

Dated 8 December 2014

Constitution of Positive Life NSW Inc.

This is the Constitution of Positive Life NSW Inc., to be approved at a general meeting of members to be held on Monday, 8 December 2014 and adopted with immediate effect as the new Constitution of Positive Life NSW Inc. (in substitution for and to the exclusion of the existing constitution), which is initialled by me as Secretary for the purposes of identification.


.....
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Constitution of Positive Life NSW Inc.

Introduction

1. Definitions and interpretation

1.1 Definitions

In this Constitution:

- (1) **Act** means the *Associations Incorporation Act 2009 (NSW)* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.
- (2) **Adoption Date** means the date on which this Constitution is adopted by the Association as its constitution.
- (3) **Annual General Meeting** means a general meeting of Members duly convened and held at least once every calendar year.
- (4) **Associate Member** means any person who applies, and is eligible for membership of the Association:
 - (a) who has not disclosed their HIV status;
 - (b) who lives in New South Wales, identifies as a person affected by HIV, but is under the age of 18 years (subject to the consent of the parent or guardian, as appropriate); or
 - (c) who, regardless of age, identifies as a person affected by HIV, but does not ordinarily reside in New South Wales.
- (5) **Association** means Positive Life NSW Inc. ABN 42 907 908 942.
- (6) **Auditor** means any person or body corporate appointed by the Directors to perform the duties of an auditor of the Association.
- (7) **Chief Executive Officer** means any person appointed to perform the duties of chief executive officer of the Association.
- (8) **Director** means any person or persons appointed to the position of director of the Association or a number of directors assembled as a board.
- (9) **Distinguished Member** means any person who is nominated and has been elected by the Directors for their significant contribution to the rights and wellbeing of persons affected by HIV / AIDS in New South Wales.
- (10) **Executive Director** means a public officer of the Association including, but not limited to, any person appointed to the position of president, vice-president, treasurer or secretary of the Association.
- (11) **Full Member** means any person who applies, and is eligible for membership of the Association who lives in New South Wales, identifies as being infected with HIV and is aged 18 years or over.
- (12) **Member** means any person entered in the register of members as a Full Member, Associate Member or Distinguished Member of the Association from time to time.
- (13) **Previous Constitution** means the constitution of the Association immediately before the Adoption Date.

- (14) **Regulation** means the *Associations Incorporation Regulation 2010 (NSW)* under the Act.
- (15) **Public Officer** means any person holding office under this Constitution as the public officer of the Association.
- (16) **Special General Meeting** means a general meeting of Members, other than the Annual General Meeting.
- (17) **Staff Representative** means any person appointed to perform the duties of the staff representative of the Association.

1.2 Interpretation

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

2. Transitional

2.1 This Constitution has the effect that:

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

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

Objects

3. Objects of the association

The objects of the Association shall be to:

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

4. Alteration of objects

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

Membership

5. Application for membership

- 5.1 An application of a person for membership of the Association:
 - (1) shall be made in writing in the prescribed form; and
 - (2) shall be lodged with the secretary.
- 5.2 As soon as practicable after the receipt of an application for membership, the secretary shall refer the application to the Directors, who shall determine whether to approve or reject the application.
- 5.3 The Directors shall cause to keep the names of all applicants strictly confidential, except as required by law.
- 5.4 The secretary shall, on approval of the application for membership, designate the entry of the approved applicant's name in a register of members and, upon the name being so entered, the applicant becomes a Member.
- 5.5 Where the Directors reject an application for membership, the secretary shall, as soon as practicable, provide written notice to applicant:

- (1) setting out the decision of the Directors and the grounds on which the decision was based;
- (2) stating that the applicant may address the Directors at a meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after the service of notice;
- (3) stating the date, place and time of that meeting; and
- (4) inform the applicant that they may do either or both of the following:
 - (a) attend and speak at a meeting convened for this purpose; and/or
 - (b) submit to the Directors at, or prior to that meeting, written representations relating to the decision.

