

Dated

# **Constitution of The Deaf Society of New South Wales**

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*Corporations Act 2001*

Company limited by guarantee

## **Constitution**

of

## **The Deaf Society of New South Wales**

### **Preliminary**

#### **1 Name of the company**

The name of the company is The Deaf Society of New South Wales (**Company**).

#### **2 Type of company**

The Company is a not-for-profit public company limited by guarantee and is a charity.

#### **3 Limited liability of members**

The liability of members is limited to the amount of the guarantee in clause 4.

#### **4 The guarantee**

Each member must contribute an amount not more than \$2 (the guarantee) to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

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

#### **5 Definitions**

In this constitution, words and phrases have the meaning set out in clauses 78 and 80.

### **Charitable purposes and powers**

#### **6 Object**

The Company's object is to provide benevolent relief to people who are deaf or have a hearing loss. The Company will achieve its object through activities including the following:

- (1) promoting the welfare of people who are deaf or have a hearing loss;

- (2) enabling people who are deaf or have a hearing loss to gain access to information, community facilities, support systems and services which are generally available in the community;
- (3) ensuring as far as possible that services provided by government and non-government agencies to the community become and remain accessible to people who are deaf or have a hearing loss;
- (4) ensuring as far as possible that information available to the general community is in a form which is accessible to people who are deaf or have a hearing loss;
- (5) preparing and disseminating information to the general community as to the values, beliefs and activities of people who are deaf or have a hearing loss;
- (6) ensuring as far as possible that communication support and an effective interpreting service is available to people who are deaf or have a hearing loss;
- (7) assisting people who are deaf or have a hearing loss to develop skills necessary to enable them to have access to community services and to undertake leadership roles within the deaf community and the Company;
- (8) providing training programs for service-providing agencies to enable services provided by those agencies to become and remain accessible to people who are deaf or have a hearing loss;
- (9) undertaking specific projects with a view to improving the quality of life of people who are deaf or have a hearing loss and who may have additional disabilities or are from a variety of ethnic cultures and backgrounds;
- (10) planning and conducting educational programs and providing other learning activities to meet the educational needs and interests of people who are deaf or have a hearing loss;
- (11) assisting people who are deaf or have a hearing loss to access employment and vocational training opportunities;
- (12) supporting the independence and social and economic participation of individuals who are impacted by deafness or have a hearing loss;
- (13) enabling individuals who are impacted by deafness or have a hearing loss to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and
- (14) raising community awareness of the issues that affect the social and economic participation of individuals who are impacted by deafness or have a hearing loss, and facilitate greater community inclusion.

## **7 Powers**

Subject to clause 8, the Company has the following powers, which may only be used for the purpose of the object set out in clause 6:

- (1) the powers of an individual, and
- (2) all the powers of a Company limited by guarantee under the Corporations Act.

## **8 Not-for-profit**

- 8.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the object of the Company set out in clause 6.
- 8.2 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.3 and 76.
- 8.3 Clause 8.2 does not stop the Company from doing the following things, provided they are done in good faith:
- (1) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
  - (2) making a payment to a member in carrying out the Company's charitable purpose(s).

## **9 Amending the constitution**

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a Special Resolution.
- 9.2 The members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

## **Members**

### **10 Membership and register of members**

- 10.1 The members of the Company are:
- (1) any persons that are members of the Company at the date of adoption of this constitution; and
  - (2) any other person that the directors allow to be a member, in accordance with this constitution.
- 10.2 There is no limit on the number of members of the Company.
- 10.3 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain for each current member:
- (1) the member's name;
  - (2) the member's address;
  - (3) any alternative address nominated by the member for the service of notices; and
  - (4) the date the member was entered on to the register.
- 10.4 The Company must also keep a record of each person who stopped being a member in the last 7 years, such record to include:
- (a) the person's name;

- (b) the person's address;
- (c) any alternative address nominated by the person for the service of notices; and
- (d) the dates their membership started and ended.

10.5 The Company must give current members access to the register of members.

10.6 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

## **11 Members of the Company**

### **11.1 Who can be a member**

A person who supports the object of the Company is eligible to apply to be a member of the Company under clause 13.

### **11.2 Categories of membership**

- (1) The categories of membership are:
  - (a) ordinary members; and
  - (b) life members.
- (2) Additional categories of members, if recommended by the directors, may be created from time to time by the directors upon terms and conditions stipulated by the directors.
- (3) All members that are not life members are ordinary members.

