

Constitution

Australasian Sleep Association

ACN 138 032 014

ABN 51 138 032 014

First registered as a company limited by guarantee on 1 July 2009

Current constitution adopted at AGM 22 October 2015

Constitution Adopted at a General Meeting of the ASA on 1 June 2017



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1. NAME OF THE COMPANY

The name of the Company is Australasian Sleep Association.

2. TYPE OF COMPANY

- (a) The Company is a not-for-profit public company limited by guarantee.
 - (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (a) payment of debts and liabilities of the Company;
 - (b) payment of the costs, charges and expenses of winding up; and
 - (c) any adjustment of the rights of the contributories among Members.
 - (c) The amount that each Member or past Member is liable to contribute is limited to \$10.00.
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3. REPLACEABLE RULES

This Constitution displaces the Replaceable Rules except to the extent that they are repeated in this Constitution.

4. DEFINITIONS AND INTERPRETATION

4.1 Definitions

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

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

Association means the Australasian Sleep Association Incorporated.

Board means the Board of Directors.

Branch means a group of individual Members authorised by the Board to become and act as a Branch pursuant to clause 43A.”

Branch Executive” means the governing committee of a Branch including the NZ Branch Executive established pursuant to clause 43C.1.”

Chairman means the person holding that office under this Constitution and includes any assistant or acting chairman.

Committee means a committee established in accordance with **clause 42**.

Company means Australasian Sleep Association (ACN 138 032 014).

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

Corps Act means the *Corporations Act 2001*.

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

Independent Director means the Director appointed to the Board pursuant to **clause 30.7**.

Member means a member of the Company pursuant to **clause 6** (and **Membership** has the corresponding meaning) and includes:

- (a) Emeritus Members;
- (b) Full Members;
- (c) Associate Members;
- (d) Student Members;
- (e) Sustaining Members;
- (f) Organisational Members; and
- (g) Retired Members.

Member Appointed Directors means:

- (a) the President Elect; and
- (b) the Directors whose positions may be filled by the Members at an AGM.

Member Present means in connection with a meeting of Members, a Member being present in person or by proxy or attorney or, in the case of a corporation, by a Representative.

Member's Guarantee Amount means the amount referred to in **clause 2(c)**.

Non-voting Member means and includes:

- (a) Associate Members;
- (b) Student Members;
- (c) Sustaining Members;
- (d) Organisational Members; and
- (e) Retired Members.

“NZ Branch” means the Branch established by the Board pursuant to clause 43B.

“NZ Director” means the Director holding office pursuant to clause 30.2(a)(v).”

Objects means the objects of the Company set out in **clause 5.1**.

Office means the registered office for the time being of the Company.

“Office Bearers” means those members of the Branch Executive referred to in clause 43C.2(a).”;

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

Past President means the immediately preceding President of the Board appointed in accordance with **clause 30.6**.

President means the President of the Board elected in accordance with **clause 30.5**.

President Elect means the Director who will next succeed as the President in accordance with **clause 30.4**.

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

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

Representative means a person authorised in accordance with section 250D of the Corps Act to act as a representative of a body corporate that is a member of the Company.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Subscription means the subscription fees payable by Members pursuant to **clause 8**.

Tax Act means the *Income Tax Assessment Act 1997(Cth)* and related tax legislation applicable to not-for-profit entities.

Vice President means the Vice President of the Board appointed in accordance with **clauses 30.4(c) or 30.6(c)**, as the case may be.

Voting Member means and includes:

- (a) Emeritus Members; and
- (b) Full Members;

but does not include:

- (c) Associate Members;
- (d) Student Members;

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- (e) Sustaining Members;
 - (f) Organisational Members; and
 - (g) Retired Members.

4.2 Interpretation

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
 - (a) the singular includes the plural and vice versa;
 - (b) each gender includes the other two genders;
 - (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (b) An expression used in a particular Part or Division of the Corps Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- (c) Headings do not form part of or affect the construction or interpretation of this Constitution.

5. OBJECTS AND PURPOSES

5.1 Objects

- (a) The Company is a charitable institution that exists to provide a range of services and support for promoting the treatment and control of health and medical conditions, disorders and ailments arising directly from sleep health and the consequent impact that poor sleep health can have on human health generally, on specific diseases, on public safety, productivity and quality of life generally. The Company pursues these Objects through a

range of activities and services which include, but are not limited to, the following:

- (a) the promotion of the advancement of knowledge in all areas of sleep health and sleep science, including basic sleep mechanisms, chronobiology, clinical sleep disorders and healthy sleep-wake behaviour;
 - (b) the convening of regular scientific meetings and the arrangement of other research and educational seminars and conferences on sleep related topics in the Australasian region;
 - (c) the facilitation of communication between groups and individuals who have an interest in some aspect of sleep and wakefulness and the encouragement of professional relationships and understanding of Members;
 - (d) the cooperation with or advice to other bodies interested in sleep health and sleep science and communication with similar organisations in other parts of the world;
 - (e) the encouragement of public and professional education about the causes and treatment of sleep mechanisms and sleep disorders including but not limited to insomnia, snoring, obstructive sleep apnea, sleep hypoventilation, restless legs syndrome, bruxism, narcolepsy, sleep automaton behaviours like sleep talking and sleep walking, nightmares and night terrors and rapid eye movement behaviour disorder; and
 - (f) anything ancillary to the Objects set out in **clauses 5.1(a)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corps Act to:
- (a) carry out the Objects; and
 - (b) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(a)**.

5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution will prevent payment in good faith to a Member:
 - (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or

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- (c) of reasonable and proper rent for premises leased by any Member to the Company.
 - (c) No payment shall be made to any Director other than the payment:
 - (a) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
 - (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

MEMBERSHIP

6. ADMISSION TO MEMBERSHIP

6.1 Number of Members

The Company must have at least five (5) Members.

6.2 Pre-condition to Membership

A person is entitled to become a Member if that person agrees to assume the liability to pay the Member's Guarantee Amount.

