

# Constitution

**Australian Nursing & Midwifery Accreditation Council  
Limited**

**ACN 143 879 396**

A Public Company Limited by Guarantee

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## **1 Name of the Company**

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The name of the Company is Australian Nursing & Midwifery Accreditation Council Limited.

## **2 Type of Company**

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- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each 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:
  - (i) payment of debts and liabilities of the Company;
  - (ii) payment of the costs, charges and expenses of winding up; and
  - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to \$20.00

## **3 Replaceable Rules**

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This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

## **4 Definitions and Interpretation**

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### **4.1 Definitions**

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

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

**ACNC Act** means Australian Charities and Not-for-Profits Commission Act 2012 (Cth).

**ACNC Regulation** means Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (Cth).

**AGM** means annual general meeting.

**Alternate Director** means a person who sits on the Board in lieu of a Director in the event that the Director cannot attend a meeting.

**Appointed Director** means a person appointed as a Director pursuant to **clause 33.6**.

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

**Board Governance Charter** means the board governance charter of the Company.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

**By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with **clause 53**.

**Chairperson** means the person holding that office under **clause 33.8** and includes any assistant or acting Chairperson under this Constitution.

**Code of Conduct** means the code of conduct that forms Appendix I to the Board Governance Charter.

**Committee** means a committee established in accordance with **clause 49**.

**Company** means Australian Nursing & Midwifery Accreditation Council Limited.

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

**Corporations Act** means Corporations Act 2001 (Cth).

**Deputy-Chairperson** means the person appointed to that position pursuant to **clause 33.8(a)(ii)** and includes any assistant or acting Deputy-Chairperson under this Constitution.

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

**Director Present** means in connection with a Board meeting, a Director being present in person or pursuant to **clause 44(d)**.

**Direct Vote** means a valid notice of a Member's voting intention, made pursuant to **clause 20.2**.

**Disciplinary Committee** means the committee established under **clause 12.2(a)**.

**Entrance Fee** means the entrance fee payable by Members pursuant to **clause 10**.

**Member** means a member of the Company pursuant to **clause 6** and Membership has the corresponding meaning.

**Member Director** means a person appointed as a Director pursuant to **clause 33.5**.

**Member Present** means in connection with a meeting of Members, a Member being present (in person or by conference pursuant to **clause 14.2(c)**) by proxy or attorney or by a Nominee.

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

**National Law** means the Health Practitioner Regulation National Law (ACT) 2010, and the equivalent legislation in each Australian State and Territory.

**Nominee** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate, as described in **clause 9**.

**Nursing and Midwifery Board of Australia** means the body corporate of that name established under section 31 of the National Law.

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

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

**Office Bearer** means a person holding any of the offices specified in **clause 33.8(a)**.

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

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

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

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

**Special Resolution** has the meaning given to it by the Corporations Act.

**Subscription** means the subscription fees payable by Members pursuant to **clause 10**.

## 4.2 Interpretation

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;
- (h) an expression used in a particular Part or Division of an Act or Regulation 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; and
- (i) headings do not form part of or affect the construction or interpretation of this Constitution.

## 5 Objects

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### 5.1 Objects

- (a) The Company is a charitable institution established to advance the education, training and professional competence of nurses and midwives. The Company will achieve this object by:
  - (i) acting as an independent accreditation entity (including acting as an external accreditation entity under the National Law);
  - (ii) upholding the objectives of the national registration and accreditation scheme outlined in section 3 of the Schedule to the National Law;
  - (iii) assessing the qualifications and skills of internationally qualified nurses and midwives who wish to migrate to Australia;
  - (iv) advising and making recommendations to government bodies, professional and other organisations, on matters relating to the education, training and competence of nurses, midwives and other health professionals as required; and
  - (v) anything ancillary to the Objects referred to in **clause 5.1(a)(i) to 5.1(a)(iv)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
  - (i) carry out the Objects of the Company; and
  - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

## 5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (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:
  - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
  - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

## 5.3 Remuneration of Directors

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;
- (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; and
- (c) of fees to the Director as remuneration for his or her services as a Director, provided that the amount is reasonable in the circumstances and the amount has been approved by the Members at a general meeting.

