

CONSTITUTION  
OF  
NATIONAL NUTRITION FOUNDATION  
LTD

Australian Company Number (ACN) [161 021 478]  
A company limited by guarantee

Amendments on 21 October 2025

## CONTENTS

Preliminary.....	7
<b>1. Name of the company .....</b>	<b>7</b>
<b>2. Type of company.....</b>	<b>7</b>
<b>3. Limited liability of Members .....</b>	<b>7</b>
<b>4. The guarantee.....</b>	<b>7</b>
<b>5. Definitions .....</b>	<b>7</b>
Charitable objects and powers of the Company .....	7
<b>6. Objects.....</b>	<b>7</b>
<b>7. Powers .....</b>	<b>8</b>
<b>8. Not-for-profit.....</b>	<b>8</b>
<b>9. Amending the Constitution .....</b>	<b>8</b>
Members 8	
<b>10. Membership and register of Members.....</b>	<b>8</b>
<b>11. Ordinary Members .....</b>	<b>9</b>
<b>12. Subscribing Members.....</b>	<b>9</b>
<b>13. How to apply to become a Subscribing Member .....</b>	<b>9</b>
<b>14. Board decides whether to approve Subscribing Membership.....</b>	<b>10</b>
<b>15. Subscription of Subscribing Members.....</b>	<b>10</b>
<b>16. When a person becomes a Member .....</b>	<b>11</b>
<b>17. When a person stops being a Member .....</b>	<b>11</b>
<b>18. Membership entitlements not transferable .....</b>	<b>12</b>
<b>19. Representative .....</b>	<b>12</b>
Dispute resolution and disciplinary procedures .....	13
<b>20. Dispute resolution.....</b>	<b>13</b>

<b>21.</b>	<b>Disciplining Members.....</b>	<b>14</b>
<b>22.</b>	<b>Right of appeal of a disciplined member .....</b>	<b>15</b>
	General meetings of Members.....	16
<b>23.</b>	<b>General meetings called by Directors.....</b>	<b>16</b>
<b>24.</b>	<b>General Meetings called by Members.....</b>	<b>16</b>
<b>25.</b>	<b>Annual General Meeting .....</b>	<b>16</b>
<b>26.</b>	<b>Notice of General Meetings .....</b>	<b>17</b>
<b>27.</b>	<b>Quorum at General Meeting .....</b>	<b>18</b>
<b>28.</b>	<b>Auditor's right to attend meetings .....</b>	<b>18</b>
<b>29.</b>	<b>Right of non-Members to attend General Meeting .....</b>	<b>19</b>
<b>30.</b>	<b>Using technology to hold meetings .....</b>	<b>19</b>
<b>31.</b>	<b>Chairperson for General Meetings.....</b>	<b>19</b>
<b>32.</b>	<b>Role of the chairperson.....</b>	<b>19</b>
<b>33.</b>	<b>Adjournment of meetings.....</b>	<b>19</b>
<b>34.</b>	<b>Cancellation or postponement of meetings .....</b>	<b>20</b>
	Members' resolutions and statements.....	20
<b>35.</b>	<b>Members' resolutions and statements .....</b>	<b>20</b>
<b>36.</b>	<b>Company must give notice of proposed resolution or distribute statement.....</b>	<b>21</b>
<b>37.</b>	<b>Circular resolutions of Members .....</b>	<b>21</b>
	Voting at General Meeting .....	22
<b>38.</b>	<b>How many votes a Member has .....</b>	<b>22</b>
<b>39.</b>	<b>Challenge to Member's right to vote .....</b>	<b>22</b>
<b>40.</b>	<b>How voting is carried out .....</b>	<b>22</b>
<b>41.</b>	<b>When and how a vote in writing must be held.....</b>	<b>23</b>
<b>42.</b>	<b>Direct Voting .....</b>	<b>23</b>

<b>43.</b>	<b>Disqualification .....</b>	<b>24</b>
<b>44.</b>	<b>Appointment of proxy.....</b>	<b>24</b>
<b>45.</b>	<b>Voting by proxy .....</b>	<b>25</b>
Directors	<b>25</b>	
<b>46.</b>	<b>Number of Directors .....</b>	<b>25</b>
<b>47.</b>	<b>Election and appointment of Directors .....</b>	<b>25</b>
<b>48.</b>	<b>Election of chairperson .....</b>	<b>27</b>
<b>49.</b>	<b>Term of office .....</b>	<b>27</b>
<b>50.</b>	<b>When a Director stops being a Director.....</b>	<b>28</b>
<b>51.</b>	<b>Alternate Directors .....</b>	<b>28</b>
Powers of Directors .....		<b>28</b>
<b>52.</b>	<b>Powers of Directors.....</b>	<b>28</b>
<b>53.</b>	<b>Delegation of Directors' powers .....</b>	<b>28</b>
<b>54.</b>	<b>Payments to Directors.....</b>	<b>29</b>
<b>55.</b>	<b>Execution of documents.....</b>	<b>30</b>
Duties of Directors.....		<b>30</b>
<b>56.</b>	<b>Duties of Directors.....</b>	<b>30</b>
<b>57.</b>	<b>Conflicts of interest .....</b>	<b>30</b>
Directors' meetings .....		<b>31</b>
<b>58.</b>	<b>When the Directors meet.....</b>	<b>31</b>
<b>59.</b>	<b>Calling Directors' meetings .....</b>	<b>31</b>
<b>60.</b>	<b>Chairperson for Directors' meetings .....</b>	<b>31</b>
<b>61.</b>	<b>Quorum at Directors' meetings.....</b>	<b>32</b>
<b>62.</b>	<b>Using technology to hold Board meetings.....</b>	<b>32</b>
<b>63.</b>	<b>Passing Board resolutions .....</b>	<b>32</b>