6.3 Becoming a Member

Subject to the Corps Act, a person becomes a Member on the registration of that person's name in the Register.

6.4 Categories of Membership

There are seven (7) categories of membership in the Company:

- (a) Emeritus Members qualified for membership pursuant to **clause 6.5**;
- (b) Full Members qualified for membership pursuant to **clause 6.6**;
- (c) Associate Members qualified for membership pursuant to **clause 6.7**;
- (d) Student Members qualified for membership pursuant to **clause 6.8**;
- (e) Sustaining Members qualified for membership pursuant to **clause 6.9**;
- (f) Organisational Members qualified for membership pursuant to **clause 6.10**;
and
- (g) Retired Members qualified for membership pursuant to **clause 6.11**.

6.5 Emeritus Members

- (a) The Board may admit to Emeritus Membership any person who has made a notable contribution to sleep research or the understanding, treatment or practice of sleep medicine.

- (b) Emeritus Members are not required to pay the annual Subscription.

6.6 Full Members

- (a) Full Membership is open to all persons involved in sleep research or management of sleep disorders, provided such persons are:
 - (a) a medical practitioner, psychologist, scientist, dentist, nurse, technologist or physiotherapist who has graduated from a university and who has received appropriate postgraduate training and qualifications in sleep medicine, sleep research or related fields; and
 - (b) any person who in the opinion of the Board has made a worthwhile contribution to the study or practice of sleep medicine, sleep research or related fields.
- (b) Every application for Full Membership of the Company shall be:
 - (a) in such form as the Board from time to time prescribes;
 - (b) accompanied by the payment of the Subscription fees prescribed by the Board;
 - (c) proposed by a Voting Member (**Proposer**) and seconded by another Voting Member (**Secunder**); and
 - (d) in writing signed by the applicant, the Proposer and the Secunder.

6.7 Associate Members

- (a) Any medical practitioner or other suitably qualified person, other than those referred to in **clause 6.6(a)(a)**, who is interested in sleep medicine or sleep research, shall be eligible for Associate Membership.
- (b) Any Associate Member may become a Full Member once the requirements set out in **clause 6.6(a)(a)** are satisfied and upon nomination in accordance with **clause 6.6(b)(c)**.

6.8 Student Members

- (a) Any undergraduate or postgraduate student of a university, centre of tertiary education or learned college, who is undertaking full time training or studies in sleep medicine, sleep research or related fields, shall be eligible for Student Membership.
- (b) Any Student Member may become a Full Member once the requirements set out in **clause 6.6(a)(a)** are satisfied and upon nomination in accordance with **clause 6.6(b)(c)**.

6.9 Sustaining Members

Sustaining Members shall be representatives of companies or businesses which have an interest in the broad field of sleep health and sleep science, and who:

- (a) have shown interest in the Company; and

- (b) wish to support the Objects; and
- (c) have been approved by the Board.

6.10 Organisational Members

- (a) Organisational Members shall be companies or bodies corporate:
 - (a) which have an interest in the broad field of sleep health and sleep science; or
 - (b) wishing to encourage research and learning in the areas of sleep health and sleep science;
- and which:
- (c) have shown interest in the Company; and
 - (d) wish to support the Objects; and
 - (e) have been approved by the Board.
- (b) In the event that an Organisational Member wishes to attend a general meeting, it shall appoint a Representative to attend the general meeting on behalf of the Organisational Member. The Organisational Member shall notify the Secretary in writing at least forty eight (48) hours prior to the commencement of the meeting of the name of the Representative.

6.11 Retired Members

A Full Member or Associate Member may make application to the Secretary to be transferred to this class of Membership on their retirement from employment.

6.12 Application for Membership

- (a) Only a person satisfying the eligibility requirements for Membership may apply for Membership.
- (b) The Board may prescribe the form of the application for Membership.
- (c) An application for Membership must:
 - (a) if applying for Full Membership, be proposed by a Voting Member (**Proposer**) and seconded by another Voting Member (**Secunder**) as required by **clause 6.6(b)(c)**;
 - (b) be in writing signed by the applicant (if for Organisational Membership, it is to be signed by an officer of the applicant) and, if applying for Full Membership, signed by the Proposer and the Secunder;
 - (c) list training, qualifications and nature or current practice and employment;
 - (d) if for Student Membership, list the institution and qualification being sought, supported by a:

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- (i) copy of the current student ID card; and
 - (ii) statement by the applicant's supervisor; and
 - (e) if the Board has prescribed the form of the application for the class of Membership, be in that prescribed form.

6.13 Rights of Members

- (a) Voting Members have the right to attend, to speak at and to Vote at general meetings and to be appointed as a Director, subject to this Constitution and to such privileges as the Directors determine.
- (b) Non-voting Members have all of the rights and privileges of Voting Members, except that they:
 - (a) may not exercise any voting rights; and
 - (b) are not eligible for election as a Director but may be appointed as an Independent Director subject to this Constitution.

6.14 Consideration for application for Membership

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept or reject the application, without being required to provide any reasons for its determination.

6.15 Registration as Member

If the Board accepts an application for Membership, as soon as practicable, the Board must register the name of the person in the Register of Members.

7. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

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

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

8. SUBSCRIPTIONS

- (a) Subject to **clause 6.5(b)**, there shall be an annual Subscription payable by each Member to the Company, which will be due on 1 July each year or on the date a Member is admitted to Membership within the Company (as the case may be). The Board is at liberty to charge different classes of Membership different rates of Subscription.
- (b) Subject to **clause 8(c)**, the amount of any Subscription shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time.

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- (c) The Board may in its discretion:
- (a) determine that:
 - (i) no Subscription is payable; or
 - (ii) a discounted Subscription is payable;by a Member, Members or a class of Members (in whole or in part) in a given year; and
 - (b) extend the time for payment of Subscriptions by any Member.
- (d) No part of any Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 9**.