# MEMBERSHIP

## 6 Admission to Membership

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### 6.1 Maximum Number of Members

There shall be a maximum of five (5) Members of the Company at any given time.

### 6.2 Eligibility for Membership

Subject to **clause 6.1**, any body corporate is entitled to become a Member if the body corporate:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) is nominated by not less than two (2) existing Members;
- (c) supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
- (d) lodges an application in accordance with **clause 7.1(a)**;



- (e) subject to **clause 10(c)**, pays the Entrance Fee in accordance with **clause 10(a)**; and
- (f) is approved as a Member pursuant to **clause 7.1(b)**.

### 6.3 Benefits

- (a) Each Member will be entitled to vote at all general meetings.
- (b) Each Member shall nominate a Member Director pursuant to **clause 33.5**.
- (c) In addition to each Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

## 7 Applications for Membership

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### 7.1 Applications for Membership

- (a) An application for Membership of the Company must:
  - (i) be in the form prescribed by the Board from time to time;
  - (ii) include such information as the Board requires showing that:
    - (A) part of the applicant's purpose is the advancement of the education, training and professional competence of nurses and midwives; and
    - (B) it is an organisation of substantial standing in its field of endeavour;
  - (iii) include a signature, or equivalent acknowledgement by the applicant acknowledging that the applicant agrees to be bound by:
    - (A) the Constitution of the Company and any code of conduct as amended from time to time; and
    - (B) the duly authorised decisions of the Board and Membership under the Constitution;
  - (iv) be accompanied by any Entrance Fee and annual Subscription payable pursuant to **clause 10(a)**; and
  - (v) be lodged with the Secretary.
- (b) As soon as practicable after receiving an application for Membership, the Secretary must refer the application to the Board which is to determine whether to approve or reject the application.
- (c) As soon as practicable after the Board makes that determination the Secretary must:
  - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
  - (ii) if the Board approved the application, enter the applicant's name in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or
  - (iii) if the Board rejected the application, comply with the notification requirements in **clause 7.1(d)** and within twenty-eight (28) days of the Board's decision, refund the applicant any annual Subscription paid pursuant to **clause 7.1(a)(iv)**, but not any Entrance Fee.
- (d) If the Board determines under **clause 7.1(b)** to reject an application for Membership, the Secretary must serve the applicant with a notice in writing setting out the

determination of the Board. The Board is not required to provide any reasons for its decision.

## **8 Membership Entitlements Not Transferable**

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

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

## **9 Nominee**

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- (a) Each Member must nominate as its Nominee a natural person.
- (b) If the appointment of a Nominee by the Member is made by reference to a position held, the appointment must identify the position.
- (c) Despite **clause 8**, a Member may remove and replace a Nominee where the Member gives written notice to the Board in a form approved by the Board.
- (d) A signature by a Nominee of a Member on behalf of that Member is taken to be the signature of that Member for the purposes of this Constitution.
- (e) Any power or right of a Member as granted by this Constitution can be exercised by the Nominee of that particular Member.
- (f) Members are represented at meetings of Members by their Nominees, subject to the right of a Member or a Nominee to appoint a proxy pursuant to **clause 28**.
- (g) The actions of a Nominee bind the Member which is represented by that particular Nominee.
- (h) Each Nominee will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.
- (i) A Nominee is ineligible to be a Director while holding the position of a Nominee.

