) if the meeting is convened otherwise – it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Councillors.
- (c) If a meeting has been adjourned to another time and place determined by the Councillors, not less than 7 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.
- (d) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

11.6. Appointment of chairperson

- (a) If a Chairperson is appointed in accordance with this Constitution to chair the meetings, that person is entitled to preside as the chairperson at every general meeting.
- (b) The President, or in his absence, one of the Vice Presidents of the Association, shall preside as Chairman at every meeting of the Association.
- (c) If neither the President or any of the Vice Presidents are present within 15 minutes after the hour appointed for the meeting (or they are unwilling or unable to act), the

Members present shall choose one of their number to be Chairman of the meeting.

11.7. Chairperson's powers

Subject to the terms of this Constitution dealing with adjournment of meetings, rulings of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting are final and no motion of dissent from a ruling of the chairperson may be accepted.

11.8. Adjournment of meetings

- (a) The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

11.9. Voting on show of hands

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- (b) If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Association, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

11.10. Demand for a poll

- (a) A poll may be demanded by any of the following:
 - (i) the chairperson;
 - (ii) at least 5 Members entitled to vote on the resolution; or
 - (iii) any Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) The demand for a poll may be withdrawn.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- (d) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (e) A poll demanded on the election of the chairperson or on a question of adjournment must be taken immediately.

11.11. Voting rights of Members

- (a) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a show of hands every Member (other than an Honorary Life Member) present or who represents a Member (other than an Honorary Life Member) has one vote.
- (b) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a poll every Member (other than an Honorary Life Member) present in person or by proxy, attorney or representative has one vote
- (c) No Members shall be entitled to vote at any meeting unless all moneys due to the Association have been paid.

11.12. Chairperson's vote at general meetings

The chairperson of a general meeting is entitled to a second or casting vote in the case of an equality of votes at the meeting or at the poll if a poll is demanded.

11.13. Objections to voter qualification

No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered. An objection to the qualification of a voter must be referred to the chairperson, whose decision is final. A vote not disallowed according to an objection as provided in this Constitution is valid for all purposes.

12. Proxies and representatives

12.1. Proxies and representatives of Members

At meetings of Members or categories of Members (if any), each Member entitled to vote may vote by a proxy, or by an attorney, and may appoint an individual as its representative. Except as expressly provided by the terms of their appointment, a person attending as a proxy, or as the attorney or representative of a Member has all the powers of a Member, except where expressly stated to the contrary in this Constitution.

12.2. Appointment of proxies

A Member may appoint either 1 or 2 persons as their proxy to attend and vote instead of the Member. A proxy need not be a Member. A document appointing a proxy must be in writing in any form permitted by the Act and signed by the Member making the appointment.

12.3. Authority of proxies

A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document. Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting.

12.4. Verification of proxies

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, all of the following documents must be deposited with the Association:
- (i) the document appointing the proxy; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- (b) Those documents must be received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting.
- (c) If a general meeting has been adjourned, an appointment and any authority received by the Association at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

12.5. Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this Constitution.

12.6. Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document, power of attorney or otherwise is valid, if no intimation in writing of the revocation of the instrument or of the authority under which the instrument was executed has been received by the Association at the Office before the commencement of the meeting or adjourned meeting at which the document is used.

13. Councillors

13.1. Number of Councillors

- (a) The management of the affairs of the Association shall be vested in the Council

(b) The Council may decide the number of Councillors but that number must be at least 2 and not more than 16 elected Members excluding the officer bearers of the Association set out in **rule 13.1(c)**.

(c) The following officer bearers shall be appointed to the Council:

- (i) President;
- (ii) Two Vice Presidents; and
- (iii) Treasurer,

13.2. Acts done by a person bona fide acting as a Member of the Council or office bearers shall be valid notwithstanding any informality or irregularity in his appointment.

13.3. **Qualification**

A Councillor must be a Member. Neither the Auditor of the Association for the time being nor any partner or employee of the Auditor is eligible to act as a Councillor.