5.6 At a meeting of the Directors, the Directors shall:

- (a) give to the applicant an opportunity to make oral representations;
- (b) give due consideration to any written representations submitted to the Directors by the applicant at or prior to the meeting; and
- (c) by way of resolution, determine whether to confirm or to revoke its decision.

5.7 In the event that the Directors confirm their decision to reject an application for membership, the secretary shall, within seven (7) days, by written notice, inform the applicant of the decision to reject the application and of the applicant's right of appeal that decision.

5.8 An applicant may appeal against the confirmation of the Directors decision to reject an application to a general meeting of the Association by submitting with the secretary written notice to that effect within fourteen (14) days of service of the notice of the board's decision.

5.9 On receipt of a notice of appeal from an applicant, the secretary shall seek endorsement of the Directors to convene a general meeting of Members to be held within forty-two (42) days after the date on which the secretary received the notice.

5.10 At a general meeting of Members convened under clause 5.9:

- (1) no special business, other than the business of the applicant's appeal shall be transacted;
- (2) the Directors and the applicant shall be given the opportunity to put their respective cases forward;
- (3) only Full Members present or represented must form a quorum of no less than nine (9) and shall vote by secret ballot on the question of whether the appeal shall be upheld or disallowed;
- (4) if the duly constituted general meeting, by a 2/3 majority disallows the appeal, the decision of the Directors shall be final and binding; and
- (5) if the duly constituted general meeting, by a 2/3 majority allows the appeal, the decision of the Directors will be overturned and the secretary shall forthwith enter the applicant's name in the register of members. Upon the name being so entered, the applicant becomes a Member of the Association.

6. Register of members

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

7. Rights, privileges or obligations

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

8. Fees

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

9. Variation of membership

- 9.1 A Full Member's membership may be altered to that of an Associate Member if their normal place of residence is outside of New South Wales.
- 9.2 An Associate Member's membership may be altered to that of a Full Member, so long as their criteria to be a Full Member are met.
- 9.3 The Directors may at any time require a Member to provide satisfactory proof of their eligibility for membership. Failing to provide such proof within twenty-one (21) days or such other period of time as the Directors may permit, may result in their membership being cancelled.

10. Cancellation and revocation of membership

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

10.4 The Directors may, by resolution:

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

11. Complaints and grievances

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

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

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

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

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

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

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

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

11.7 Upon submitting of an appeal, the procedure to be adopted regarding the conduct of the appeal shall be that prescribed in clause 5.10 above.

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

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

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

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

11.10 At any mediation conducted, the mediator shall:

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

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

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

- (1) at its discretion, appoint a committee of not less than two Directors, who shall have no conflict of interest, for the purposes of determining the dispute; and
- (2) for the purposes of determining the dispute, such committee shall:
 - (a) as soon as reasonably possible, appoint a time and place for a hearing of the dispute;
 - (b) provide the parties with the opportunity to present such oral and/or written material as they may choose to present;
 - (c) ensure that written notes of the hearing are taken and kept; and
 - (d) after hearing and considering all material the parties wish to present, give an oral decision with a brief summary of the Directors reasons, together with any recommendations the committee determines to be appropriate.

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

Meetings of members

12. Calling general meetings

12.1 A Director may call a general meeting of Members.

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

- (a) at least five (5) per cent of Full Members requisition the Directors to call a general meeting; and
- (b) the Directors receive the requisition in writing.