## **12 Life members**

12.1 The directors may appoint a member to be a life member if, in the opinion of the directors, the person has:

- (1) rendered some special service or benefit to the Company;
- (2) contributed to the advancement of people who are deaf or have a hearing loss by furthering knowledge and expertise in the field or being an outstanding advocate for the deaf community; or
- (3) made some other significant and lasting contribution, which the Company wishes to acknowledge.

12.2 Subject to 12.3, a life member has all the rights and privileges of ordinary members and is subject to this constitution.

12.3 Life members are not required to pay any annual subscription to the Company.

## **13 How to apply to become a member**

13.1 A person may apply to become an ordinary member of the Company by submitting an application in a form approved by the directors, including stating that they:



- (1) want to become a member;
- (2) support the object of the Company; and
- (3) agree to comply with the Company's constitution, including paying the guarantee under clause 4 if required.

13.2 The application fee (if any) payable by each applicant for membership is the sum the directors determine from time to time.

## **14 Directors decide whether to approve membership**

14.1 The directors must consider an application for membership within a reasonable time after the application is received.

14.2 If the directors approve an application, the secretary must as soon as possible:

- (1) enter the new member on the register of members; and
- (2) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14.5).

14.3 If the directors reject an application, they are not required to give reasons for the decision to reject the application. The secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

14.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 13.1(1), 13.1(2) or 13.1(3). In that case, by applying to be a member, the applicant agrees to those three matters.

14.5 An applicant for membership of the Company will become a member when they are entered on the register of members.

## **15 Annual subscription**

15.1 The annual subscription payable by a member of the Company is the sum the directors determine from time to time.

15.2 All annual subscriptions are due and payable in advance by 1 July in each year.

15.3 If a person is admitted to membership of the Company during the months of January to June inclusive, the directors may reduce the annual subscription payable by the applicant in any manner they see fit.

## **16 Unpaid annual subscriptions**

16.1 If the annual subscription of a member remains unpaid for 2 months after it becomes due and payable, then:

- (1) the member immediately ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears, if the directors so decide in their absolute discretion; and
- (2) a notice of default will be sent to such member notifying them of this loss of the rights and privileges of membership.

- 16.2 A member who loses, and does not have reinstated, the rights and privileges of membership under clause 16.1:
- (1) remains a member and is liable for all the obligations and liabilities of membership until the expiration of 6 months after the date of the notice of default sent under clause 16.1(2); and
  - (2) ceases to be a member and the member's name must be removed from the register of members at the expiration of such 6 month period.

## **17 When a person stops being a member**

- 17.1 A person (other than a life member) immediately stops being a member if they:
- (1) die (if the member is an individual);
  - (2) are wound up or otherwise dissolved or deregistered (if the member is an incorporated member);
  - (3) resign, by writing to the secretary;
  - (4) are expelled under clause 19;
  - (5) cease to be a member in accordance with clause 16.2(2); or
  - (6) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.
- 17.2 A life member ceases to be a member if they:
- (1) die (if the member is an individual);
  - (2) are wound up or otherwise dissolved or deregistered (if the member is an incorporated member); or
  - (3) are expelled under clause 19.

## **Dispute resolution and disciplinary procedures**

### **18 Dispute resolution**

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (1) one or more members;
  - (2) one or more directors; or
  - (3) the Company.
- 18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:

- (1) tell the directors about the dispute in writing;
- (2) agree or request that a mediator be appointed; and
- (3) attempt in good faith to settle the dispute by mediation.

18.5 The mediator must:

- (1) be chosen by agreement of those involved; or
- (2) where those involved do not agree:
  - (a) for disputes between members, a person chosen by the directors; or
  - (b) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.

18.6 A mediator chosen by the directors under clause 18.5(2)(a):

- (1) may be a member or former member of the Company;
- (2) must not have a personal interest in the dispute; and
- (3) must not be biased towards or against anyone involved in the dispute.

18.7 When conducting the mediation, the mediator must:

- (1) allow those involved a reasonable chance to be heard;
- (2) allow those involved a reasonable chance to review any written statements;
- (3) ensure that those involved are given natural justice; and
- (4) not make a decision on the dispute.

## **19 Disciplining members**

19.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:

- (1) the member has breached this constitution; or
- (2) the member is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Company.