## **10 Entrance Fee and Subscriptions**

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- (a) There shall be an Entrance Fee and annual Subscription payable by each Member to the Company, unless the Members determine otherwise at an AGM or other general meeting.
- (b) Subject to **clause 10(c)**, the amount of the Entrance Fee and annual Subscription shall be payable by Members at such times and in such manner as determined by the Members from time to time.
- (c) The Members may in their discretion:
  - (i) determine that no Entrance Fee or annual Subscription is payable by a Member or Members (in whole or in part) in a given year; and
  - (ii) extend the time for payment of the Entrance Fee or annual Subscription by any Member.
- (d) No part of any Entrance Fee or annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 11**.

## 11 Cessation of Membership

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- (a) A Member's Membership will cease:
- (i) on the date that the Secretary receives written notice of resignation from that Member;
  - (ii) upon that Member no longer satisfying the criteria for Membership;
  - (iii) upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
  - (iv) subject to **clause 10(c)**, if that Member fails to pay an annual Subscription:
    - (A) within thirty (30) days after it falls due; and
    - (B) then fails to rectify this default within thirty (30) days of being notified of the default by the Company;
  - (v) if that Member is expelled from the Company pursuant to **clause 12**;
  - (vi) if that Member is dissolved or otherwise ceases to exist;
  - (vii) if that 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 that Member and someone else; appointed to it; or
  - (viii) if the Company in general meeting resolves by Special Resolution 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 twenty-one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 11(a)(i)**, resign as a Member but shall continue to be liable for:
- (i) any monies due by the Member to the Company;
  - (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**.
- (c) In the event that there is only one Member of the Company and that Member ceases to be a Member pursuant to **clause 11(a)**, the Board may appoint a new Member to the Company, the choice of that new Member being within the full and unfettered discretion of the Board.

## 12 Disciplining of Members

### 12.1 Disciplining of Members

- (a) Where the Board is of the opinion that a Member has:
- (i) persistently refused or neglected to comply with a provision or provisions of this Constitution, the Code of Conduct or any other code of conduct; or
  - (ii) persistently and wilfully acted in a manner prejudicial to the interests of the Company;
- the Board may:
- (iii) expel the Member from the Company; or
  - (iv) suspend the Member from Membership of the Company for a specified period.
- (b) A resolution of the Board pursuant to **clause 12.1** is of no effect unless the Board confirms the resolution in accordance with this **clause 12.1(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice pursuant to **clause 12.1(c)**.
- (c) If the Board resolves under **clause 12.1** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
- (i) setting out the resolution of the Board and the grounds upon which it is based;
  - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
  - (iii) stating the date, place and time of that meeting; and
  - (iv) informing the Member that the Member may do either or both of the following:
    - (A) attend and speak at that meeting;
    - (B) submit to the Board at or prior to the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 12.1(c)**, the Board must:
- (i) give the Member an opportunity to make verbal representations;
  - (ii) give due consideration to any written representations submitted to the Board by the Member at or before the Board meeting; and
  - (iii) by a resolution of at least seventy-five per cent (75%) of the Directors participating in the Board meeting, determine whether to confirm or to revoke the resolution.
- (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 12.2**.
- (f) A resolution confirmed by the Board under **clause 12.1(d)** does not take effect:

- (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
- (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 12.2(d)(ii)**.

## **12.2 Right of Appeal of Disciplined Member**

- (a) The Board will establish a committee for the purpose of conducting disciplinary proceedings against Members. The Disciplinary Committee will comprise of an independent panel of three (3) experts, all chosen by the Board. The experts will be chosen based upon the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 12.1(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 12.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 12.2(b)**, the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 12.2(c)**:
  - (i) the Member must be given the opportunity to state its case verbally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
  - (ii) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision, pursuant to **clause 12.2(d)(ii)**, is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) The Member the subject of these disciplinary procedures is entitled to:
  - (i) subject to **clause 12.2(f)(ii)**, bring a support person to any meeting being held pursuant to this **clause 12** with the Disciplinary Committee or the Board; and
  - (ii) if the support person is legally qualified, the Member must notify the Disciplinary Committee or the Board (as the case may be) at least five (5) Business Days before the meeting that the support person attending the meeting will be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this **clause 12**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

## **13 Resolution of Disputes Between Members**

- (a) Disputes between Members (in their capacity as Members), shall be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of it being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.

- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the Law Society of the Australian Capital Territory.
- (d) The costs of the mediator appointed pursuant to **clause 13(b)** or **clause 13(c)** (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 13(b)** or **clause 13(c)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

## GENERAL MEETINGS

### 14 Convening of General Meetings

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#### 14.1 AGMs

Notwithstanding section 111L of the Corporations Act:

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

#### 14.2 Convening of General Meetings

- (a) No fewer than three (3) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:
  - (i) the Members may call a general meeting; and
  - (ii) 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.
- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

### 15 Notice of General Meeting

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- (a) Notwithstanding section 111L of the Corporations Act:
  - (i) subject to **clause 15(a)(ii)**, 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; and
- (ii) fewer than twenty-one (21) days notice may be given of a general meeting in accordance with section 249H of the Corporations 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) Subject to **clause 15(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
  - (i) every Member;
  - (ii) every Director; and
  - (iii) the auditor for the time being of the Company (if any).

## **16 Cancellation or Postponement of General Meeting**

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- (a) 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:
  - (i) convened by the Board; or
  - (ii) convened by a Member or Members pursuant to **clause 14.2(b)** 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 a general meeting is changed:
  - (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
  - (ii) any 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

### 17 Quorum

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- (a) A quorum of Members Present must be present at all times during a general meeting. No business may be transacted during an inquorate period of a general meeting.
- (b) The Members Present, being a majority of the total number of Members, shall 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:
  - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
  - (ii) in any other case:
    - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
    - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

### 18 Chair

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- (a) The Chairperson of the Board shall preside as chair at each general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no Chairperson; or:
  - (ii) the Chairperson is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as chair of the meeting,

then the following person will be chair of the meeting in lieu of the Chairperson in the order of availability set out below:

  - (iii) Deputy-Chairperson;
  - (iv) another Director chosen by the Directors present at the meeting;
  - (v) Secretary; and
  - (vi) a Member (or Nominee) chosen by a majority of the Members Present.
- (c) The rulings of the chair 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.

### 19 Adjournments

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- (a) The chair of a general meeting at which a quorum is present:
  - (i) may adjourn a meeting with the consent of the meeting; and
  - (ii) must adjourn the meeting if the meeting so directs;

to a time and place as determined.



- (b) No business may be transacted at a general meeting resumed after an adjournment other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a general meeting resumed after an adjournment, is passed on the date it was passed, and not on the date of the meeting from which the adjournment took place.
- (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.

## **20 Voting**

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### **20.1 Voting**

- (a) Votes by Members at general meetings may be given:
  - (i) personally by the Nominee at the general meeting;
  - (ii) by proxy (or attorney) at the general meeting in accordance with **clause 28**; or
  - (iii) by a Direct Vote in accordance with **clause 20.2**.
- (b) A Member may only vote by one of the permitted methods set out in **clause 20.1(a)**.
- (c) If a Member casts a Direct Vote on a particular resolution, the Member is taken to have revoked the authority of a previously authorised proxy to vote on the Member's behalf in relation to that resolution.
- (d) If a Member attempts to cast more than one vote on a particular resolution, only the last vote received by the Chairperson is to be taken to have been validly cast,
- (e) Where a Subscription is charged, no Member shall be entitled to vote at any general meeting if any payment of moneys due by it to the Company is in arrears by more than one (1) month at the date of the meeting.

