

**CONSTITUTION  
OF  
ELEKTOS LTD  
(ELEKTOS)**

Australian Company Number (ACN) **634 629 039**

Australian Business Number (ABN) **68 634 629 039**

A company limited by guarantee

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## Definitions and interpretation

### 1. Definitions

In this constitution:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
- (b) **ACNC Regulation** means Australian Charities and Not-for-profits Commission Regulation 2013 (Cth).
- (c) **board** means the board of directors of the company.
- (d) **charity** means a charity entitled to that status pursuant to the *Charities Act 2013* (Cth).
- (e) **chief executive officer** means the person appointed by the board to fill that position for the company.
- (f) **circular resolution** means a resolution passed without holding a meeting, arising between board meetings, whereby each director signs a statement that they agree to the resolution.
- (g) **company** means the company referred to in clause 4.
- (h) **company secretary** means the person appointed as the secretary of the company and includes any assistant or acting secretary, pursuant to clause 52.
- (i) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (j) **elected chairperson** means a person elected by the board to be the company's chairperson under clause 35.
- (k) **general meeting** means a meeting of the member and includes the annual general meeting, under clause 20.
- (l) **member** means:
  - (i) Ku-ring-Gai Neighbourhood Centre Ltd (ACN 623 468 548); or
  - (ii) a replacement member admitted pursuant to clause 17.3 or 17.4,
 and **membership** has the corresponding meaning.
- (m) **representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate member, as described in clause 15.
- (n) **special resolution** means a resolution:
  - (i) as defined in the Corporations Act, and
  - (ii) of which notice has been given under clause 21.1(c), and
  - (iii) that has been passed by the member.
- (o) **subscription** means the subscription fees payable by the member pursuant to clause 16.
- (p) **surplus assets** means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

## 2. **Reading this constitution with the Corporations Act**

- (a) The replaceable rules set out in the Corporations Act do not apply to the company.
- (b) While the company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- (c) If the company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 3. **Interpretation**

In this constitution:

- (a) the words “*including*”, “*for example*”, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

## **Preliminary**

### 4. **Name of the company**

The name of the company is **Elektos Ltd (Elektos)** (the company).

### 5. **Type of company**

The company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity and a public benevolent institution.

### 6. **Limited liability of member**

The liability of the member is limited to the amount of the guarantee in clause 7.

### 7. **The guarantee**

The member must contribute an amount not more than **\$10** (the guarantee) to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the company incurred before the member stopped being a member, or
- (b) costs of winding up.

### 8. **Definitions**

In this constitution, words and phrases have the meaning set out in definitions and interpretation.

## **Charitable purposes and powers**

### **9. Objects**

The objects of the company are to pursue the following charitable purposes:

- (a) Provide access to services to the aged and the disabled to relieve their distress and suffering.
- (b) Provide access to home care for the aged so as to allow them to remain in their homes for as long as possible.
- (c) Provide access to services to the aged in necessitous circumstances and in particular to help them remain living at home independently.
- (d) Encourage and enable the aged to identify opportunities and achieve their personal goals.
- (e) Provide leadership in the planning, development and evaluation of services through continuous quality improvement, through leadership, innovation and research to provide access to the aged and those suffering from helplessness.
- (f) Anything ancillary to the objects referred to in clauses 9(a) to 9(e).

### **10. Powers**

The company can only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 10(a).

### **11. Not-for-profit**

11.1 The income and property of the company will only be applied towards the promotion of the objects of the company.

11.2 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;
- (c) of reasonable and proper rent for premises leased by any member to the company; or
- (d) of any surpluses or profits, so long as the member is a body corporate, is charitable and has objects similar to the objects.

### **12. Amending the constitution**

12.1 Subject to clause 12.2, the member may amend this constitution by passing a special resolution, which may be passed in accordance with clause 28.2.

- 12.2 The member must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.

## **Members**

### **13. Admission to Membership**

- 13.1 The company shall at all times only have one (1) member which, subject to clauses 17.3 and 17.4, is Ku-ring-Gai Neighbourhood Centre Ltd (ACN 623 468 548).
- 13.2 The member agrees to assume the liability to pay the member's guarantee amount pursuant to clause 7.
- 13.3 The member shall be entitled to vote at general meetings.
- 13.4 In addition to the member being entitled to vote at all general meetings, the board shall determine from time to time what additional benefits shall attach to membership.