19.2 At least 14 days before the directors' meeting at which a resolution under clause 19.1 will be considered, the secretary must notify the member in writing:

- (1) that the directors are considering a resolution to warn, suspend or expel the member;

- (2) that this resolution will be considered at a directors' meeting and the date of that meeting;
  - (3) what the member is said to have done or not done;
  - (4) the nature of the resolution that has been proposed; and
  - (5) that the member may provide an explanation to the directors, and details of how to do so.
- 19.3 Before the directors pass any resolution under clause 19.1, the member must be given a chance to explain or defend themselves by:
- (1) sending the directors a written explanation before that directors' meeting; and/or
  - (2) speaking at the meeting.
- 19.4 After considering any explanation under clause 19.3, the directors may:
- (1) take no further action;
  - (2) warn the member;
  - (3) suspend the member's rights as a member for a period of no more than 12 months;
  - (4) expel the member;
  - (5) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
  - (6) require the matter to be determined at a General Meeting.
- 19.5 The directors cannot fine a member.
- 19.6 The secretary must give written notice to the member of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **General meetings of members**

### **20 General Meetings called by directors**

- 20.1 The directors may call a General Meeting whenever they see fit.
- 20.2 If members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the directors must:
- (1) within 21 days of the members' request, give all members notice of a General Meeting; and
  - (2) hold the General Meeting within 2 months of the members' request.

- 20.3 The percentage of votes that members have (in clause 20.2) is to be worked out as at midnight before the members request the meeting.
- 20.4 The members who make the request for a General Meeting must:
- (1) state in the request any resolution to be proposed at the meeting;
  - (2) sign the request; and
  - (3) give the request to the Company.
- 20.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

## **21 General Meetings called by members**

- 21.1 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- 21.2 To call and hold a meeting under clause 21.1 the members must:
- (1) as far as possible, follow the procedures for General Meetings set out in this constitution;
  - (2) call the meeting using the list of members on the Company's register of members, which the Company must provide to the members making the request at no cost; and
  - (3) hold the General Meeting within three months after the request was given to the Company.
- 21.3 The Company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

## **22 Annual General Meeting**

- 22.1 A General Meeting, called the annual General Meeting, must be held at least once in every calendar year.
- 22.2 Even if these items are not set out in the notice of meeting, the business of an annual General Meeting may include:
- (1) a review of the Company's activities;
  - (2) a review of the Company's finances;
  - (3) any auditor's report;
  - (4) the election of directors; and
  - (5) the appointment and payment of auditors, if any.
- 22.3 Before or at the annual General Meeting, the directors must give information to the members on the Company's activities and finances during the period since the last annual General Meeting.

- 22.4 The chairperson of the annual General Meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

## **23 Notice of General Meetings**

- 23.1 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 (if any).

- 23.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.

- 23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:

- (1) for an annual General Meeting, all the members entitled to attend and vote at the annual General Meeting agree beforehand; or
- (2) for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (1) remove a director;
- (2) appoint a director in order to replace a director who was removed; or
- (3) remove an auditor.

- 23.5 Notice of a General Meeting must include:

- (1) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (2) the general nature of the meeting's business;
- (3) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
- (4) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - (a) the proxy must be a member of the Company;
  - (b) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
  - (c) the proxy form must be delivered to the Company at least 48 hours before the meeting.

- 23.6 If a General Meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- 23.7 If a General Meeting is postponed (as distinct from being adjourned), the members must be given new notice of the postponed meeting.
- 23.8 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 at or any resolution passed at the General Meeting.

## **24 Quorum at General Meetings**

- 24.1 For a General Meeting to be held, at least 5 members (a quorum) must be present (in person or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 24.2 No business may be conducted at a General Meeting if a quorum is not present.
- 24.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (1) if the date is not specified – the same day in the next week;
  - (2) if the time is not specified – the same time; and
  - (3) if the place is not specified – the same place.
- 24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **25 Auditor's right to attend meetings**

- 25.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 25.2 The Company must give the auditor (if any) any communications relating to the General Meeting that a member of the Company is entitled to receive.

## **26 Representatives of members**

- 26.1 An incorporated member may appoint as a representative:
- (1) one individual to represent the member at meetings and to sign circular resolutions under clause 33; and
  - (2) the same individual or another individual for the purpose of being appointed or elected as a director.
- 26.2 The appointment of a representative by a member must:
- (1) be in writing;

- (2) include the name of the representative;
- (3) be signed on behalf of the member; and
- (4) be given to the Company or, for representation at a meeting, be given to the chairperson before the meeting starts.

26.3 A representative has all the rights of a member relevant to the purposes of their appointment as a representative. Where relevant, references in this constitution to a “member” should be read as referring to the representative of the member.

26.4 The appointment may be a standing (ongoing) one.

## **27 Using technology to hold meetings**

27.1 The Company may hold a General Meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard, whether directly or through the use of an Auslan interpreter.