9. CESSATION OF MEMBERSHIP

- (a) A Member's Membership will cease:
- (a) upon that Member dying;
 - (b) on the date that the Secretary receives written notice of resignation from that Member;
 - (c) if the Member has not paid moneys (including fees applicable under **clause 8**) due and payable to the Company within 3 months of a final request for payment of those moneys being sent to the Member and during that 3 months' period the Member is deemed to be not financial until the moneys are paid;
 - (d) if the Member is expelled pursuant to **clause 10**;
 - (e) if, being an Organisational Member:
 - (i) that Member is dissolved or otherwise ceases to exist;
 - (ii) that Member has:
 - (1) a receiver;
 - (2) a receiver and manager;
 - (3) a liquidator;
 - (4) an administrator;
 - (5) an administrator of a deed of company arrangement;
or
 - (6) a trustee or other person administering a compromise or arrangement between the Company and someone else;

appointed to it;

- (f) subject to this Constitution allowing a change of category, upon that Member no longer satisfying the criteria for their respective category of Membership;
 - (g) In addition to the processes in clause 10, if the Company in general meeting resolves by a resolution with a 75% majority of Members Present and voting, to terminate the membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least thirty five (35) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed. If the Member submits a written response of less than 1000 words prior to the notice of meeting being sent to Members it must be sent with the notice of meeting and be available at the meeting and read to the meeting if the Member requires such reading.
- (b) A Member may at any time, pursuant to **clause 9(a)(b)**, resign as a Member but shall continue to be liable for:
- (a) any Subscriptions and all arrears due and unpaid at the date of resignation; and
 - (b) all other monies due by the Member to the Company;
 - (c) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**; and
 - (d) if applicable, the Member's Guarantee Amount.

10. DISCIPLINING OF MEMBERS

10.1 Disciplining of Members

- (a) The Board may resolve to expel any Member or to suspend any Member from Membership of the Company if the Member:
 - (a) has persistently refused or neglected to comply with a provision or provisions of this Constitution; or
 - (b) has persistently or wilfully acted in a manner prejudicial to the interests of the Company.
- (b) A resolution of the Board pursuant to **clause 10.1(a)** will be of no effect unless the Board confirms the resolution in accordance with this clause at a meeting held not earlier than fourteen (14) days and not later than twenty eight (28) days after the service on the Member of notice under **clause 10.1(c)**.
- (c) If the Board resolves under **clause 10.1(a)** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:

- (a) setting out the resolution of the Board and the grounds upon which it is based;
 - (b) stating that the Member may address the Board at a meeting to be held not earlier than fourteen (14) days and not later than twenty eight (28) days after service of the notice;
 - (c) stating the date, place and time of that meeting; and
 - (d) informing the Member that the Member may do either or both of the following:
 - (i) attend and speak at that meeting;
 - (ii) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.
- (d) At a meeting of the Board held in accordance with **clause 10.1(c)**, the Board must:
- (a) give the Member an opportunity to make oral representations;
 - (b) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
 - (c) resolve whether to confirm or to revoke the decision to expel or suspend the Member.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 10.2**.
- (f) A resolution confirmed by the Board under **clause 10.1(d)** does not take effect:
- (a) until the expiration of the period within which the Member is entitled to appeal against the resolution; or
 - (b) if the Member exercises the right of appeal, until the Company confirms the resolution pursuant to **clause 10.2(d)**.

10.2 Right of Appeal of Disciplined Member

- (a) A Member may appeal to the Company in general meeting against a resolution of the Board, which is confirmed under **clause 10.2(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 10.1(e)**.
- (b) Upon receipt of a notice of appeal the Secretary must convene a general meeting of the Company to be held within twenty eight (28) days after the date of receipt of the notice.
- (c) At a general meeting of the Company convened under **clause 10.2(b)**:

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- (a) no business other than the question of the appeal may be transacted;
 - (b) the Board and the Member must be given the opportunity to state their respective cases orally or in the writing, or both; and
 - (c) the Members Present must vote by a poll on the question of whether the resolution will be confirmed.
- (d) Confirmation of the resolution may be by a simple majority of those Members Present.

GENERAL MEETINGS

11. CONVENING OF GENERAL MEETINGS

- (a) Any three (3) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Corps Act as applicable to a public company that is not subject to the ACNC Act.
- (c) A general meeting of the Company may be convened at two or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

12. NOTICE OF GENERAL MEETING

- (a) Subject to consent to shorter notice being given in accordance with the Corps Act as applicable to a public company that is not subject to the ACNC Act, at least twenty one (21) days notice of any general meeting must be given specifying:
 - (a) the place, day and hour of the meeting;
 - (b) the general nature of any business to be transacted at the meeting;
 - (c) if a special resolution is to be proposed, the details of and intention to propose it;
 - (d) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (e) any other information required by the Corps Act as applicable to a public company that is not subject to the ACNC Act.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (c) The matters upon which Voting Members can vote are limited to those matters expressly provided for in the Corps Act as applicable to a public company that is not subject to the ACNC Act, this Constitution and the

general law. Typically, Voting Members have a right to vote on certain decisions relating to the structure and Constitution of the Company, including:

- (a) the adoption of and amendment to the Constitution;
- (b) changes to the name and type of the Company;
- (c) variations to the rights attached to a particular class of Membership, subject to any rights the class of Member may have in accordance with Part 2F.2 of the Corps Act;
- (d) the election of the Member Appointed Directors;
- (e) the removal of Directors pursuant to section 203D of the Corps Act;
- (f) the appointment and removal of the Company's auditors;
- (g) the initiation of a Member's voluntary winding up of the Company; and
- (h) any special resolution to be decided upon by the Members as notified in accordance with **clause 12(a)(c)**.

13. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

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

PROCEEDINGS AT GENERAL MEETINGS

14. QUORUM

- (a) No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- (b) Members Present and entitled to vote equal to the number of Directors in office at the time plus two (2) constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (a) the meeting if convened upon the requisition of Members shall be dissolved;
 - (b) in any other case:
 - (i) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

15. CHAIRMAN

- (a) The President shall be entitled to preside as Chairman at every general meeting.
- (b) Where a general meeting is held and:
 - (a) there is no President; or
 - (b) the President is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling or unable to act as Chairman of the meeting,

the other Directors present may choose by majority decision another Director as Chairman of the meeting. If no Director is so chosen, or if all the Directors present decline to take the chair, the Members Present may choose one of their number to be Chairman of the meeting.

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

16. ADJOURNMENTS

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

17. DETERMINATION OF QUESTIONS

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
 - (a) the Chairman of the meeting;
 - (b) at least two (2) Members Present and entitled to vote on the resolution; or
 - (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) Before a vote on a resolution is taken, the Chairman must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairman of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company, which has been signed by the Chairman of the meeting or the next succeeding meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. POLLS

- (a) A poll may be demanded:
 - (a) before a vote on a resolution is taken;
 - (b) before the voting results on a show of hands are declared; or

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- (c) immediately after the voting results on a show of hands are declared.
 - (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chairman of the meeting directs subject to **clause 18(e)**.
 - (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
 - (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
 - (e) A poll demanded on the election of a Chairman or any question of adjournment of the meeting must be taken immediately.
 - (f) The demand for a poll may be withdrawn.

19. VOTING RIGHTS

A Voting Member has one (1) vote, both on a show of hands if present in person and a poll if present in person or by proxy or by attorney.

20. VOTING DISQUALIFICATION

No person other than a Voting Member shall be entitled to a vote at a general meeting.

21. OBJECTION TO QUALIFICATION TO VOTE

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

22. PERSONS OF UNSOUND MIND AND MINORS

- (a) A Voting Member:
 - (a) of unsound mind; or
 - (b) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (c) who is a minor;

may vote whether on a show of hands or on a poll by that Voting Member's committee or by such other person as properly has the management or guardianship of that Voting Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.

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- (b) Any person having the right of management or guardianship of the person or estate in respect of a Voting Member as referred to in **clause 22(a)** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

23. CHAIRMAN'S CASTING VOTE

In the case of an equality of votes whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote.

24. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

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

PROXIES

25. RIGHT TO APPOINT PROXIES

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

26. APPOINTING A PROXY

26.1 Appointing a Proxy

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

26.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the information required by the Corps Act as applicable to a public company that is not subject to the ACNC Act which at the date of this Constitution is the following information:
- (a) the name and address of the Member;
 - (b) the name of the Company;
 - (c) the proxy's name or the name of the office of the proxy; and
 - (d) the meetings at which the instrument of proxy may be used.

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- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
 - (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 26.2(a)**.
 - (d) An instrument of proxy may be revoked at any time by notice in writing to the Company or by submitting a later proxy subject to clause 27.

27. LODGMENT OF PROXIES

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

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Company.

28. VALIDITY OF PROXIES

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
 - (a) the death or unsoundness of mind of the Voting Member;
 - (b) the bankruptcy or liquidation of the Voting Member;
 - (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least forty eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- (b) A proxy who is not entitled to vote on a resolution as a Voting Member may vote as a proxy for another Voting Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

29. RIGHTS OF PROXIES AND ATTORNEYS

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Unless a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy if the proxy votes.
- (a) If the proxy is the Chairman and the proxy directs the proxy to vote in a certain manner they must follow the voting instructions contained in the instrument of proxy and must so vote.
- (c) Where the instrument of proxy directs the proxy how to vote and the person appointed as proxy is not the Chairman and the proxy does not exercise the vote when a poll is called then the Chairman is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution at the meeting and must so vote.
- (d) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (e) The Chairman of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairman that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity, he may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

30. NUMBER AND APPOINTMENT OF DIRECTORS

30.1 Number of Directors

The Board of Directors shall consist of not less than three (3) or such other minimum as may be set by the Corps Act and not more than eleven (11) individuals.

30.2 Constitution of Board

- (a) The Board shall consist of the following:
 - (i) the President;
 - (ii) the Past President or the President Elect, as the case may be (refer to **clauses 30.4 and 30.6**);
 - (iii) six (6) Directors; and
 - (iv) up to two (2) Independent Directors.
 - (v) The chair of the Branch Executive of the NZ Branch (hereinafter referred to as the NZ Director
- (b) A Member Appointed Director must also be a Full Member.

30.3 Election of Member Appointed Directors

- (a) Nomination of candidates for election as a Member Appointed Director:
 - (i) must be made in writing, signed by a Voting Member and accompanied by written consent of the candidate (which may be endorsed on the form of the nomination); and
 - (ii) must be delivered to the Secretary at least twenty eight (28)) days before the date fixed for the holding of the annual general meeting at which the election is fixed to take place.
- (b) Voting for the election of candidates as Member Appointed Directors:
 - (i) is to be held at the annual general meeting; and
 - (ii) a majority of votes cast by Voting Members entitled to vote as an ordinary resolution is required for the successful election of a candidate as a Member Appointed Director.

30.4 President Elect

- (a) Prior to a Director being eligible to hold the position of President, that Director shall be required to have served a one (1) year term as President Elect.
- (b) In conjunction with the annual general meeting in the year before the expiry of the term of any President, the Members will appoint a President Elect in

accordance with **clause 30.3** for the purposes of **clause 30.4(a)** who will hold the position on the Board referred to above.

- (c) Upon being appointed as President Elect, the President Elect will assume the role of Vice President.
- (d) For clarity, a year for the purposes of a Director is the period from the conclusion of one annual general meeting to the conclusion of the next annual general meeting.

30.5 President

- (a) The President Elect shall, on the expiry of his or her one (1) year term, by default assume the position of President. If the President vacates his or her position prior to the expiry of the President's two (2) year term, the Board may allow the President Elect to assume the office of President upon such vacation occurring, even if the President Elect's one (1) year term has not yet expired.
- (b) The term of the President is two (2) years.
- (c) The President is not eligible for re-election as President on the expiry of the two (2) year term referred to in **clause 30.5(b)**.