### **14. Membership entitlements not transferable**

- 14.1 A right, privilege or obligation which the member has by reason of being the member of the company:
- (a) is not capable of being transferred or transmitted to another person; and
  - (b) terminates on cessation of the entity's membership.

### **15. Representative(s)**

- 15.1 The member must appoint as its representative(s) a minimum of one (1) natural person(s).
- 15.2 The member may appoint more than one (1) representative, but only one (1) representative may exercise the member's powers at any one time.
- 15.3 The name and address of the representative(s) will be entered in the register as the representative of the member.
- 15.4 All correspondence and notices from the company will be served on the representative(s), and any notice served on the representative(s) will be deemed to be service on the member.
- 15.5 If the appointment of a representative by the member is made by reference to a position held, the appointment must identify the position.
- 15.6 Despite clause 14, the member may remove and replace a representative where the member gives written notice to the board in a form approved by the board.
- 15.7 A signature by a representative of the member on behalf of the member is taken to be the signature of the member for the purposes of this constitution.
- 15.8 Any power or right of the member as granted by this constitution can be exercised by a representative of the member.
- 15.9 The actions of a representative bind the member.
- 15.10 Each representative shall comply with the terms of this constitution in all matters pertaining to the company as if the member himself or herself.

### **16. Membership Fees**

- 16.1 There may be an annual subscription payable by the member to the company.



- 16.2 The amount of any such annual subscription, as well as the timing and manner of payment, will be determined by the board from time to time.
- 16.3 The board may in its discretion:
- (a) determine that no annual subscription is payable by the member in a given year; and
  - (b) extend the time for payment of the annual subscription by the member.
- 16.4 No part of any annual subscription shall be refunded to the member who ceases to be the member in accordance with clause 17.
- 17. Cessation of Membership**
- 17.1 The member's membership will cease:
- (a) on the date that the company secretary receives written notice of resignation from the member; and
  - (b) if:
    - (i) the member is dissolved or otherwise ceases to exist; or
    - (ii) the member has:
      - (A) a receiver;
      - (B) a receiver and manager;
      - (C) a liquidator;
      - (D) an administrator;
      - (E) an administrator of a deed of company arrangement; or
      - (F) a trustee of other person administering a compromise or arrangement between the member and someone else, appointed to it.
- 17.2 The member may at any time, pursuant to clause 17.1(a), resign as the member but shall continue to be liable for:
- (a) any monies due by the member to the company; and
  - (b) any sum for which the member is liable as the member of the company under clause 7.
- 17.3 In the event that the member ceases to be the member pursuant to clause 17.1, the vacating member shall have the power to admit a new member to the company, the choice of that new member being within the full and unfettered discretion of the vacating member, subject to clause 17.5.
- 17.4 In the event that the vacating member does not admit a new member pursuant to clause 17.3, the board may admit a new member to the company, the choice of that new member being within the full and unfettered discretion of the board, subject to clause 17.5.
- 17.5 The new member referred to in clauses 17.3 and 17.4 must be a body corporate.

## **Dispute resolution and disciplinary procedures**

### **18. Dispute resolution**

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between the member or any director and:
- (a) one or more directors, or
  - (b) the company.
- 18.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 18.3 If those involved in the dispute do not resolve it under clause 18, they must within 10 days:
- (a) tell the board about the dispute by writing to the company secretary;
  - (b) agree or request that a mediator be appointed by the President of the Law Society of New South Wales; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 18.4 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - (i) a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission, or
    - (ii) the president of the law institute or society in the state or territory in which the company has its registered office.
- 18.5 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and
  - (d) not make a decision on the dispute.

## **General meetings**

### **19. Convening of general meetings**

- 19.1 The board may call a general meeting.
- 19.2 Notwithstanding section 111L of the Corporations Act:
- (a) the member may call a general meeting; and
  - (b) the company will do so,
- in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of members to call a general meeting.
- 19.3 A general meeting of the company may be convened virtually or at the time and place (including using one or more methods of secure technology that gives the member a reasonable opportunity to participate in the meeting) and in the manner the board resolves.