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

## **28 Chairperson for General Meetings**

28.1 The Elected Chairperson is entitled to chair General Meetings.

28.2 The members entitled to vote at a General Meeting may choose a director or member to be the chairperson for that meeting if:

- (1) there is no Elected Chairperson;
- (2) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or
- (3) the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

## **29 Role of the chairperson**

29.1 The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

29.2 The chairperson has a casting vote in addition to any vote he or she may have as a member. The chairperson has a discretion both as to use of the casting vote and as to the way in which it is used.

## **30 Adjournment and postponement of meetings**

30.1 If a quorum is present, a General Meeting must be adjourned if a majority of members direct the chairperson to adjourn it.

30.2 Only unfinished business may be dealt with at a General Meeting resumed after an adjournment.



- 30.3 The directors may postpone the holding of any General Meeting whenever they see fit (other than a General Meeting called by members under clause 21) for not more than 42 days after the date for which it was originally called.

## **Members' resolutions and statements**

### **31 Members' resolutions and statements**

- 31.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (1) written notice to the Company of a resolution they propose to move at a General Meeting (**Members' Resolution**); and/or
  - (2) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (**Members' Statement**).
- 31.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 31.3 A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the members making the request.
- 31.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 31.5 The percentage of votes that members have (as described in clause 31.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 31.6 If the Company has been given notice of a Members' Resolution under clause 31.1(1), the Members' Resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 31.7 This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

### **32 Company must give notice of proposed resolution or distribute statement**

- 32.1 If the Company has been given a notice or request under clause 31:
- (1) in time to send the notice of proposed Members' Resolution or a copy of the Members' Statement to members with a notice of meeting, it must do so at the Company's cost; or
  - (2) too late to send the notice of proposed Members' Resolution or a copy of the Members' Statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed Members' Resolution or a copy of the Members' Statement.
- 32.2 The Company does not need to send the notice of proposed Members' Resolution or a copy of the Members' Statement to members if:
- (1) it is more than 1,000 words long;

- (2) the directors consider it may be defamatory;
- (3) clause 32.1(2) applies, and the members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' Resolution or a copy of the Members' Statement to members; or
- (4) in the case of a proposed Members' Resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the members.

### **33 Circular resolutions of members**

- 33.1 Subject to clause 33.3, the directors may put a resolution to the members to pass a resolution without a General Meeting being held (**Members' Circular Resolution**).
- 33.2 The directors must notify the auditor (if any) as soon as possible that a Members' Circular Resolution has or will be put to members, and set out the wording of the resolution.
- 33.3 A Members' Circular Resolutions cannot be used:
- (1) for a resolution to remove an auditor, appoint a director or remove a director; or
  - (2) where the Corporations Act or this constitution requires a meeting to be held.
- 33.4 A Members' Circular Resolution is passed if all the members entitled to vote on the resolution sign or agree to the Members' Circular Resolution, in the manner set out in clause 33.5 or clause 33.6.
- 33.5 Members may sign:
- (1) a single document setting out the Members' Circular Resolution and containing a statement that they agree to the resolution; or
  - (2) separate copies of that document, as long as the wording is the same in each copy.
- 33.6 The Company may send a Members Circular Resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **Voting at General Meetings**

### **34 How many votes a member has**

Subject to clause 16, each member has one vote.

### **35 Challenge to member's right to vote**

- 35.1 A member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 35.2 If a challenge is made under clause 35.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

## **36 How voting is carried out**

- 36.1 Voting must be conducted and decided by:
- (1) a show of hands;
  - (2) a vote in writing; or
  - (3) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 36.2 Before a vote (other than by a show of hands) is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 36.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 36.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

## **37 When and how a vote in writing must be held**

- 37.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (1) at least five members present (including by proxy); or
  - (2) the chairperson.
- 37.2 A vote in writing must be taken when and how the chairperson directs, unless clause 37.3 applies.
- 37.3 A vote in writing must be held immediately if it is demanded under clause 37.1:
- (1) for the election of a chairperson under clause 28.2; or
  - (2) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

## **38 Appointment of proxy**

- 38.1 A member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 38.2 A proxy must be a member.
- 38.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (1) speak at the meeting;
  - (2) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (3) join in to demand a vote in writing under clause 37.1.