13.4. **Appointment by the Council**

Subject to the Constitution and the Act, the Council may appoint a person to be a Councillor at any time except during a general meeting. Any Councillor so appointed:

- (a) automatically retires at the next annual general meeting and is eligible for re-election by that general meeting; and
- (b) is not taken into account in deciding the rotation or retirement of Councillors or the number of them to retire under **rule 13.7** at that general meeting.

13.5. **Election by general meeting**

Subject to this Constitution and the Act, the Members may elect Councillors by ordinary resolution. A Councillor appointed to replace one removed from office under **rule 13.11** must retire when the Councillor replaced would have been required to retire if not removed and is eligible for re-election.

13.6. **Eligible candidates**

The Association in general meeting cannot validly elect a person as a Councillor unless:

- (a) the person retires under **rules 13.4, 13.5** or **13.7** and seeks re-election;

- (b) the Council recommends the appointment; or
- (c) at least 30 Business Days before the meeting at which the relevant resolution will be considered, the Association receives both:
 - (i) a nomination of the person by at least 2 Members (other than the person); and
 - (ii) a consent to act as a Councillor signed by the person.
- (d) The Association must notify Members of every candidate for election as a Councillor at least 7 days before the relevant general meeting.

13.7. One third of Councillors retire annually

- (a) At each annual general meeting:
 - (i) one third (or if that is not a whole number, the whole number nearest to one third) of the Councillors who are not:
 - (A) appointed, and required to retire, under **rule 13.4**;
 - (B) Councillors who vacate office under the Act; and
 - (ii) subject to **rule 13.3** any Councillor who would, if that Councillor remained in office until the next annual general meeting, have held that office for more than 4 years,
must retire from office.
- (b) A retiring Councillor, if recommended by the Chairman and supported by a majority vote of the Council, will be eligible for re-election for a further term.

13.8. Selection of Councillors to retire

Subject to **rule 13.5**, the Councillors who retire under **rules 13.4** or **13.7** are those who have held office the longest since last being elected or appointed. If 2 or more Councillors have been in office for the same period, those Councillors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

13.9. Time of retirement

A Councillor's retirement under **rule 13.7** takes effect at the end of the relevant annual general meeting unless the Councillor is re-elected at that meeting.

13.10. Cessation of Councillor's appointment

A person automatically ceases to be a Councillor if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under the Act and is not given permission or leave to manage the Association under the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Council meetings for a continuous period of 6 months without written leave of absence from the Council
- (e) resigns by notice in writing to the Association; or
- (f) is removed from office under **rule 13.11**.

13.11. Removal from office

Whether or not a Councillor's appointment was expressed to be for a specified period:

- (a) the Councillors by ordinary resolution; or
- (b) the Members by ordinary resolution,

may remove a Councillor from office. The powers to remove a Councillor under this **rule 13.11** are in addition to the Act.

13.12. Too few Councillors

If the number of Councillors (excluding the office bearers) is reduced below the minimum required by **rule 13.1**, the continuing Councillors may act as the Council only:

- (a) to appoint Councillors up to that minimum number;

- (b) to convene a meeting of Members;
- (c) in emergencies;
- (d) any vacancy occurring among the elected Members of the Council or officers of the Association between one annual general meeting and another may be filled by the Council within 60 days of the occurrence of such vacancy. The Council shall also have power to appoint acting office bearers.

13.13. Any officer or Member of the Council shall vacate office:

- (a) If he becomes bankrupt or suspends payment or compromises with his creditors.
- (b) If from illness or otherwise he becomes permanently incapacitated from properly performing his duties.
- (c) If by notice in writing to the Association he resigns office.
- (d) If he ceases to be a member of the Association or does not become a member within one month from the date of his appointment.

The disqualifying conditions except those set out in sub-clauses (b) and (d) of this rule 13.14 may be dispensed with by any resolution of any General Meeting.