13. Notice of meeting

13.1 A notice of a general meeting must:

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

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

13.3 Written notice of a general meeting must be given to:

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

14. Business of an annual general meeting

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

15. Business of a special general meeting

- 15.1 The business of a Special General Meeting shall be any matter which is not ordinary business transacted at an Annual General Meeting. This may include, but is not limited to:
- (1) changing the name of the Association;
 - (2) changing the constitution of the Association;
 - (3) changing the Association's objects;
 - (4) an amalgamation with another incorporated association;
 - (5) to voluntarily wind up the Association and distribute its property;
 - (6) to apply for registration as a company or a co-operative; and
 - (7) any other matter required under the Act.
- 15.2 A Special Resolution is to be put to a meeting of Full Members of which notice has been given to such Members no less than twenty-one (21) days before the date on which the meeting will be held.
- 15.3 The notice referred to in clause 15.2 must include the terms of the resolution and a statement to the effect that the resolution is intended to be passed as a special resolution.
- 15.4 Voting on a special resolution shall be by postal vote.
- 15.5 For a special resolution to be passed, it must be supported by 3/4 of the votes cast by Full Members, who under this Constitution, are entitled to vote.
- 15.6 The Directors may at any time convene a Special General Meeting.
- 15.7 A Special General Meeting requisitioned by Full Members must be held within three (3) months of receiving the request. The requisitioning of a Special General Meeting must:
- (1) state the purpose of the meeting;
 - (2) be signed by the Full Members making the requisition;

- (3) must be submitted in person with the secretary;
- (4) may consist of several documents in a similar form, each signed by one or more of the Full Members making the requisition; and
- (5) be convened, as practicably possible, in the same manner as general meetings convened by the Directors.

15.8 If a Special General Meeting is not held within twenty-eight (28) days from the date on which the request for requisition was submitted to the secretary, any one or more of the Full Members who made the request may convene a Special General Meeting to be held not later than ninety (90) days after that date.

16. Accidental omission to give notice

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

17. Cancellation or postponement of general meeting

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

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

may not be cancelled without the prior written consent of the persons who called or requisitioned the meeting.

17.2 The Directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by Full Members).

17.3 Whenever any meeting is postponed, the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

18. Electronic communication

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

19. Admission to general meetings

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

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

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

20. Other persons to be present at meetings

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

21. Quorum

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

22. Chair at general meetings

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

23. Resolutions proposed by members

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

24. Postal ballots

24.1 The Association shall hold postal ballots to determine the following:

- (1) the election of Directors; and
- (2) any Special Resolution of which the necessary notice has been given in accordance with this Constitution.

24.2 Postal voting shall be conducted in accordance with the *Associations Incorporation Regulations 2010 (NSW)* as amended from time to time.

24.3 The Directors must:

- (1) cause the details of the proposal on which the ballot is to be held to be set out in a statement; and
- (2) fix the dates for:
 - (a) the forwarding of ballots to members; and
 - (b) the closing of the ballot; and
- (3) appoint a returning officer for the ballot.

24.4 Every ballot must be conducted by the returning officer appointed by the Directors.

24.5 A Director may not be appointed as a returning officer.

24.6 The returning officer may be assisted in the performance of his or her duties by any person appointed by the Directors.

24.7 The returning officer must prepare a roll of the full names and addresses of the Full Members who are eligible to vote.

24.8 A person whose name is on the roll is entitled to vote in the ballot, and no person is otherwise so entitled.

24.9 The returning officer must cause ballot papers to be prepared:

- (1) in or to the effect of Form A in Schedule 3 of the *Associations Incorporation Regulations 2010 (NSW)*; or
- (2) in such other form as the Directors determine.

24.10 Each ballot paper must:

- (1) be initialled by the returning officer or an appointed assistant; or
- (2) bear a mark that identifies it as a genuine ballot paper.

24.11 The returning officer must, at least fourteen (14) days (or twenty-one (21) days in the case of a special resolution) before the date fixed for the closing of the ballot, send by post or otherwise deliver to every Full Member entitled to vote in the ballot one set of the following material:

- (1) one (1) ballot paper;
- (2) an envelope (hereby referred to as "the outer envelope") addressed to the returning officer and the reverse side of which is noted or printed with the name and address of the Full Member;

- (3) a small envelope (hereby referred to as "the inner envelope") in which the ballot paper is to be enclosed;
- (4) a copy of a statement prepared by the Directors setting out the terms of the resolution; or
- (5) in the case of a special resolution, a copy of a statement to the effect that the resolution is intended to be passed as a special resolution.