- 38.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (1) the member's name and address;
  - (2) the Company's name;
  - (3) the proxy's name or the name of the office held by the proxy; and
  - (4) the meeting(s) at which the appointment may be used.
- 38.5 A proxy appointment may be a standing (ongoing) one.
- 38.6 Proxy forms must be received by the Company at the address stated in the notice under clause 23.5(4) or at the Company's registered address at least 48 hours before a meeting.
- 38.7 A proxy does not have the authority to speak and vote for a member at a meeting while that member is at the meeting.
- 38.8 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (1) dies;
  - (2) is wound up or otherwise dissolved or deregistered;
  - (3) is mentally incapacitated;
  - (4) revokes the proxy's appointment; or
  - (5) revokes the authority of a representative or agent who appointed the proxy.
- 38.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## **39 Voting by proxy**

- 39.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a proxy from voting as a member in his or her own capacity on a show of hands).
- 39.2 When a vote in writing is held, a proxy:
- (1) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (2) if the way they must vote is specified on the proxy form, must vote that way; and
  - (3) if the proxy holds more than one proxy, may cast the votes held in different ways.

## **Directors**

### **40 Number of directors**

- 40.1 The Company must have at least 6 and no more than 9 directors, comprising:

- (1) up to 7 Elected Directors; and
  - (2) up to 2 Appointed Directors.
- 40.2 The Company may by resolution, increase or reduce the number of directors referred to in clause 40.1 but the number may not be reduced below 3.

## **41 Election and appointment of directors**

### **41.1 Elected Directors**

- (1) Elected Directors are to be elected by the members at an annual General Meeting:
  - (a) if the number of candidates for election as Elected Directors is less than the number of vacancies on the board, by passing resolution(s) of the members in accordance with clause 41.1(2); or
  - (b) if the number of candidates for election as Elected Directors is greater than the number of vacancies on the board, a ballot must be held for the election of the candidates in accordance with clause 46.
- (2) Each of the Elected Directors must be appointed by a separate resolution, unless:
  - (a) the members have first passed a resolution that the appointments may be voted on together; and
  - (b) no votes were cast against that resolution.

### **41.2 Appointed Directors**

The board may appoint, by resolution, up to 2 additional Directors at any time to provide additional skills required by the board.

## **42 Eligibility and qualifications to be a director**

### **42.1 Eligibility of Elected Directors**

Nominations received from persons seeking to be put forward for election as an Elected Director will only be accepted if they:

- (1) submit a written application in the manner and form identified by the directors from time to time;
- (2) are a member of the Company, or a representative of a member of the Company (appointed under clause 26);
- (3) are nominated by two members or representatives of members entitled to vote; and
- (4) are not ineligible to be a director under the Corporations Act or the ACNC Act.

### **42.2 Eligibility of Appointed Directors**

In order to be eligible for the position of Appointed Director, a person must:

- (1) be a member of the Company, or a representative of a member of the Company (appointed under clause 26);

- (2) be recommended by the Nominations Committee as having certain competencies, skills and experiences set out in the Skills Matrix; and
- (3) not be ineligible to be a director under the Corporations Act or the ACNC Act.

### **43 Casual vacancies**

43.1 The directors may appoint a person as a director to fill a casual vacancy among the Elected Directors if that person:

- (1) is a member of the Company, or a representative of a member of the Company (appointed under clause 26); and
- (2) is not ineligible to be a director under the Corporations Act or the ACNC Act.

43.2 Any director appointed under this clause 43 holds office only until the termination of the next annual General Meeting and is eligible for re-election at that annual General Meeting but is not taken into account in determining the number of Elected Directors who must retire by rotation at that meeting.

### **44 Nominations Committee**

#### **44.1 Establishment of a Nominations Committee**

- (1) The board may establish a Nominations Committee, to consist of three directors, one of which must be the Elected Chairperson. The composition of the Nominations Committee may be varied by the board in its discretion.
- (2) The board may by ordinary resolution remove any member of the Nominations Committee appointed by them and may by ordinary resolution appoint another person as a replacement.

#### **44.2 Role of the Nominations Committee**

- (1) The primary responsibility and objective of the Nominations Committee is to identify individuals having appropriate competencies, skills and experience to assist the Company to achieve the object of the Company set out in clause 6.
- (2) In order to perform the responsibility and objective set out in clause 44.2(1), the Nominations Committee is to have regard to:
  - (a) the criteria set out in the Skills Matrix;
  - (b) ensuring, to the extent possible, that people who are deaf are substantially represented on the board;
  - (c) the overall composition of the board;
  - (d) the expertise and experience required by the board and Company; and
  - (e) the availability of persons with suitable qualifications and expertise.