### **20.2 Direct Votes**

- (a) A Member who is entitled to vote at a general meeting is entitled to vote by a Direct Vote, using the form prescribed by the Board from time to time, which may include electronic means.
- (b) If sent by post or fax, the Direct Vote must be signed by the Member by a duly authorised officer, attorney or representative.
- (c) If sent by electronic transmission, the Direct Vote is to be taken to have been signed if it has been signed or authorised by the Member in the manner approved by the Board.
- (d) The Direct Vote must be received by the Company at least forty-eight (48) hours before the time of the relevant general meeting in order to be valid.
- (e) A Direct Vote is valid if it contains the following information:
  - (i) the Member's name and address, or any applicable identifying notations such as the Member's identification number or similar approved by the Board or specified in the notice of meeting; and

- (ii) the Member's voting intention on any or all of the resolutions to be put before the meeting.
- (f) A Direct Vote is valid unless the Company receives written notification changing the voting intention before the vote is cast.
- (g) The Chair's decision as to whether a Direct Vote is valid is conclusive.
- (h) A Member who has cast a Direct Vote is entitled to attend the meeting. The Member's attendance cancels the Direct Vote, unless the Member instructs the Company otherwise.
- (i) If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the Chair of the meeting must:
  - (i) on a vote by show of hands, count each Member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote; and
  - (ii) on a poll, count the votes cast by each Member who has submitted a Direct Vote directly for or against the resolution.

## 21 Determination of Questions

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- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
  - (i) the chair of the meeting; or
  - (ii) at least three (3) Members Present.
- (b) Before a vote on a resolution is taken, the chair must inform the meeting whether any proxy votes or Direct Votes have been received and how the proxy votes or Direct Votes are to be cast.
- (c) A declaration by the chair 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 chair of the 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.

## 22 Polls

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- (a) A poll may be demanded:
  - (i) before a vote on a resolution is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the chair of the meeting directs subject to **clause 22(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 chair or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

## **23 Voting Rights**

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A Member has one (1) vote, both on a show of hands and a poll, or by Direct Vote.

## **24 Disqualification**

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No person other than a:

- (a) Member;
- (b) Nominee; or
- (c) proxy of a:
  - (i) Member; or
  - (ii) Nominee,

shall be entitled to a vote at a general meeting.

## **25 Objection to Qualification to Vote**

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

## **26 No Casting Vote at General Meetings**

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

## **27 Right of Non-Members to Attend General Meeting**

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

# **PROXIES**

## **28 Right to Appoint Proxies**

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- (a) A Member or a Nominee who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's or the Nominee's proxy to attend and vote for the Member or the Nominee at the meeting.

- (b) If a Member or Nominee appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

## 29 Appointing a Proxy

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### 29.1 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.

### 29.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act):
- (i) the name and address of the Member;
  - (ii) the name of the Company;
  - (iii) the proxy's name or the name of the office of the proxy; and
  - (iv) the meetings at which the instrument of proxy may be used.
- (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 may be revoked at any time by notice in writing to the Company.

## 30 Lodgement of Proxies

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- (a) An instrument appointing:
- (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (ii) an attorney to exercise a Member's or Nominee'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 twenty-four (24) 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.
- (b) For the purposes of this **clause 30**, it will be sufficient that any document required to be lodged by a Member or Nominee be received in legible form by facsimile at the place at which the document is required to be delivered by the Member or Nominee, 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 30**, it will be sufficient that any document required to be lodged by a Member or Nominee 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 or other electronic transmission by the Company.

### 31 Validity of Proxies

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- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death of the appointor;
  - (ii) the bankruptcy or liquidation of the appointor;
  - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,
- if the Company has not received at its Office written notice of the death, 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 Member or Nominee may vote as a proxy for another Member or Nominee who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (c) Except on a show of hands, a proxy may vote as more than one Member or Nominee if the proxy holds appointments for those Members or Nominees which specify the way the proxy is to vote on the resolution and the proxy votes that way.

### 32 Rights of Proxies and Attorneys

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- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 31(b)** and **clause 31(c)**, unless a Member or Nominee by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the chair that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a poll.