14. Powers and proceedings of Councillors

14.1. Powers of Councillors

- (a) Subject to this Constitution, the Councillors may exercise all those powers of the Association as are not, by the Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.
- (b) The Council shall investigate all cases in which assistance is sought from the Association and shall have power to grant or refuse assistance as it deems advisable.

14.2. Convening of Councillors' meetings

- (a) Three Councillors may at any time, and a Secretary must on the requisition of three Councillors, convene a meeting of the Councillors. Reasonable notice of the proposed meeting must be given.

14.3. Mode of meeting for Councillors

A Councillors' meeting may be called or held using any technology consented to by all the Councillors. The consent may be a standing one. A Councillor may only withdraw their consent within a reasonable period before the meeting. The Councillors may otherwise regulate their meetings as they think fit.

14.4. Quorum at Councillors' meetings

- (a) At a meeting of Councillors, the number of Councillors whose presence is necessary to constitute a quorum is 5 unless another number is determined by the Councillors.
- (b) If the number of Councillors is reduced below the number necessary for a quorum of Councillors, the continuing Councillor or Councillors may act only to appoint additional Councillors to the number necessary for a quorum or to convene a general meeting of the Association.

14.5. Voting at Councillors' meetings

Questions arising at a meeting of Councillors must be decided by a majority of votes of Councillors present and voting. A decision of the majority is for all purposes a decision of the Councillors.

14.6. Appointment of chairperson

- (a) The President of the Association or in his absence one of the Vice-Presidents shall preside at the meetings of the Council and in their absence, a Chairman shall be chosen by vote of the Members of the Council present.
- (b) If a chairperson has not been elected, or if at any meeting the chairperson is not present within 10 minutes after the time appointed for holding the meeting or is unwilling or unable to act, the deputy chairperson will chair the meeting.

14.7. Chairperson's vote at Councillors meetings

Subject to the Act, in case of an equality of votes on a resolution at a meeting of Councillors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his capacity as a Councillor in respect of that resolution.

14.8. Councillor not in breach if acts in matters relating to Councillor's interests

- (a) This **rule 14.8** applies if:
- (i) a Councillor has an interest or duty in relation to a matter that is not a Material Personal Interest; or
 - (ii) a Councillor with a Material Personal Interest in relation to the Association's affairs:
 - (A) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Association's affairs before acting in a matter that relates to the interest; and
 - (B) may be present and vote on the matter under the Act.
- (b) The Councillor is not in breach of his or her duties to the Association merely because he or she acts in matters that relate to the Councillor's interest.
- (c) The Councillor may vote on matters that relate to the Councillor's interest.
- (d) In relation to any transactions that relate to the Councillor's interest:
- (i) the transactions may proceed;
 - (ii) the Association cannot avoid the transactions merely because of the Councillor's interest; and
 - (iii) the Councillor may retain benefits under the transactions despite the Councillor's interest.

14.9. Councillor not in breach if does not act in matters relating to Councillor's interests

- (a) This **rule 14.9** applies if a Councillor with a Material Personal Interest in relation to a matter:
 - (i) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Association's affairs; but
 - (ii) must not be present and vote on the matter under the Act.
- (b) The Councillor is not in breach of duty to the Association merely because he or she does not act in relation to the matter.
- (c) The Councillors may vote on matters that relate to the Councillor's interest in the Councillor's absence.
- (d) In relation to any transactions that relate to the Councillor's interest:
 - (i) the transactions may proceed;
 - (ii) the Association cannot avoid the transactions merely because of the Councillor's interest; and
 - (iii) the Councillor may retain benefits under the transactions despite the Councillor's interest.

14.10. Execution of instruments

A Councillor may participate in the execution of an instrument for the Association, regardless of any interest or duty that the Councillor may have:

- (a) whether or not the Councillor has complied with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Association's affairs; and
- (b) whether or not the Councillor may be present and vote in relation to the execution of the instrument under the Act.