### **45 Term of office**

#### **45.1 Elected Directors**

- (1) An Elected Director may not hold office for a continuous period in excess of 3 years or past the 3<sup>rd</sup> annual General Meeting following the Elected Director's appointment, whichever is the longer, without submitting for re-election.
- (2) Subject to clause 45.1(1), at each annual General Meeting of the Company, 1/3 of the Elected Directors for the time being or, if their number is not 3 or a multiple of 3, then the number nearest to but not exceeding 1/3, retire from office but no Elected Director may retain office for more than 3 years without submitting himself or herself for re-election even though the submission results in more than 1/3 of the Elected Directors retiring from office.
- (3) The Elected Director(s) to retire at an annual General Meeting are those who have been longest in office since their election but, as between or among 2 or more Elected Directors who became Elected Directors on the same day, the Elected Director(s) to retire are determined by lot unless they otherwise agree between or among themselves.
- (4) Subject to clause 45.3, a retiring Elected Director is eligible for re-election without the necessity of giving any previous notice of his or her intention to submit himself or herself for re-election.
- (5) Subject to clause 45.3, unless the directors decide to reduce the number of Elected Directors in office the Company may, at any annual General Meeting at which any Elected Director retires, fill the vacated office by re-electing the retiring Elected Director or electing some other qualified person.

#### **45.2 Appointed Directors**

- (1) Appointed Directors hold office for a term of 2 years from the time they are co-opted.
- (2) There is no limit on the number of consecutive terms that an Appointed Director may hold office.

#### **45.3 Limit on consecutive terms of office**

An Elected Director who has held office for two consecutive terms of up to 3 years each is thereafter ineligible for a period of twelve (12) months for election to any further term as a director without the prior approval of the board on each occasion.

### **46 Election procedure for Elected Directors**

- 46.1 If a ballot is required, balloting lists must be prepared listing the names of the candidates only in alphabetical order.
- 46.2 At the annual General Meeting each member entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.
- 46.3 The candidates equal to the number of vacancies receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as Elected Directors.
- 46.4 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the names of the candidates who received the same number of votes must be put to a further ballot immediately.
- 46.5 Elected Directors:

- (1) who retire at a General Meeting continue to hold office until the end of the meeting; and
- (2) who are appointed at a General Meeting take office immediately after the end of the meeting.

#### **47 Insufficient directors**

If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

#### **48 Election and role of the Elected Chairperson**

- 48.1 The directors must elect a director as the Company's Elected Chairperson.
- 48.2 The Elected Chairperson is to be appointed by the board at the first directors' meeting after the annual General Meeting and hold office until the end of the first meeting of the directors held after the next annual General Meeting, unless the Elected Chairperson resigns from his or her position, ceases to be director, or is removed by resolution of the board.
- 48.3 Subject to this clause 48, the Elected Chairperson is to be elected in such a manner as the board determines.
- 48.4 The Elected Chairperson may be required to undertake such ceremonial or other responsibilities as determined by the directors from time to time.

#### **49 When a director ceases being a director**

In addition to any other circumstances in which a director ceases to be a director under law, a director ceases being a director if they:

- (1) cease to be a member;
- (2) become bankrupt or suspend payment or compounds with his or her creditors;
- (3) become of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (4) give written notice of resignation as a director to the Company;
- (5) die;
- (6) are removed as a director by a resolution of the members;
- (7) are a representative of a member, and that member stops being a member;
- (8) are a representative of a member, and the member notifies the Company that the representative is no longer a representative;
- (9) are absent for 3 consecutive directors' meetings without approval from the directors; or
- (10) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act.



## **Powers of directors**

### **50 Powers of directors**

- 50.1 The directors are responsible for managing and directing the activities of the Company to achieve the object set out in clause 6.
- 50.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 50.3 The directors must decide on the responsible financial management of the Company including:
- (1) any suitable written delegations of power under clause 51, and
  - (2) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 50.4 The directors cannot remove a director or auditor.
- 50.5 Directors and auditors may only be removed by a members' resolution at a General Meeting or as otherwise set out in this constitution.

### **51 Delegation of directors' powers**

- 51.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate, and revoke such delegation.
- 51.2 The delegation must be recorded in the Company's minute book.
- 51.3 A delegate must exercise the powers delegated to it in accordance with any directions of the board. The proper exercise of such power by the delegate is as effective as if the board had exercised it.
- 51.4 The meetings and proceedings of any committee are governed (to the extent applicable) by the provisions in this constitution regulating the meetings and proceedings of the board.

### **52 Payments to directors**

- 52.1 The Company must not pay fees to a director for acting as a director.
- 52.2 The Company may:
- (1) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (2) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- 52.3 Any payment made under clause 52.2 must be approved by the directors.
- 52.4 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

## **53 Execution of documents**

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

- (1) two directors of the Company; or
- (2) a director and the secretary.