24.12 The returning officer may send a duplicate ballot paper to any voter if the returning officer is satisfied:

- (1) that the voter has not received a ballot paper; or
- (2) that the ballot paper received by the voter has been lost, spoilt or destroyed and that the voter has not already voted.

24.13 If a duplicate ballot paper is sent, the relevant outer envelope is to be marked with the word "Duplicate".

24.14 A Full Member casts a vote in the ballot by:

- (1) marking his or her vote on the ballot paper according to the instructions on the ballot paper; and
- (2) sending the ballot paper, in the envelopes provided, to the returning officer.

24.15 The returning officer must provide a ballot box that must be secured immediately before the ballot papers are delivered to Full Members in accordance with clause 24.11 and must remain secured until the close of the ballot.

24.16 The returning officer must place the outer envelopes in the ballot box not later than the time and date fixed on the ballot paper for the closing of the ballot.

24.17 As soon as practicable after the date fixed for the closing of the ballot, the returning officer must, in the presence of such scrutineers as may be appointed by the Directors, open the ballot box and deal with the contents in accordance with clause 24.19.

24.18 The returning officer must:

- (1) examine the outer envelopes;
- (2) mark the voter's name on the roll by drawing a line through the name;
- (3) remove the inner envelopes from the outer envelopes; and
- (4) when all the inner envelopes have been dealt with in the above manner, take the ballot papers from them.

24.19 Ballot papers must be scrutinised by the returning officer who must reject as informal any ballot paper that:

- (1) is not duly initialled by the returning officer or appointed assistant or does not bear a mark that identifies it as a genuine ballot paper;
- (2) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer;
- (3) has any mark or writing that, in the opinion of the returning officer, will enable the voter to be identified; or
- (4) has not been marked as prescribed on the ballot paper itself.

24.20 The returning officer must count all votes cast and make out and sign a statement of:

- (1) the number of formal votes cast in favour of the proposal;
- (2) the number of formal votes cast against the proposal;
- (3) the number of informal votes cast; and
- (4) the proportion of the formal votes cast in favour of the proposal.

24.21 On the declaration of the returning officer of the result of the postal ballot, the Directors must cause an entry to be made in the minute book showing the particulars referred to in clause 24.20 above.

24.22 The returning officer must forward a copy of the statement to the chair who must announce the result of the ballot at the next general meeting.

24.23 In the case of a special resolution, the Association must cause the result of the ballot to be notified in writing to Members as soon as practicable after the ballot.

24.24 The returning officer must retain:

- (1) all ballot papers (whether formal or otherwise); and
- (2) all rolls

used in connection with the conduct of the postal ballot, locked in the ballot box, in accordance with this clause.

24.25 The returning officer must retain those items for a period of not less than eight (8) weeks after the date fixed for the closing of the ballot unless directed in writing by the Directors to retain those items for a longer period.

25. Voting entitlement and proxy voting

25.1 At a general meeting, only Full Members shall be entitled to vote.

25.2 An Associate Member has no right to vote at a general meeting, but may with the leave of the chair have speaking rights on any particular matter, subject to that member having been confirmed as an Associate Member.

25.3 Subject to any rights or restrictions relating to the voting rights of the Member and to this Constitution, at a general meeting on a show of hands, each Full Member shall have one (1) equal vote.

25.4 Proxy voting shall not be permitted at or in respect of a general meeting.

26. Members of unsound mind and minors

26.1 If a Member is:

- (1) of unsound mind; or
- (2) a minor

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

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

27. Objections to right to vote

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

28. Decisions

- 28.1 A resolution put to the vote at a meeting of Members must be decided on a show of hands.
- 28.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

29. Resolutions to be decided on a show of hands

- 29.1 Any resolution to be considered at a general meeting shall be decided on a show of hands.
- 29.2 On a show of hands, a declaration by the chair that a resolution is conclusive evidence of the result provided that the declaration reflects the show of hands. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour, against or abstaining.