### **20. Annual general meeting**

- 20.1 Notwithstanding section 111L of the Corporations Act:

- (a) in the event that the board wishes to do so, it may convene an annual general meeting; and
- (b) any annual general meeting which is convened must be done so in accordance with the requirements of the Corporations Act.

## **21. Notice of general meetings**

21.1 Subject to consent to shorter notice being given in accordance with the Corporations Act (notwithstanding section 111L of the Corporations 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; and
- (e) any other information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act).

21.2 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 (except the member) will not invalidate the proceedings at, or any resolution passed at, the meeting.

21.3 Subject to clause 21.2, notice of every general meeting must be given in any manner authorised by this constitution to:

- (a) the member;
- (b) every director; and
- (c) the auditor for the time being of the company (if any).

## **22. Auditor's right to attend meetings**

22.1 The auditor is entitled to attend any general meeting and to be heard by the member on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

22.2 The company must give the auditor any communications relating to the general meeting that the member is entitled to receive.

## **23. Using technology to hold meetings**

23.1 The company may hold a general meeting virtually or at two or more venues using any technology that gives the member a reasonable opportunity to participate, including to hear and be heard.

23.2 Anyone using this technology is taken to be present in person at the meeting.

## **24. Chairperson for general meetings**

24.1 The elected chairperson is entitled to chair general meetings or in his or her absence the deputy chairperson.

24.2 The member may choose a director to be the chairperson (who will hold attendant rights and responsibilities of the elected chairperson) for that meeting if:

- (a) there is no elected chairperson or deputy chairperson, or

- (b) the elected chairperson or deputy chairperson are not present within 30 minutes after the starting time set for the meeting, or
- (c) the elected chairperson or deputy chairperson are present but both say they do not wish to act as chairperson of the meeting.

**25. Role of the chairperson**

- 25.1 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give the member a reasonable opportunity to make comments and ask questions (including to the auditor).

**26. Adjournment, cancellation or postponement of meetings**

- 26.1 The chairperson 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.
- 26.2 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.
- 26.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 26.4 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.
- 26.5 Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations 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 the member pursuant to clause 19.2 upon receipt by the company of a written notice withdrawing the requisition for a meeting.
- 26.6 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 member relating to the original meeting.
- 26.7 Where any general meeting is cancelled or postponed or the venue for a general meeting is changed, the board must 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.
- 27. Quorum**
- 27.1 No business may be transacted at any general meeting unless there is a quorum at all times during the meeting.
- 27.2 For the purpose of clause 27.1, the member shall constitute a quorum for all general meetings.

- 27.3 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 the member, shall be dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to such other day time and place as the board may by notice to the member 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.

## **Voting at general meetings**

### **28. Determination of questions**

- 28.1 At any general meeting a resolution to be considered at the meeting shall be decided on the verbal vote of the member, pursuant to one of the permitted methods of voting set out in clause 29.
- 28.2 Notwithstanding clause 28.1, where not excluded from doing so by the law, the member may pass a resolution by:
- (a) the member recording it; and
  - (b) signing the record,
- pursuant to section 249B(1) of the Corporations Act.
- 28.3 For the avoidance of doubt, a resolution passed pursuant to clause 28.2 does not require convening of a general meeting.

### **29. Disqualification**

No person other than:

- (a) a representative;
- (b) a proxy or attorney of the member; or
- (c) a proxy of a representative,

shall be entitled to vote at a general meeting.

### **30. Objection of 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 chairperson whose decision shall be final and conclusive and a vote allowed by the chairperson shall be valid for all purposes.