## APPOINTMENT AND REMOVAL OF DIRECTORS

### 33 Number and Appointment of Directors

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#### 33.1 Present Board

- (a) The Board in office as at the adoption of this Constitution shall be entitled to hold office until the end of the AGM or other annual meeting held in 2017.
- (b) Notwithstanding anything else herein contained, if any casual vacancies occur on the Board before the 2017 AGM (or other annual meeting held in 2017), the positions do not need to be filled. However, the Board may appoint a natural person to fill any such casual vacancy that occurs.

#### 33.2 Effect of Clause

The following provisions of this **clause 33** shall come into effect at the end of the 2017 AGM (or other similar annual meeting held in 2017).

#### 33.3 Number of Directors

- (a) The Board of Directors shall consist of not fewer than four (4) and not more than nine (9) persons.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 33.3(a)**.

#### 33.4 Composition of Board

The Board shall consist of:

- (a) up to five (5) Member Directors; and
- (b) up to four (4) Appointed Directors appointed by the Board from time to time, as determined by the Board from time to time.

#### 33.5 Member Directors

Appointments as Member Directors shall take place as follows:

- (a) Each Member shall nominate, in writing to the Chair, one (1) natural person to be a Member Director. The nomination shall be delivered to the Chair not later than close of business fourteen (14) Business Days before the day fixed before the relevant AGM or other annual meeting.
- (b) Any appointments made under **clause 33.5(a)** shall be made in accordance with the Board Governance Charter.

#### 33.6 Appointed Directors

- (a) The Board may appoint Appointed Directors to the Board at any time to fill the positions provided for in
- (b) **clause 33.4(b)**.
- (c) An Appointed Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.

**33.7 Term**

- (a) Except as provided for by **clause 33.7(c)**:
- (i) Member Directors shall hold office for a term of three (3) years, but shall be eligible for reappointment for one (1) further term of three (3) years; and
  - (ii) Appointed Directors shall hold office for a term of up to three (3) years, but shall be eligible for reappointment for one (1) further term of up to three (3) years; and
  - (iii) Directors shall not hold office for more than six (6) consecutive years.
- (b) Once a Director has served the maximum term of six (6) consecutive years, the person is not eligible for reappointment to the Board until a period of at least two (2) years has expired since the expiry of the Director's previous term on the Board.
- (c) The Board Governance Charter may provide for different terms for some of the Directors who would hold office as from the AGM or other annual meeting held in 2017 in order to create staggered terms.
- (d) Time served on the Board before the 2017 AGM (or other annual meeting held in 2017) shall not count towards the term limits set out in this **clause 33.7**.

**33.8 Office Bearers**

- (a) The Board shall, at the first meeting of the Board held after this Constitution is adopted and thereafter at the first meeting of the Board held after an AGM (or other annual meeting if no AGM is to be held) of the Company where an Office Bearer has retired, appoint from amongst the Directors sitting on the Board at the time of the Board meeting:
- (i) a Chairperson;
  - (ii) a Deputy-Chairperson; and
  - (iii) such additional office bearer positions as the Board deems necessary from time to time.
- (b) The Office Bearers shall hold office for a term of three (3) years but shall be eligible for reappointment for one further term (3) year each, provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.

**34 General Right to Appoint and Remove Directors**

The Board may act despite any vacancy in its body, but if the number falls below the minimum fixed in accordance with **clause 33.1** the Board may act:

- (a) for the purpose of:
- (i) increasing the number of Directors to the minimum; or
  - (ii) convening a general meeting; or
- (b) in emergencies,
- but for no other purpose.

**35 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) dies;
  - (ii) in the case of a Member Director, the Member that appointed that Member Director ceases to be a Member;
  - (iii) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (iv) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
  - (v) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
  - (vi) 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;
  - (vii) is removed from office by the Company in general meeting;
  - (viii) completes the period for which the Director was appointed;
  - (ix) resigns by notice in writing to the Company; or
  - (x) is absent from Board meetings for a period of three (3) consecutive meetings except in exceptional circumstances, and the Board resolves that the Director should vacate from office.