Directors

30. Number of directors

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

- 30.3 The Directors in general meeting may by resolution increase the number of Directors referred to in clause 30.1.

31. Appointment of directors

- 31.1 The Association by resolution may appoint a person qualified to be a Director but so that the total number does not at any time exceed the maximum number fixed in accordance with this Constitution.

32. Elections of directors

- 32.1 Nominations of candidates for election as Directors must:
- (1) be made in writing, signed by two Full or Distinguished Members of the Association and accompanied by the written consent of the candidate; and
 - (2) be delivered to the secretary of the Association before the date nominated by the secretary as the closing date for nominations.
- 32.2 A person nominated as a candidate for election as a Director must be a Full Member of the Association.
- 32.3 If insufficient nominations are received to fill all vacancies, the candidates nominated are taken to be elected and any vacant positions are taken to be casual vacancies.
- 32.4 If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are deemed to be elected, notwithstanding any other conditions that may preclude this such as a conflict of interest, stated or otherwise.
- 32.5 If the number of nominations received exceeds the number of vacancies to be filled, a postal ballot is to be held.
- 32.6 The election of Directors shall be conducted by means of postal voting.
- 32.7 The president, vice-president, treasurer and secretary shall be elected at the first directors' meeting following the Annual General Meeting by the elected Directors.
- 32.8 If a Director becomes temporarily incapable of performing the duties of his or her position, the Directors may appoint a Full Member of the Association to act in his or her position during the period of incapacity and the Full Member so appointed shall be deemed to be the occupant of the position during that period.
- 32.9 The oversight of any election ballot will be overseen by a returning officer nominated by the Directors who does not have any conflict of interest in the election.

33. Casual vacancies and additional directors

- 33.1 The Directors may, at any time, may appoint a Full Member to a vacant office and the member so appointed may continue in office up to and including the conclusion of the Annual General Meeting next following the date of their appointment. In this event, the Director so appointed shall have no voting rights until such time as appointed formally at the next Annual General Meeting.

34. Insufficient directors

- 34.1 In the event of a vacancy or vacancies in the office of director, the remaining Directors may act, but if the number of those remaining is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Association.

35. Removal and resignation of directors

- 35.1 The Executive Directors may by resolution remove a Director from office.
- 35.2 A Director may resign from the Association by giving a written notice of resignation to the Association at its office.

36. Vacation of office of director

- 36.1 In addition to any other circumstances in which the office of a Director becomes vacant under this Constitution, the office of a Director becomes vacant if the Director:
- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
 - (2) becomes of unsound mind;
 - (3) is not present at 3 consecutive meetings of Directors without special leave of absence from the Directors and the Directors declare his or her seat to be vacant;
 - (4) being the Chief Executive Officer, ceases to be employed full-time by the Association;
 - (5) becomes disqualified from being a director;
 - (6) is removed from office; or
 - (7) resigns from office.

37. Executive directors

- 37.1 For purposes of this Constitution, the Executive Directors of the Association shall include:
- (1) the president;
 - (2) the vice-president;
 - (3) the treasurer; and
 - (4) the secretary.

37.2 The Executive Directors may exercise certain powers and functions that the Directors may from time to time determine.

37.3 The Executive Directors shall be elected at the first directors' meeting following the Annual General Meeting by the Directors from among the pool of Directors.

38. Chief executive officer

38.1 The Directors may by resolution appoint a person to the office of Chief Executive Officer.

38.2 The Chief Executive Officer's appointment may only be revoked or terminated by resolution of the Association.

38.3 The Chief Executive Officer shall not be entitled to vote at a meeting of the Directors'.

38.4 Notwithstanding clause 38.3 above, the Directors may, upon terms and conditions and with any restrictions they see fit, confer on a Chief Executive Officer any of the powers that the Directors can exercise.