### **31. Appointment of proxy**

- 31.1 The member (or representative) may appoint a proxy to attend and vote at a general meeting on their behalf.
- 31.2 A proxy appointed to attend and vote for the member (or representative) has the same rights as the member to:
- (a) speak at the meeting; and

- (b) vote in a vote in writing (but only to the extent allowed by the appointment).
- 31.3 An appointment of proxy (proxy form) must be signed by the member (or representative) and must contain:
  - (a) the name of the member (or representative) and its address;
  - (b) the company's name;
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 31.4 A proxy appointment may be standing (ongoing).
- 31.5 Proxy forms must be received by the company at the address stated in the notice under clause 21.1 or at the company's registered address at least 48 hours before a meeting.
- 31.6 A proxy does not have the authority to speak and vote for the member (or representative) at a meeting while the member (or representative) is at the meeting.
- 31.7 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the member (or representative):
  - (a) revokes the proxy's appointment, or
  - (b) revokes the authority of a representative or agent who appointed the proxy.
- 31.8 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 32. Voting by proxy**
- 32.1 A proxy may only vote pursuant to the requirements of clause 28, however, a proxy:
  - (a) does not need to vote, unless the proxy appointment specifies the way they must vote, and
  - (b) if the way they must vote is specified on the proxy form, must vote that way.

## **Directors**

### **33. Number of directors**

The company must have no less than three directors, and no more than ten directors.

### **34. Election and appointment of directors**

- 34.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the company will be appointed until the next annual general meeting.
- 34.2 Apart from the initial directors and directors appointed under clause 34.6, the member may elect a director by resolution. The member may elect as many directors as it wishes, subject to clause 33.

- 34.3 For the avoidance of doubt, a resolution passed pursuant to clause 34.2 may be passed in accordance with clause 28.2.
- 34.4 Each of the directors must be elected by a separate resolution, unless the member passes a resolution for a collective election.
- 34.5 A person is eligible for election as a director of the company if they:
- (a) are nominated by the member or representatives of the member (unless the person was previously elected as a director at a general meeting and has been a director since that meeting),
  - (b) give the company their signed consent to act as a director of the company, and
  - (c) are not ineligible to be a director under the Corporations Act or the ACNC Regulation.
- 34.6 The member, by resolution, may appoint a person as a director to fill a casual vacancy (whether of an elected director or an appointed director) or as an additional director if that person:
- (a) gives the company their signed consent to act as a director of the company, and
  - (b) is not ineligible to be a director under the Corporations Act or the ACNC Regulation.
- 34.7 For the avoidance of doubt, a resolution passed pursuant to clause 34.6 may be passed in accordance with clause 28.2.
- 34.8 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

### **35. Election of office bearers**

- 35.1 The directors must elect a director as the company's elected chairperson, and another director as the company's deputy chairperson.
- 35.2 The term of each office bearer commences on the date of their appointment and ends on the date they cease being a director pursuant to clause 36.
- 35.3 Each office bearer may be re-elected for any number of terms (so long as they hold office as a director).

### **36. Term of office**

- 36.1 At each annual general meeting, any director appointed by the member to fill a casual vacancy or as an additional director pursuant to clause 6 must retire.
- 36.2 Other than a director appointed under clause 34.6, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 36.3 Each director must retire annually.
- 36.4 Each director may be reappointed or re-elected for any number of terms.

### **37. When a director stops being a director**

A director stops being a director if they:

- (a) give written notice of resignation as a director to the company;
- (b) die;
- (c) are removed as a director by a resolution of the member pursuant to section 203D of the Corporations Act;
- (d) are absent for 3 consecutive board meetings without approval from the board, or
- (e) become ineligible to be a director of the company under the Corporations Act or the ACNC Regulation.

## **Powers of directors**

### **38. Powers of directors**

- 38.1 The board is responsible for managing and directing the activities of the company to achieve the objects set out in clause 9.
- 38.2 The board may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by the member.
- 38.3 The board must decide on the responsible financial management of the company including:
  - (a) any suitable written delegations of power under clause 39, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 38.4 The board cannot remove a director or auditor. Directors and auditors may only be removed by resolution of the member at a general meeting in accordance with the Corporations Act.
- 38.5 For the avoidance of doubt, a resolution passed pursuant to clause 38.5 may be passed in accordance with clause 28.2.

### **39. Delegation of directors' powers**

- 39.1 The board may delegate any of its powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as it considers appropriate.
- 39.2 The delegation must be recorded by instrument in writing, in the company's minutes.