## **Duties of directors**

### **54 Duties of directors**

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (1) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (2) to act in good faith in the best interests of the Company and to further the object of the Company set out in clause 6;
- (3) not to misuse their position as a director;
- (4) not to misuse information they gain in their role as a director;
- (5) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 55;
- (6) to ensure that the financial affairs of the Company are managed responsibly; and
- (7) not to allow the Company to operate while it is insolvent.

### **55 Conflicts of interest**

55.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (1) to the other directors; or
- (2) if all of the directors have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if reasonable to do so.

55.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

55.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 55.4:

- (1) be present at the meeting while the matter is being discussed; or

- (2) vote on the matter.

55.4 A director may still be present and vote if:

- (1) their interest arises because they are a member of the Company, and the other members have the same interest;
- (2) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 73);
- (3) their interest relates to a payment by the Company under clause 72 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (4) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the director to vote on the matter; or
- (5) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (a) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company, and
  - (b) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## **Directors' meetings**

### **56 When the directors meet**

The directors may decide how often, where and when they meet.

### **57 Calling directors' meetings**

57.1 A director may call a directors' meeting at any time by giving reasonable notice to all of the other directors, except that it is not necessary to give notice of a meeting of directors to any director who:

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

57.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

57.3 All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

### **58 Chairperson for directors' meetings**

58.1 The Elected Chairperson is entitled to chair directors' meetings.

58.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the Elected Chairperson is:

- (1) not present within 30 minutes after the starting time set for the meeting, or
- (2) present but does not want to act as chairperson of the meeting.

## **59 Quorum at directors' meetings**

59.1 Unless the directors determine otherwise, the quorum for a directors' meeting is 3.

59.2 A quorum must be present for the whole directors' meeting.

## **60 Using technology to hold directors' meetings**

60.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

60.2 The directors' agreement may be a standing (ongoing) one.

60.3 A director may only withdraw their consent within a reasonable period before the meeting.

60.4 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

## **61 Passing directors' resolutions**

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

61.2 The chairperson has a casting vote if necessary in addition to any vote he or she has as a director. The chairperson has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

## **62 Circular resolutions of directors**

62.1 The directors may pass a circular resolution without a directors' meeting being held.

62.2 A circular resolution is passed if the majority (greater than 50%) of the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 62.3 or clause 62.4.

62.3 Each director may sign:

- (1) a single document setting out the resolution and containing a statement that they agree to the resolution; or
- (2) separate copies of that document, as long as the wording of the resolution is the same in each copy.

62.4 The Company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

- 62.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 62.3 or clause 62.4.

## **Secretary**

### **63 Appointment and role of secretary**

- 63.1 The Company must have at least one secretary, who may also be a director.
- 63.2 A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the directors.
- 63.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 63.4 The role of the secretary includes:
- (1) maintaining a register of the Company's members; and
  - (2) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and circular resolutions.

## **Minutes and records**

### **64 Minutes and records**

- 64.1 The Company must, within one month, make and keep the following records:
- (1) minutes of proceedings and resolutions of General Meetings;
  - (2) minutes of Members' Circular Resolutions;
  - (3) a copy of a notice of each General Meeting; and
  - (4) a copy of any Members' Statement distributed to members under clause 32.
- 64.2 The Company must, within one month, make and keep the following records:
- (1) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (2) minutes of circular resolutions of directors.
- 64.3 To allow members to inspect the Company's records:
- (1) the Company must give a member access to the records set out in clause 64.1; and
  - (2) the directors may authorise a member to inspect other records of the Company including records referred to in clause 64.2 and clause 65.1.
- 64.4 The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:

- (1) the chairperson of the meeting; or
  - (2) the chairperson of the next meeting.
- 64.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## **65 Financial and related records**

- 65.1 The Company must make and keep written financial records that:
- (1) correctly record and explain its transactions and financial position and performance; and
  - (2) enable true and fair financial statements to be prepared and to be audited.
- 65.2 The Company must also keep written records that correctly record its operations.
- 65.3 The Company must retain its records for at least 7 years.
- 65.4 The directors must take reasonable steps to ensure that the Company's records are kept safe.

## **By-laws**

### **66 By-laws**

- 66.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 66.2 Members and directors must comply with by-laws as if they were part of this constitution.

## **Notice**

### **67 What is notice**

- 67.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 68 to 70, unless specified otherwise.
- 67.2 Clauses 68 to 70 do not apply to a notice of proxy under clause 38.6.