30.6 Past President

- (a) Upon retiring as the President, that Director by default immediately becomes the Past President and will hold the position on the Board referred to above.
- (b) Notwithstanding any other clause in this Constitution, the Past President shall only have a term of one (1) year as Past President.
- (c) During the Past President's one (1) year term, the Past President will assume the role of Vice President.
- (d) The Past President is not eligible for re-election to the position of President or President Elect on the expiry of that one (1) year term, until two (2) years have lapsed from the expiry of that one (1) year term.

30.7 Independent Directors

- (a) The Board may appoint up to two (2) Independent Directors to the Board.
- (b) Subject to **clause 30.7(c)**, an Independent Director shall be an individual who will bring skills and experience to the Board to enable the Board to advance the Objects.
- (c) One of the Independent Directors elected to the Board can be a practising polysomnographic technologist.

30.8 Term

- (a) Subject to a Director who holds the consecutive positions of President Elect, President, Past President and subject to the NZ Director, each Member Appointed Director shall hold office for a term of two (2) years but shall not hold office for more than six (6) consecutive years. Directors shall be eligible

for reappointment as a director after a lapse of two (2) years from the date from which they last held office as a Director.

- (b) A Director who holds the consecutive positions of President Elect, President and Past President may hold office as a Director for a maximum of ten (10) years.
- (c) The NZ Director may hold office for so long as he or she is the Chair of the Branch Executive of the NZ Branch.
- (d) The term for an Independent Director shall be as determined by the Board up to a period of 24 months from the date of appointment. The Board may reappoint an Independent Director. A retiring Independent Director who is eligible may stand for election as a Member Appointed Director.

30.9 First Board

- (a) Notwithstanding anything else herein contained, the Directors who commence holding office on the date of incorporation of the Company shall be those who held office as committee members of the Association immediately prior to the date of incorporation of the Company.
- (b) More specifically:
 - (i) the committee member who was president of the Association immediately prior to the date of incorporation of the Company shall be the President for the purposes of **clause (i)**;
 - (ii) the committee member who was president elect or the past president of the Association (as the case may be) immediately prior to the date of incorporation of the Company shall be the President Elect or the Past President for the purposes of **clause (ii)** (as the case may be);
 - (iii) the remaining committee members of the Association (excluding any practising polysomnographic technologist) immediately prior to the date of incorporation of the Company shall be the Directors for the purposes of **clause 30.2**; and
 - (iv) any committee member of the Association immediately prior to the date of incorporation of the Company who is a practising polysomnographic technologist shall be an Independent Director for the purposes of **clause 30.2**.
- (c) For the purposes of **clause 30.8**, the terms of each of the first Directors referred to in **clause 30.9** shall be calculated respectively as if those terms commenced on the date that the first Directors were first elected to the committee of the Association. When this clause 30 no longer applies to any Director the clause shall be deleted and replace with the words 'Deleted (date)'.

30.10 Vice President

- (a) Notwithstanding anything else herein contained, if the Vice President (see **clause 30.4(c)**) for any reason is not able or willing to assume the role of President:
 - (i) the Vice President must inform the Board forthwith and cease their term as a Director from that date; and
 - (ii) the Board must seek a replacement President Elect using the processes in **clause 30.3** with such changes as the Board thinks fit.
- (b) If the Vice President arising from **clause 30.10(a)(ii)** is not in place in time in good time to effect the transition to President in accordance with **clause 30.5(a)** then the Board may delay the transition for a period of up to three (3) months, and must so delay the transition if there is no Vice President, Until a Vice President is in a position to transition to President the Board must fill the position of President by:
 - (i) inviting the current President to continue in that role and delay for up to three (3) months their transition to Past President;
 - (ii) if the current President is unable or unwilling to continue in that role by inviting the last Past President to fill that role; and
 - (iii) if the last Past President is unable or unwilling to assume that role the Board must appoint a Member Appointed Director to that role.

31. GENERAL RIGHT TO APPOINT AND REMOVE DIRECTORS

- (a) Subject to the Corps Act, the Board may at any time appoint any eligible individual as a Director (apart from the NZ Director) to fill any casual vacancy. Any Director so appointed shall only hold office until the next annual general meeting of the Company after the appointment is made. In the event that the NZ Director retires from the Board or as the chair of the Branch Executive of the NZ Branch, the subsequent chair of the Branch Executive of the NZ Branch will become the NZ Director. (For the purposes of clarity, a previous NZ Director is eligible to stand for election to the Board as a Member Appointed Director or for appointment as an Independent Director, once the previous NZ Director has been off the Board for a period of at least two (2) years.)
- (b) The Board may act despite any vacancy in their body, but if the number falls below the minimum required by the Corps Act, the Board may act for the purpose of increasing the number of Directors to the minimum or of convening a general meeting or in emergencies but for no other purpose.

32. VACATION OF OFFICE

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take

effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).

- (b) The office of a Director shall become vacant if the Director:
- (i) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (ii) becomes prohibited from being a director of a company by reason of any order made under the Corps Act or the ACNC Act if applicable;
 - (iii) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - (iv) resigns by notice in writing to the Company;
 - (v) is absent with or without permission of the Board from meetings of the Board held for more than six (6) months unless at the next meeting the Board resolves otherwise;
 - (vi) is removed from office by the Members in general meeting but if the Director is a nominee director, the Director shall remain a Director until a replacement Director is nominated by the nominating body; or
 - (vii) if the Director is a nominee director and the body that nominated the Director removes them from office by notice in writing, which may be given without any reason being ascribed to it, in which case the Director shall remain a Director until a replacement Director is nominated by the nominating body;
 - (viii) being the NZ Director, is no longer the chair of the Branch Executive of the NZ Branch.

POWERS AND DUTIES OF DIRECTORS

33. POWERS OF DIRECTORS

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

34. NEGOTIABLE INSTRUMENTS

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by

- (a) the President or a Director so authorised in writing by the Board; and
- (b) one other Director or Officer so authorised in writing by the Board.