### **36 Filling of Vacancies on the Board**

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- (a) In the event of a casual vacancy occurring on the Board in relation to a Member Director vacancy, the Member that nominated the vacating Director shall nominate a suitable natural person, who cannot be a Nominee, in accordance with the Board Governance Charter to fill that vacancy.
- (b) In the event of a casual vacancy occurring on the Board in relation to an Appointed Director, the Board shall appoint any person in accordance with **clause 33.6(a)** by Board resolution.
- (c)
  - (i) Any Director appointed pursuant to **clause 36(a)** shall hold office until the conclusion of the next AGM (or other annual meeting if no AGM is to be held) following the date of the appointment.
  - (ii) Any Director appointed pursuant to **clause 36(b)** shall hold office for the unexpired portion of the existing term of the vacancy.

### **37 Acting Office Bearers**

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- (a) In the event of a vacancy occurring in the position of Chairperson, the Deputy-Chairperson shall assume office as acting Chairperson until the next meeting of the Board following an AGM (or other annual meeting if no AGM is to be held), at which



time the Board shall elect a new Chairperson in accordance with **clause 33.8(a)** for either a full new term or for the balance of the term of the vacating Chairperson.

- (b) In the event of a vacancy occurring in the position of Deputy-Chairperson, another Director (elected by the Directors at the next meeting of the Board) who is not Chairperson, determined by the Board, shall assume office as acting Deputy-Chairperson until the next meeting of the Board following an AGM (or other annual meeting if no AGM is to be held), at which time the Board shall elect a new Deputy-Chairperson in accordance with **clause 33.8(a)** for the balance of the term of the vacating Deputy-Chairperson.
- (c) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.
- (d) Nothing in **clause 37** permits any person to simultaneously hold more than one position of Office Bearer.

### **38 Alternate Directors**

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Alternate Directors shall not be permitted.

## **POWERS AND DUTIES OF DIRECTORS**

### **39 Duties of Directors**

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- (a) Each Director is subject to, and must comply at all times with, the duties set out in governance standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with governance standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

### **40 Powers of Directors**

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

### **41 Negotiable Instruments**

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All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
- (b) the Secretary; or
- (c) another staff member of the Company,

to sign such instruments.

## **42 Conferment of Powers**

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- (a) The Board may from time to time confer upon any Director for the time being or any other person as it 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 42** 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**

### **43 Contracts**

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- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the relevant legislation, being either:
  - (i) the Corporations Act; or
  - (ii) the ACNC Regulation,
 which shall include disclosing an interest and having the declarations recorded in the minutes of the relevant meeting.
- (c) Subject to **clause 43(b)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may still, with the consent of the majority of the Board:
  - (i) be present while the matter is being considered at a meeting;
  - (ii) vote on the matter;
  - (iii) 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;
  - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this clause 43 does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the

nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

## PROCEEDINGS OF DIRECTORS

### 44 Meetings of Directors

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- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit, provided that the Board must meet not less than four (4) times each calendar year.
- (b) A minimum of two (2) Directors may at any time, and the Secretary upon the request of any two (2) Directors shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the Secretary and/or Directors must have used their best endeavours to ensure that the notice was properly served and received.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) Subject to **clause 44(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 44(d)**, must be available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

### 45 Quorum

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- (a) A quorum of Directors Present must be present at all times during a Board meeting. No business may be transacted during an inquorate period of the meeting.
- (b) A majority of the total number of Directors shall constitute a quorum for all Board meetings.
- (c) A Director who is disqualified from voting on a matter pursuant to **clause 43(c)** due to not obtaining the consent of the Board shall be counted in the quorum despite that disqualification.

## 46 Chair

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- (a) The Chairperson shall, if present, chair every meeting of the Board.
- (b) If a meeting of Board is held and:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
  - (iii) the Chairperson, if present, does not wish to chair the meeting,
 then the following person will be chair of the meeting in lieu of the Chairperson in the order of availability set out below:
  - (iv) Deputy-Chairperson;
  - (v) another Director chosen by the Directors present at the meeting; and
  - (vi) Secretary.