#### **39.3 Exercise of function**

A function the exercise of which has been delegated to a committee under this rule may, while the delegation remains unrevoked, be exercised from time to time by the committee in accordance with the terms of the delegation.

#### **39.4 Acts of the committee**

Any act or thing done or suffered by a committee acting in the exercise of a delegation has the same force and effect as it would have if it had been done or suffered by the board.

### **40. Revocation of Delegation**

The board may, at any time by instrument in writing, revoke wholly or in part any delegation under clause 39.



**41. Payments to directors**

- 41.1 The company must not pay fees to a director for acting as a director.
- 41.2 The company may:
- (a) pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- 41.3 Any payment made under clause 41.2 must be approved by the board.
- 41.4 The company shall pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

**42. Execution of documents**

The company may execute a document without using a common seal if the document is signed by:

- (a) two directors of the company, or
- (b) a director and the company secretary.

**Duties of directors****43. Powers and duties of directors**

- 43.1 The control, management and conduct of the company shall be vested in the board, who shall exercise all such powers of the company as are not by the Corporations Act, the ACNC Act, the ACNC Regulation or by this constitution required to be exercised in any other manner.
- 43.2 A director is, pursuant to section 187 of the Corporations Act, taken to have acted in good faith in the best interests of the company even if that director is acting in the best interests of the member if the following conditions are satisfied:
- (a) the director acts in good faith in the best interests of the member; and
  - (b) the company is not insolvent at the time the director acts and does not become insolvent because of the director's act.
- 43.3 The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
  - (b) to act in good faith in the best interests of the company and to further the charitable objects of the company set out in clause 9;
  - (c) not to misuse their position as a director;
  - (d) not to misuse information they gain in their role as a director;
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 44;

- (f) to ensure that the financial affairs of the company are managed responsibly, and
- (g) not to allow the company to operate while it is insolvent.

#### **44. Directors' Conflicts of interest**

- 44.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a board meeting (or that is proposed in a circular resolution):
- (a) to the other directors, or
  - (b) if all of the directors have the same conflict of interest, to the member at the next general meeting, or at an earlier time if reasonable to do so.
- 44.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 44.3 Each director who has a material personal interest in a matter that is being considered at a board meeting (or that is proposed in a circular resolution) must not, except as provided under clauses 44.4:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 44.4 A director may still be present and vote if:
- (a) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 62);
  - (b) their interest relates to a payment by the company under clause 61 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (c) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
  - (d) the directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
    - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

### **Directors' meetings**

#### **45. When the directors meet**

The directors must meet between one to three times per year but may decide where and when they meet.

#### **46. Calling board meetings**

- 46.1 A director may call a board meeting by giving reasonable notice to all of the other directors.
- 46.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

**47. Chairperson for board meetings**

- 47.1 The elected chairperson is entitled to chair board meetings or in his or her absence the deputy chairperson.
- 47.2 The directors at a board meeting may choose a director to be the chairperson for that meeting if the elected chairperson and deputy chairperson are:
- (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as chairperson of the meeting.

**48. Quorum at board meetings**

- 48.1 Unless the directors determine otherwise, the quorum for a board meeting is a majority (more than 50%) of directors.
- 48.2 A quorum must be present for the whole board meeting.

**49. Using technology to hold board meetings**

- 49.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 49.2 The directors' agreement may be a standing (ongoing) one.
- 49.3 A director may only withdraw their consent if not less than 24 hours notice is given to the chief executive officer before the meeting.

**50. Passing directors' resolutions**

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

**51. Circular resolutions of directors**

- 51.1 The directors may pass a circular resolution without a board meeting being held.
- 51.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 51.3 or clause 51.4.
- 51.3 Each director may sign:
- (a) a single document, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 51.4 The company may send a circular resolution by email to the directors setting out the resolution and containing a statement that they agree to the resolution. The directors may agree to the resolution by signing the statement and returning by email to the company secretary.
- 51.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 51.3 or clause 51.4.

**Company Secretary****52. Appointment and role of company secretary**

- 52.1 The company must have at least one company secretary, who may also be a director.