35. CONFERMENT OF POWERS

- (a) The Board may from time to time confer upon any Director for the time being, or any other person as they may select, such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 35** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

36. CONTRACTS

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions that apply to such contracts or arrangements.
- (b) A Director must disclose an interest in accordance with the Corps Act and the ACNC Act if it applies and the Secretary must record all declarations in the minutes of the relevant meeting.
- (c) A Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board subject to compliance with section 195 and related provisions of the Corps Act and the ACNC Act if it applies still may:
 - (i) vote on the matter;
 - (ii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (iv) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) The Company shall not make any payment for services rendered by a Director in a professional or technical capacity, except where the provision of such services and the amount payable have prior approval of the Board and where the amount does not exceed an amount that is commercially reasonable for those services.
- (e) A Director's failure to make disclosure under this **clause 36** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

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- (f) A general notice given to the Board by a Director that the Director is an officer, a member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

37. MEETINGS OF DIRECTORS

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that they shall meet together not less than five (5) times each calendar year.
- (b) The President or any two (2) Directors may at any time and the Secretary upon the request of the President or any two (2) Directors shall convene a meeting of the Board by giving at least, where possible, twenty four (24) hours notice of the meeting to all Directors, except a Director who the person convening the meeting reasonably believes to be outside Australasia.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one provided it is reviewed annually by the Board. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

38. QUORUM

- (a) A majority of Directors entitled to attend a meeting of the Board who are personally present (or in conference in accordance with **clause 37(d)**) form a quorum and a quorum must be present at all times during the meeting.
- (b) A Director who is disqualified from voting on a matter pursuant to **clause 36** shall be counted in determining the quorum despite that disqualification.

39. CHAIRMAN

- (a) The President shall, if present, preside as Chairman of every meeting of the Board.

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- (b) If a meeting of the Board is held and the President is not present within ten (10) minutes after the time appointed for the holding of the meeting or, if present, does not wish to or is not able to chair the meeting, then the other Directors present must elect one of their number to be Chairman of the meeting.

40. VOTING

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In case of an equality of votes at a meeting of the Board, the President has a casting vote in addition to a deliberative vote.

41. RESOLUTIONS BY DIRECTORS

- (a) The Board may pass a resolution without a Board meeting being held if at least a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall, for the purposes of this **clause 41**, be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall, for the purposes of this **clause 41**, be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.

42. COMMITTEES OF DIRECTORS

42.1 Standing Committees

The Board will form six (6) standing Committees, being the following:

- (a) Research Committee to make recommendations to the Board on matters of research and research translation relevant to the Objects;
- (b) Conference Committee to make recommendations to the Board on matters relating to the annual scientific meeting;
- (c) Education Committee to make recommendations to the Board on matters relating to the education of Members and the general public;
- (d) Membership Committee to make recommendations to the Board on matters relating to the Membership and the benefits offered to the Members;

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- (e) Finance Committee to make recommendations to the Board on matters relating to the financial management of the Company; and
 - (f) Clinical Committee to make recommendations to the Board on matters of clinical practice in sleep disorders and the regulation of such clinical practice.

42.2 Constitution of Committees

- (a) Each of the Committees referred to in **clause 42.1** will consist of:
 - (i) the elected chairperson of that Committee; and
 - (ii) no less than four (4) other Members appointed by the Board and any other members of the Committee appointed by the Board who may but need not be Members.
- (b) The Board will elect the chairperson of each Committee.
- (c) The chairperson of a Committee does not need to be a Director.

42.3 Other Committees

The Board may form and delegate any of its powers to any other Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation.

42.4 Operation of all Committees

- (a) A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (b) The meetings and proceedings of any Committee consisting of more than one person will be governed, to the extent that they can be and with such modifications as are necessary, by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (c) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corps Act and this Constitution to be made entered and signed. A copy of these minutes shall be tabled at the next practicable Board Meeting.

43. BRANCHES

43A. Branches

- (a) The Board may in its discretion authorise the formation of a Branch, and grant to it the right to be and to function as such so long as the Board deems fit.
- (b) The prescribing from time to time of geographical or other limits in respect of the area or constituency from which members of a Branch shall be drawn shall at all times be the prerogative of the Board.

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- (c) A Branch shall conduct its affairs and programmes in accordance with this Constitution and such other directions and limitations declared by the Board.
 - (d) The Board shall have the power to define the powers and responsibilities of and otherwise exercise control over the Branches.
 - (e) A Branch shall cease to be a Branch at any time that the Board in its discretion withdraws the authority upon which it was established.
 - (f) The NZ Branch is the only Branch to have the right to have the chair of its Branch Executive as a Director of the Company by virtue of being the chair of the Branch Executive.

NEW ZEALAND BRANCH

43B. New Zealand Branch Membership

- (a) Pursuant to clause 43A(a), the Board authorises the formation of the NZ Branch.
- (b) The individual Members who reside in New Zealand will be members of the NZ Branch of the Company.
- (c) A member of the NZ Branch shall cease to be a member of it if he or she ceases to be a Member of the Company.
- (d) Each member of the NZ Branch (who is financial) is entitled to one (1) vote at a meeting of the members of the NZ Branch, even if they are not Voting Members of the Company.

43C. New Zealand Branch Executive

43C.1 Branch Executive

- (a) The affairs of the NZ Branch shall be managed by an Executive Committee (referred to as the **Branch Executive**) of up to eight (8) members. Only individual Members who reside in New Zealand and who are financial
 - (i) and who are Full Members are eligible to nominate or be nominated for election to the position of Office Bearers on the Branch Executive; and
 - (ii) are eligible to nominate or be nominated for election to the remaining positions on the Branch Executive as referred to in clause 43C.2(a)(iv).
- (b) At the New Zealand Annual Scientific Meeting, vacancies in respect of members of the Branch Executive whose terms have expired may be filled by election.