38.5 The Directors may, at any time, withdraw or vary any of the powers conferred on a Chief Executive Officer.

39. Public officer

39.1 The Executive Directors shall appoint a Public Officer.

39.2 The Public Officer must, as soon as reasonable practicable after being appointed as the Public Officer lodge notice with the Association of his or her address.

39.3 The Public Officer may be heard on any matter at any meeting of Members or the Directors.

39.4 The Directors may at any time suspend or terminate the appointment of the Public Officer.

39.5 In the event of a vacancy arising, the Association must appoint a replacement Public Officer within fourteen (14) days.

40. Staff representative

40.1 Notwithstanding their being able to receive notice of and attend a meeting of Directors, the Staff Representative shall not be entitled to vote at a Directors' meeting.

41. Treasurer

41.1 The treasurer of the Association shall be responsible for ensuring that:

- (1) all monies due to the Association are collected and received and that all payments authorised by the Association are made; and
- (2) correct books and accounts are kept, showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.

42. Other officers

42.1 The Directors may create any other position in the Association with the powers and responsibilities as they may from time to time confer.

42.2 The Directors may at any time terminate the appointment of a person holding a position created under clause 42.1 and may abolish the position.

Remuneration of directors

43. Remuneration for services offered by members

43.1 A Director may be remunerated for services they provide the Association in their capacity as a Full Member.

44. Remuneration of the chief executive officer

44.1 The Chief Executive Officer shall be paid such remuneration that the Executive Directors determine appropriate for the purpose of attracting and retaining a suitably qualified individual.

44.2 The remuneration of the Chief Executive Officer shall be a fixed sum, and must not include a commission on, or a percentage of profits or revenue generated by the Association.

- 44.3 The Association shall also pay the Chief Executive Officer superannuation contributions of an amount necessary to meet the minimum level of superannuation contributions required under any applicable legislation to avoid any penalty, charge, tax or impost, provided that the making of that payment is permitted, without recourse to a general meeting.

45. Payment of expenses

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

Powers and duties of directors

46. Responsibility of the directors

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

47. General business management

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

48. Committee of directors

- 48.1 The meetings and proceedings of any committee of directors are governed by the provisions in this Constitution regulating the meetings and proceedings of the Directors'.
- 48.2 The Directors may, by instrument of delegation, constitute one (1) or more working group to report on such matters as are specified in the instrument of delegation.
- 48.3 A working group may consist of such Members as the Directors determine appropriate, but in any event, may include:
- (1) at least one (1) Director; and
 - (2) the president (or his or her delegate).

Directors' interests

49. Director to disclose interests

49.1 A Director who has a material personal interest in a matter that relates to the Association must give the other Directors notice of the interest as soon as practicable after the Director becomes aware of his or her interest in the matter.

50. Prohibition on being present or voting

50.1 Except as required by law, a Director who has a material personal interest in a matter that is being considered at a meeting of the Directors or Members:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

Directors' meetings

51. Meetings of directors

51.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

51.2 A Director may at any time requisition, and the secretary must on receiving notice of the requisition, call a meeting of the Directors.

52. Notice of meeting

52.1 Reasonable notice of every directors' meeting must be given to each Director except that it is not necessary to give notice of such meeting to any Director who:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left contact details which he or she may be given notice.

52.2 A notice of a meeting of directors may be given in writing or orally, telephone, electronic mail or any other means of communication.

53. Electronic communications use at meetings of directors

53.1 A directors' meeting may be held using telephone or, if consented to by all Directors, other technology. The consent may be a standing one.

53.2 The following provisions apply to a meeting held by electronic communication:

- (1) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
- (2) at the commencement of the meeting each Director must announce his or her presence to all the other Directors taking part in the meeting.

53.3 Where a directors' meeting is held using any electronic communication:

- (1) the participants will be taken to be assembled together at a meeting and to be present at that meeting;
- (2) the meeting will be taken to be held at the place agreed to by the participants so long as at least one Director is physically present at that place; and
- (3) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present.