- 52.2 A company secretary must be appointed by the board (after giving the company their signed consent to act as company secretary of the company) and may be removed by the board.
- 52.3 The board must decide the terms and conditions under which the company secretary is appointed, including any remuneration.
- 52.4 The role of the company secretary includes:
- (a) maintaining a register of the company's members, and
  - (b) maintaining the minutes and other records of general meetings (including notices of meetings), board meetings and circular resolutions.

## **Minutes and records**

### **53. Minutes and records**

- 53.1 The company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
  - (b) minutes of written resolutions of the member, and
  - (c) a copy of a notice of each general meeting.
- 53.2 The company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of board meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of the board.
- 53.3 To allow the member (or its representative) to inspect the company's records as per the Corporations Act:
- (a) the company must give the member (or its representative) access to the records set out in clause 53.1 but not the records referred to in clause 53.2; and
  - (b) the board may authorise the member (or its representative) to inspect other records of the company, including records referred to in clause 53.2.
- 53.4 The board must ensure that minutes of a general meeting or a board meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 53.5 The board must ensure that minutes of the passing of a circular resolution of the board are signed by a director within a reasonable time after the resolution is passed.

### **54. Financial and related records**

- 54.1 The company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.

- 54.2 The company must also keep written records that correctly record its operations.
- 54.3 The company must retain its records for at least 7 years.
- 54.4 The board must take reasonable steps to ensure that the company's records are kept safe.

## **By-laws**

### **55. By-laws**

- 55.1 The board may pass a resolution to make or amend or repeal by-laws to give effect to this constitution.
- 55.2 The member and the board must comply with by-laws as if they were part of this constitution.

## **Notice**

### **56. What is notice**

- 56.1 Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 58 to 59, unless specified otherwise.
- 56.2 Clauses 57 to 59 do not apply to a notice of proxy under clause 30.5.

### **57. Notice to the company**

Written notice or any communication under this constitution may be given to the company, the directors or the company secretary by:

- (a) delivering it to the company's registered office;
- (b) posting it to the company's registered office or to another address chosen by the company for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the company to the member as the company's email address or other electronic address, or
- (d) sending it to the fax number notified by the company to the member as the company's fax number.

### **58. Notice to the member**

- 58.1 Written notice or any communication under this constitution may be given to the member:
  - (a) by hand delivery;
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any); or
  - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any).
- 58.2 If the company does not have an address for the member, the company is not required to give notice by hand delivery.

### **59. When notice is taken to be given**

A notice:

- (a) delivered by hand delivery, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs; and
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent.

## **Financial year**

### **60. Company's financial year**

The company's financial year is from 1 July to 30 June, unless the board passes a resolution to change the financial year.

## **Indemnity, insurance and access**

### **61. Indemnity**

- 61.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.
- 61.2 In this clause, 'officer' means a director or company secretary and includes a director or company secretary after they have ceased to hold that office.
- 61.3 In this clause, 'to the relevant extent' means:
  - (a) to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 61.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

### **62. Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company shall pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

### **63. Directors' access to documents**

- 63.1 A director has a right of access to the financial records of the company at all reasonable times.
- 63.2 If the board agrees, the company must give a director or former director access to:
  - (a) certain documents, including documents provided for or available to the directors, and
  - (b) any other documents referred to in those documents.

## **Winding up**

## **64. Winding up**

64.1 If any surplus remains following the winding up of the company, the surplus will be paid to or distributed to another institution(s) or corporation(s) which has:

- (a) objects which are similar to the objects and are charitable;
- (b) a constitution which requires its income and property to be applied in promoting its objects;
- (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 11.2; and
- (d) DGR endorsement.

64.2 If the member meets the requirements set out in clause 64.1 and is charitable, it is eligible to receive the surplus under that clause.

64.3 The identity of the corporation(s) or institution(s) referred to in clause 64.1 is to be determined:

- (a) by the board; or
- (b) if the board does not decide or does not wish to decide, then by the member,

in writing at or before the time of dissolution, and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

64.4 In the event that that company subsequently has its endorsement as a DGR revoked, the company must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another DGR which is charitable, such DGR to be determined by the board, or failing the board, the member, and failing such determination being made by either the board or the