## 47 Voting

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- (a) A resolution of the Board must be passed by a majority of votes of the Directors Present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors Present 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 chair does not have a casting vote in addition to a deliberative vote.

## 48 Resolutions by Directors

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- (a) The Board may pass a resolution without a Board meeting being held if a majority of the total number of Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, the document can consist of any number of counterparts, and those counterparts taken together constitute one and the same instrument.
- (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 48** 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 48** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (d) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 48** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

## **49 Committee**

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- (a) The Board may form and delegate any of its powers to a Committee or Committees consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation.
- (b) The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (c) 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.
- (d) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (e) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act (notwithstanding section 111L of the Corporations Act) and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

## **50 Validation of Acts of Directors**

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All acts done:

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

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**

## **51 Minutes**

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- (a) Notwithstanding section 111L of the Corporations Act, the Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
  - (i) the names of the Directors Present at each meeting of the Board and of Directors present at each meeting of any Committee;
  - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
  - (iii) such matters as are required by the Corporations Act or the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his

or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.

- (b) Such minutes shall be signed by the person presiding over the meeting, or the person presiding over 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**

### **52 Appointment and Tenure**

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- (a) There must be a Secretary appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may remove any Secretary so appointed.

## **BY-LAWS**

### **53 By-Laws**

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- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property.
- (b) The Board may amend and repeal By-Laws from time to time.
- (c) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (d) When in force, a By-Law is binding on all Members and has the same effect as this Constitution.
- (e) The Board will adopt such measures as it deems appropriate to bring to the notice of Members all By-Laws, amendments and repeals.

## EXECUTION OF DOCUMENTS

### 54 Execution of Documents

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- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
  - (i) two (2) Directors signing the same; or
  - (ii) one (1) Director and one (1) 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

### 55 Accounts and Inspection

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The Board shall:

- (a) cause proper financial records to be kept and must, if required by the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company;
- (b) where required by the ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the ACNC Act; and
- (c) 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.

## NOTICES

### 56 Service of Notices

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- (a) A notice may be given by the Company to any Member by:
  - (i) serving it on the Member by hand delivering it to the Member 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;
  - (ii) 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;

- (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
  - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office its 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 second 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) 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.

## WINDING UP

### 57 Winding Up

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- (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(s) or corporation(s) which has (have):
  - (i) objects which are similar to the Objects;
  - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
  - (iii) 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(s) or institution(s) referred to in **clause 57(a)** is to be determined:
  - (i) by the Board; or
  - (ii) if the Board does not decide or does not wish to decide, then by the Members;

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of the Australian Capital Territory for determination.



## INDEMNITY

### 58 Indemnity

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

### 59 Payment of Indemnity Policy Premium

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- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or 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:
  - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of governance standard 5 in section 45.25 of the ACNC Regulation.
- (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 or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

### 60 Indemnity to Continue

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

## Annexure A

## Form of Appointment of Proxy

**Australian Nursing & Midwifery Accreditation Council Limited**  
(incorporated under the *Corporations Act 2001*)

**PROXY FORM****1. Name of meeting at which this proxy is assigned****2. Your details***(Please print your name and address)*Name of Member/Nominee:  
\_\_\_\_\_ACN/ABN:  
\_\_\_\_\_Address:  
\_\_\_\_\_City:  
\_\_\_\_\_State:  
\_\_\_\_\_Postcode:  
\_\_\_\_\_Telephone:  
\_\_\_\_\_**3. Appoints**Name:  
\_\_\_\_\_*(Please print name of proxy)*

or failing the person so named, or if no person is named, the **chair of the meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the chair sees fit at the (Annual) General Meeting of Australian Nursing and Midwifery Accreditation Council Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

**4. Directions****5. Signature.....****Print name and position****6. Date****Delete form completely not required**