### **68 Notice to the Company**

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

- (1) delivering it to the Company's registered office;
- (2) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;
- (3) sending it to an email address or other electronic address notified by the Company to the members as the Company's email address or other electronic address; or

- (4) sending it to the fax number notified by the Company to the members as the Company's fax number.

## **69 Notice to members**

69.1 Written notice or any communication under this constitution may be given to a member:

- (1) in person;
- (2) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
- (3) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
- (4) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
- (5) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

69.2 If the Company does not have an address for the member, the Company is not required to give notice in person.

## **70 When notice is taken to be given**

A notice:

- (1) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- (2) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (3) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (4) given under clause 69.1(5) is taken to be given on the business day after the notification that the notice is available is sent.

## **Financial year**

### **71 Company's financial year**

The Company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## **Indemnity, insurance and access**

### **72 Indemnity**

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

### **73 Insurance**

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

### **74 Directors' access to documents**

- 74.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 74.2 If the directors agree, the Company must give a director or former director access to:
- (1) certain documents, including documents provided for or available to the directors; and
  - (2) any other documents referred to in those documents.

## **Winding up**

### **75 Surplus assets not to be distributed to members**

If the Company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company, otherwise than in accordance with clause 76 unless that member or former member is a charity described in clause 76.1.



## 76 Distribution of surplus assets

- 76.1 Subject to clause 76.2 and subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
- (1) with charitable purpose(s) similar to, or inclusive of, the object in clause 6; and
  - (2) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company.
- 76.2 If the Company is endorsed as a deductible gift recipient by the Commissioner of Taxation under Division 30 of the *Income Tax Assessment Act 1997* and such endorsement is revoked or the Company is wound up or dissolved, the Company must transfer to another organisation which is endorsed as a deductible gift recipient and is charitable at law, as determined by the members of the Company, any surplus representing:
- (1) gifts of money or property made for the principal objects of the Company;
  - (2) contributions made in relation to an eligible fundraising event held for the principal objects of the Company; and
  - (3) money received by the Company because of such gifts and contributions.
- 76.3 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## 77 Transitional Arrangements

Notwithstanding any other clause of this constitution, the transitional arrangements set out in Schedule 1 to this constitution shall apply from the time of adoption of this constitution.

## Definitions and interpretation

### 78 Definitions

In this constitution:

- (1) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
- (2) **Appointed Director** means a director appointed by the directors in accordance with clause 41.2;
- (3) **Company** means the Company referred to in clause 1;
- (4) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (5) **Elected Chairperson** means a person elected by the directors to be the Company's chairperson under clause 48;
- (6) **Elected Director** means a director elected by the members in accordance with clause 41.1;

- (7) **General Meeting** means a meeting of members and includes the annual general meeting, under clause 22;
- (8) **Registered Charity** means a charity that is registered under the ACNC Act;
- (9) **Special Resolution** means a resolution:
  - (a) of which notice has been given under clause 23.5(3); and
  - (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution;
- (10) **Skills Matrix** means the criteria set out in the board charter or in a separate document approved by the board from time to time, setting out the competencies, skills and experience considered to be appropriate for a director of the Company, having regard to the object of the Company set out in clause 6; and
- (11) **Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

## 79 Reading this constitution with the Corporations Act

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

## 80 Interpretation

In this constitution:

- (1) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (2) reference to a 'person' means an individual or incorporated body; and
- (3) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

## Schedule 1 – Transitional Arrangements

### 1 Definitions

1.1 In this schedule:

- (1) **Transitional Directors** mean the directors of the Company holding office at the conclusion of the Transition EGM; and
- (2) **Transition EGM** means the extraordinary general meeting of the Company held on 6 September 2016.

### 2 Adjustment in number of Transitional Directors

2.1 As soon as practicable following the Transition EGM, the Transitional Directors will meet to determine which of the Transitional Directors will retire from office in order that the number of Transitional Directors is reduced to 7.

2.2 The Transitional Directors to retire in accordance with clause 2.1 of this Schedule 1 will be selected in the following order:

- (1) those Transitional Director(s) that elect to retire from office (if any); and
- (2) those Transitional Directors who have been longest in office since their most recent election or appointment (**Election Date**). Where two or more Transitional Directors share the same Election Date, the Transitional Director(s) to retire are to be determined by lot (unless they otherwise agree between or among themselves).

2.3 With immediate effect on the conclusion of the meeting referred to in clause 2.1:

- (1) the Transitional Directors selected to retire in accordance with clause 2.2 must retire from office; and
- (2) the remaining Transitional Directors will each be deemed to be an Elected Director under this constitution.