14.11. Delegation of powers to committee

The Councillors may delegate any of their powers to committees consisting of Councillors or other persons as they think fit. The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Councillors. In the exercise of any powers delegated to it, a committee formed by the Councillors must conform to the directions of the Councillors.

14.12. Proceedings of committees

Except as provided in a direction of the Councillors, the meetings and proceedings of a committee formed by the Councillors must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Councillors.

14.13. Validity of acts of Councillors

All acts done by a meeting of the Councillors or of a committee of Councillors or by a person acting as a Councillor are valid even if it is later discovered that there is a defect in the appointment of a person to be a Councillor or a Member of the committee or that they or any of them were disqualified or were not entitled to vote.

14.14. Minutes

The Councillors must cause minutes of all proceedings of general meetings, of meetings of the Councillors and of committees formed by the Councillors to be entered in books kept for the purpose. The Councillors must cause all minutes to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

14.15. Resolutions in writing

- (a) A resolution in writing signed by all Councillors, excluding Councillors who have been given leave of absence, is to be treated as a determination of the Councillors passed at a meeting of the Councillors duly convened and held.
- (b) A resolution in writing may consist of several documents in like form, each signed by one or more Councillors and if so signed it takes effect on the latest date on which a Councillor signs one of the documents.
- (c) A document generated by electronic means which purports to be a facsimile of a resolution of Councillors is to be treated as a resolution in writing.

- (d) A document bearing a facsimile of a signature is to be treated as signed.

15. Indemnity and insurance

15.1. Indemnity

Every Officer and past Officer (with the exception of any auditor) of the Association is hereby indemnified by the Association to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Association or a subsidiary of the Association, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

15.2. Insurance premiums

- (a) The Association may pay the premium on a contract insuring a person who is or has been an Officer of the Association to the fullest extent permitted by law.
- (b) For the purposes of this Constitution:
- (i) *Officer* means a Councillor, director, a Secretary, an officer as defined by the Act, or the Chief Executive Officer; and
 - (ii) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Association or the employment of the Officer with the Association.

15.3. Indemnity to employees

Every employee who is not a Councillor, Secretary or executive officer of the Association may be indemnified out of the property of the Association against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or

- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

16. Notices

16.1. Notices by the Association

A notice is properly given by the Association to a person if it is:

- (a) in writing signed on behalf of the Association (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

16.2. Overseas Members

A Member whose registered address is not in Australia may notify the Association in writing of an address in Australia to which notices may be sent.

16.3. When notice is given

A notice to a person by the Association is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5pm (local time in the place of receipt) on a business day – on that day; or

- (ii) after 5pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
- (b) if it is sent by mail:
 - (i) within Australia – 3 business days after posting; or
 - (ii) to a place outside Australia – 7 business days after posting.

A certificate in writing signed by a Councillor or Secretary stating that a notice was sent is conclusive evidence of service.

16.4. Notices to lost members

If:

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Council believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Association under **rule 16.2**,

the Association may give effective notice to that Member by exhibiting the notice at the Association's Office for at least 48 hours. This rule ceases to apply if the Member gives the Association notice of a new address.

17. Amendment to Constitution

- 17.1. This Constitution cannot be amended, varied or replaced without a special resolution of the Members in a general meeting and as otherwise required under the Act.
- 17.2. Any amendment, variation or repeat of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

18. Secretary

- 18.1. The Secretary shall in accordance with the Act be appointed by the Council for such term at such remuneration and upon such conditions as it thinks fit; and any secretary so appointed may be removed by it.

- 18.2. Nothing in this Constitution prevents the Council from appointing a member of the Association as Honorary secretary and any Member so appointed shall become an office-bearer of the Association and if not already a Member of the Council ex officio a Member of the Council and he or she shall be subject to the provisions of rules 7.1, 7.2 and 4.3(c) of the Constitution.