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- (c) Subject to a Branch Executive member who holds the consecutive positions of chair elect, chair and past chair, each Branch Executive member shall hold office for a term of approximately two (2) years.
- (i) Subject to clause 43C.1(d)(ii), members of the Branch Executive can be re-elected at a New Zealand Annual Scientific Meeting, so long as a member does not serve for more than three (3) consecutive terms. A member of the Branch Executive can subsequently be re-elected to the Branch Executive after that member has been off the Branch Executive for a period of at least two (2) years.
- (ii) A Branch Executive member who holds the position of chair elect, chair and past chair may hold office as a Branch Executive member for a maximum of ten (10) years.
- (d) The term of office of each member of the Branch Executive shall commence and conclude at the conclusion of the relevant New Zealand Annual Scientific Meeting and for clarity in this clause 43C such period shall be deemed a 'year'.
- (e) Notwithstanding anything else herein contained, the first Branch Executive elected pursuant to these provisions will hold office for the following terms:
- (i) the Office Bearers will be elected for an initial term of two (2) years; and
- (ii) all of the other members of the Branch Executive (referred to in clause 43C.2(a)(iv)) will be elected for an initial term of one (1) year.
- (f) The members of the Branch Executive (referred to in clause 43C.2(a)(iv)) who were elected for an initial term of one (1) year pursuant to clause 43C.1(f)(ii) will not have that one (1) year term count toward the limit imposed by clause 43C.1(d)(i).

43C.2 Office Bearers

- (a) The Branch Executive shall at all times consist of the following:
- (i) the NZ president;
- (ii) the treasurer;
- (iii) the past NZ president or the NZ president elect, as the case may be; (all collectively referred to as **Office Bearers**) and
- (iv) up to five (5) other members.

- (b) The treasurer shall hold office for a term of two (2) years, subject to the treasurer ceasing to be a member of the Branch Executive for any reason prior to the expiry of the two (2) year term. The treasurer may offer himself or herself for re-election for further terms.
- (c) At the first Branch Executive meeting held after each New Zealand Annual Scientific Meeting, the Branch Executive shall elect from amongst its members (excluding those who are serving as chair or past chair) those who are to fill any vacancies in relation to the following Office Bearers:
 - (i) NZ president elect (in accordance with clause 43C.3(b)); and
 - (ii) treasurer.

43C.3 Chair Elect

- (a) Subject to the first president who will not be required to first serve as a president elect, prior to a Branch Executive member being eligible to hold the position of president, that Branch Executive member shall be required to have served a one (1) year term as president elect.
- (b) One (1) year before the expiry of the term of any president, the members of the NZ Branch will elect (at that year's New Zealand Annual Scientific Meeting) a NZ president elect for the purposes of clause 43C.3(a), who will hold the position on the Branch Executive referred to in clause 43C.2(a)(iii).

43C.4 Chair

- (a) The NZ president elect shall, on the expiry of his or her one (1) year term, by default assume the position of NZ president and chair.
- (b) The term of the president is two (2) years.
- (c) If the NZ president vacates his or her position prior to the expiry of the NZ president's two (2) year term, the Branch Executive may allow the NZ president elect to assume the office of NZ president upon such vacation occurring, even if the NZ president elect's one (1) year term has not yet expired.
- (d) The NZ president is not eligible for re-election as president on the expiry of the two (2) year term referred to in clause 43C.4(b).

43C.5 Past Chair

- (a) Upon retiring as NZ president, that Branch Executive member by default immediately becomes the past NZ president and will hold the position on the Branch Executive referred to in clause 43C.2(a)(iii).

- (b) Notwithstanding any other clause in this Constitution, the past NZ president shall only have a term of one (1) year as past NZ president
- (c) The past NZ president is not eligible for re-election to the position of chair or chair elect on the expiry of that one (1) year term, until two (2) years have lapsed from the expiry of that one (1) year term.

43C.6 Vacancies

- (a) Any member of the Branch Executive may retire from the Branch Executive on giving notice to the Secretary at the Office of his or her intention to retire, and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Secretary).
- (b) The office of a member of the Branch Executive shall become vacant if the member:
 - (i) is no longer a member of the NZ Branch;
 - (ii) resigns in accordance with clause 43C.6(a);
 - (iii) is removed from office by the members of the NZ Branch pursuant to a special resolution passed at a meeting of the NZ Branch members;
or
 - (iv) is absent without permission of the Branch Executive from meetings of the Branch Executive held for more than six (6) months.
- (c) In the event of any vacancy on the Branch Executive of an Office Bearer (subject to clause 43C.4(c)), the Branch Executive shall elect from amongst its members another individual to fill that vacancy. Any individual so elected to fill the vacancy will only hold office for the remainder of the term of the vacating Office Bearer.
 - (i) Clause 43C.6(c)(i) does not apply to the past NZ president. If the office of past NZ president becomes vacant, it will remain vacant for the rest of the one (1) year term.
 - (ii) In the event of any vacancy on the Branch Executive (not being that of an Office Bearer), the Branch Executive shall be entitled to appoint any member of the NZ Branch to fill such casual vacancy. Any person so appointed shall only hold office until the next New Zealand Annual Scientific Meeting after the appointment is made.

43D. Election of New Zealand Branch Executive

- (a) Nomination of candidates for election as a member of the Branch Executive:
 - (i) must be made in writing, signed by an appropriate member of the NZ Branch (as determined by clause 43C.1(a)) and accompanied by written consent of the candidate (which may be endorsed on the form of the nomination); and
 - (ii) must be delivered to the Office or the Secretary at least seven (7) days before the date fixed for the holding of the New Zealand Annual Scientific Meeting at which the election is to take place.
- (b) Voting for the election of candidates as members of the Branch Executive:
 - (i) is to be held at the New Zealand Annual Scientific Meeting; and
 - (ii) a majority of those eligible members of the NZ Branch who are entitled to vote (as determined by clause 43C.1(a)) and who are present, is required for the successful election of a candidate as a member of the Branch Executive.
- (c) Ten (10) members of the NZ Branch present and entitled to vote constitute a quorum for all meetings of members of the NZ Branch.
- (d) If the nominations received for the election of members of the Branch Executive are not in excess of the vacancies, the chair of the New Zealand Annual Scientific Meeting shall declare such persons duly elected. If sufficient candidates are not nominated to fill the vacancies, the Branch Executive shall be entitled to fill the remaining vacancies as though they were casual vacancies.