53.4 If the secretary of the meeting of directors is not present at a meeting held by electronic communication, one (1) of the Directors present or another person nominated by them present at the meeting must take minutes of the meeting.

53.5 A Director may not leave an electronic communication meeting by disconnecting his or her link to the meeting unless that Director has previously obtained the express consent of the chair of the meeting.

53.6 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a meeting held by electronic communication unless that Director has previously obtained the express consent of the chair to leave the meeting.

54. Chairing directors' meetings

54.1 The president or failing him or her, the vice-president shall chair Directors' meetings.

54.2 The Directors must elect another Director present to chair a meeting, or part of it, if the president or vice-president is not present within thirty (30) minutes after the time appointed for the holding of the meeting, or if the president or vice-president are unwilling to act as chair for the meeting or part of the meeting.

55. Quorum

55.1 The quorum for a meeting of the Directors is five (5). The quorum must be present at all times during the meeting.

55.2 Each Director shall have one equal vote.

55.3 The Chief Executive Officer and staff representative shall not be counted towards a quorum at a meeting of the Directors.

56. Passing of directors' resolutions

56.1 A resolution of the directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

56.2 The chair shall not have a casting vote in addition to any vote he or she has as a Director.

56.3 If there is an equality of votes cast by Directors entitled to vote on a resolution, the Directors must put the matter back to the entire board to resolve upon.

57. Minutes to be kept

57.1 The secretary must keep minute books in which they record, within one (1) month:

- (1) proceedings and resolutions of meetings of Members;
- (2) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);

- (3) resolutions passed by members without a meeting; and
- (4) resolutions passed by directors without a meeting.

57.2 The Directors must ensure that minutes of a meeting are signed by the chair of the meeting.

Financial year, accounts, audit, funds and records

58. Financial year

58.1 The financial year of the Association shall:

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

59. Accounts

59.1 The Directors must cause proper accounting and other records to be kept.

59.2 The Association shall, on an annual basis, prepare financial statements.

59.3 The Association shall have copies of the printed financial statements available to provide to Members attending an Annual General Meeting.

59.4 Notwithstanding clause 61.3 above, the Association shall upon the request of a Member, provide a printed copy of the financial statements of the Association.

60. Audit

60.1 A registered auditor must be appointed.

60.2 The remuneration of the Auditor must be fixed.

61. Funds

61.1 The funds of the Association shall be derived from and may include donations, grants, and non-monetary gifts and, subject to any resolution passed by the Association in general meeting, such other sources as may be determined by the Directors from time to time.

61.2 All monies received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank or other authorised deposit-taking institutional account.

61.3 The Association must, as soon as practicable after receiving any monies, issue an appropriate receipt.

61.4 Subject to any resolution passed by the Association in general meeting, the funds of the Association are to be used in pursuance of the objects of the Association in such manner as the Directors determine appropriate.

61.5 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any two (2) Directors or employees of the Association, being Full Members or employees authorised to do so by the Directors with other payments being made through a petty cash system.

62. Records

- 62.1 The secretary of the Association must keep in his or her custody and under his or her control all records, books and other documents relating to the Association.
- 62.2 Except as permitted by the Directors, the following documents may be open for inspection by Members at the office of the Association, free of charge, during normal business hours:
- (1) records, books and other financial documents of the Association;
 - (2) this Constitution; and
 - (3) minutes of all meetings of directors' and general meetings of members.
- 62.3 A Member may obtain a copy of any of the documents referred to in clause 64.2 on payment of the reasonable costs of photocopying.

Indemnity and insurance

63. Indemnity

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

64. Insurance

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

65. Liability

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

Winding up

66. Distribution of assets

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

67. Limitation of liability

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

68. Confidential information

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

Execution of documents

69. Common seal

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

70. Use of common seal

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

71. Execution of documents without common seal

- 71.1 The Association may execute a document without using a common seal if the document is signed by two (2) Directors or one (1) Executive Director and the secretary.