43E. Proceedings of Branch Executive Meetings

- (a) The provisions of this Constitution which apply to the proceedings of Board meetings also apply to all meetings of the Branch Executive to the extent that they can and with such modifications as are necessary.
- (b) A majority of the duly elected members of the Branch Executive in office shall constitute a quorum at a meeting of the Branch Executive.
- (c) The Branch Executive shall cause minutes to be made for the purpose:
 - (i) of all appointments of members of the Branch Executive and of all appointments of Office Bearers made by the Branch Executive;

- (ii) of the names of the members of the Branch Executive present at each meeting of the Branch Executive; and
 - (iii) of all resolutions and proceedings at all meetings of the Branch Executive.
- (d) The Branch Executive shall with reasonable expedition transmit to the Office for submission to the Board a copy of all minutes so caused to be made.

43F. Accounts and Finances

- (a) The Branch Executive shall prepare an annual budget for approval by the Board by 30 May each year.
- (b) The Branch Executive shall open a bank account. There will be two (2) signatories to the bank account, both of whom must be current members of the Branch Executive.
- (c) The Branch Executive shall:
 - (i) ensure that all expenditure of the NZ Branch is in accordance with the approved budget; and
 - (ii) obtain the prior approval of the Board for any proposed expenditure by the NZ Branch which is not in accordance with the approved budget.
- (d) All assets (including all monies held in the NZ Branch bank account) and all liabilities of the NZ Branch are, at all times, the assets and liabilities of the Company as the NZ Branch is not a legal entity separate from the Company.

43G. Discontinuance of the NZ Branch

- (a) The NZ Branch shall cease to be a Branch of the Company if the Board withdraws the authority upon which the NZ Branch was established and functioned as such, pursuant to clause 43A(e).
- (b) In the case of the discontinuance of the NZ Branch, property, effects, assets, books of account and records used, held or established by the NZ Branch under this Constitution shall thereupon be transferred to the Office in such manner as the Board shall determine.”

44. VALIDATION OF ACTS OF DIRECTORS

All acts done:

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

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

MINUTES

45. MINUTES

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

SECRETARY

46. APPOINTMENT AND TENURE

- (a) There must be at least one Secretary (who is the Company Secretary for the purposes of the Corps Act) appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may remove any Secretary so appointed, subject to the terms of any contract and the law.

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- (c) If the Secretary is not a Director and not a responsible entity in accordance with the ACNC Act, if the ACNC Act is applicable, then prior to being appointed they must enter into a deed with the Company to act in accordance with the duties and obligations of an Officer.

EXECUTION OF DOCUMENTS

47. EXECUTION OF DOCUMENTS

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute any agreement, deed or other document by:
- (a) two Directors signing the same; or
 - (b) one Director and one Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

ACCOUNTS AND INSPECTION OF RECORDS

48. ACCOUNTS AND INSPECTION

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

NOTICES

49. SERVICE OF NOTICES

- (a) A notice may be given by the Company to any Member by:
- (a) serving it on the Member personally;
 - (b) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (c) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (d) sending it to the electronic address supplied by the Member to the Company for the giving of notices.

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- (b) Any Member who has not left at or sent to the Office his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
 - (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
 - (d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.
 - (e) A notice may be given by the Company to the persons entitled to a share in consequence of the death, lunacy or bankruptcy of a Member by:
 - (a) service on the Member personally;
 - (b) sending it by post addressed to the person by name or by the title of the representative of the deceased or lunatic or the assignee of the bankrupt or by any like description at the address, if any, within Australia supplied for the purpose by the person claiming to be entitled;
 - (c) by giving the notice in any manner in which the same might have been given if the death, lunacy or bankruptcy had not occurred.
 - (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

50. NOTICES OF GENERAL MEETING

Subject to **clause 49(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:

- (a) every Member; and
- (b) the auditor for the time being of the Company.

WINDING UP

51. WINDING UP

- (a) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which has:
 - (a) objects which are similar to the Objects of the Company;

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- (b) a constitution which requires its income and property to be applied in promoting its objects; and
 - (c) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) The identity of the corporation or institution is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by the Board and failing such determination being made by application to the Supreme Court for determination.
 - (c) If the Company is endorsed or duly authorised in any way as a deductible gift recipient in accordance with the Tax Act and the Company maintains accounts or a gift fund pursuant to such endorsement or authorisation, the Company must on the earlier of the winding up of such accounts or gift fund or of the Company having its deductible gift recipient endorsement or authorisation revoked transfer any surplus assets of those accounts or gift fund to another institution or body corporate in Australia that has:
 - (a) objects which are similar to the Objects of the Company;
 - (b) a constitution which requires its income and property to be applied in promoting its objects; and
 - (c) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**; and
 - (d) that satisfies specific requirements of the Tax Act related to the management of a gift fund or of accounts used for the handling of deductible gift recipient funds.
 - (d) The identity of the corporation or institution is to be determined by the Members in writing and failing such determination being made, by the Board.
 - (e)

INDEMNITY

52. INDEMNITY

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this **clause 52** unless:

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

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

53. PAYMENT OF INDEMNITY POLICY PREMIUM

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
 - (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (b) a contravention of sections 182 or 183 of the Corps Act or the comparable governance standards under the ACNC Act if applicable.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions, then the Company shall not be required to indemnify the Officer under **clause 52** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

54. INDEMNITY TO CONTINUE

The indemnity granted by the Company contained in **clause 52** and **53** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.