<b>64.</b>	<b>Circular resolutions of the Board</b>	<b>32</b>
<b>65.</b>	<b>Validation of Act of Directors</b>	<b>32</b>
Secretary	33	
<b>66.</b>	<b>Appointment and role of secretary</b>	<b>33</b>
Minutes and records	33	
<b>67.</b>	<b>Minutes and records</b>	<b>33</b>
<b>68.</b>	<b>Financial and related records</b>	<b>34</b>
By-laws	<b>34</b>	
<b>69.</b>	<b>By-laws</b>	<b>34</b>
Notice	<b>34</b>	
<b>70.</b>	<b>What is notice</b>	<b>34</b>
<b>71.</b>	<b>Notice to the Company</b>	<b>35</b>
<b>72.</b>	<b>Notice to Members</b>	<b>35</b>
<b>73.</b>	<b>When notice is taken to be given</b>	<b>36</b>
Financial year	36	
<b>74.</b>	<b>Company's financial year</b>	<b>36</b>
Indemnity, insurance and access	36	
<b>75.</b>	<b>Indemnity</b>	<b>36</b>
<b>76.</b>	<b>Insurance</b>	<b>37</b>
<b>77.</b>	<b>Directors' access to documents</b>	<b>37</b>
Winding up	38	
<b>78.</b>	<b>Surplus assets not to be distributed to Members</b>	<b>38</b>
<b>79.</b>	<b>Distribution of Surplus Assets</b>	<b>38</b>
Definitions and interpretation	38	
<b>80.</b>	<b>Definitions</b>	<b>38</b>

<b>81.</b>	<b>Reading this constitution with the Corporations Act.....</b>	<b>40</b>
<b>82.</b>	<b>Interpretation.....</b>	<b>40</b>

## Preliminary

1. Name of the company
  - 1.1 The name of the Company is National Nutrition Foundation Ltd (the Company).
2. Type of company
  - 2.1 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Registered Charity.
3. Limited liability of Members
  - 3.1 The liability of Members is limited to the amount of the guarantee in clause 4.
4. The guarantee
  - 4.1 Subject to this Constitution, each Member must contribute an amount of not more than \$10.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or if such person was a Member during the year ending on the day of the commencement of the winding up of the Company, and this contribution is required to pay for the:
    - (a) debts and liabilities of the Company incurred before the Member stopped being a Member; or
    - (b) costs of winding up.
5. Definitions
  - 5.1 In this Constitution, words and phrases have the meaning set out in clauses 80 and 82.

## Charitable objects and powers of the Company

6. Objects
  - 6.1 The Company is a not-for-profit institution, operating as a Registered Charity, established to be Australia's leading independent and authoritative organisation to promote healthy and sustainable eating choices for all Australians to prevent or control diseases linked to poor nutrition and unhealthy choices. The Company will achieve its Objects by:
    - (a) educating people in early childhood education, workplaces, hospitals and health services, sport and recreational centres, aged care and the food industry in relation to healthy food choices;
    - (b) increasing the availability of healthy food and drinks in early childhood education, workplaces, hospitals and health services, sport and recreational centres, aged care and the food industry; and
    - (c) doing all things ancillary to the Objects referred to in clauses 6.1(a) and 6.1(b).

## CONSTITUTION OF NATIONAL NUTRITION FOUNDATION LTD

7. Powers
- 7.1 The Company can only exercise the powers in section 124(1) of the Corporations Act to:
  - (a) carry out the Objects; and
  - (b) do all things incidental or convenient in relation to the exercise of power under clause 7.1(a).
8. Not-for-profit
- 8.1 The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- 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 79.
- 8.3 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:
  - (a) 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;
  - (b) the repayment of capital and/or payment of interest on money borrowed by the Company from the payment recipient, provided the rate of interest charged did not exceed bank overdraft rates of interest for moneys lent to the Company;
  - (c) the payment of reasonable and proper rent for premises leased by any Member to the Company; or
  - (d) making a payment to a Member in carrying out the Objects.
- 8.4 Nothing in this clause prevents the Company from making a payment to a Director for services as a Director, or reimbursing expenses, provided the payment is made in accordance with clause 54 and is reasonable in amount.
9. Amending the Constitution
- 9.1 Subject to the Corporations Act and clause 9.2, the Members may amend this Constitution by passing a Special Resolution in favour of such amendment.
- 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 Registered Charity.

## Members

10. Membership and register of Members
- 10.1 The Members of the Company are the Ordinary Members and the Subscribing Members.
- 10.2 The Company must establish and maintain a register of Members.
- 10.3 The register of Members must be kept by the secretary and must contain for each current Member:
  - (a) name;

- (b) address;
- (c) any alternative address nominated by the Member for the service of notices;
- (d) in the case of a Subscribing Member that is a body corporate, their Representative;
- (e) date the Member was entered on to the register; and
- (f) their class of Membership.

10.4 The register of Members must contain for each person or bodies corporate who ceased to be a Member in the last seven (7) years:

- (a) name;
- (b) address last listed on the register, or any alternative address nominated by the Member for the service of notices; and
- (c) the dates the Membership started and ended.

10.5 The Company must give current Members access to the register of Members if requested by the current Members in accordance with the Corporations Act.

11. Ordinary Members

11.1 A Director shall automatically be admitted as an Ordinary Member upon election or appointment as a Director so long as such Director:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time; and
- (c) agrees to become an Ordinary Member upon election or appointment, pursuant to clause 47, as a Director.

12. Subscribing Members

12.1 Any natural person or body corporate that:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time; and
- (c) subject to clause 15.1, pays the Subscription in accordance with clause 15, is eligible to be admitted as a Subscribing Member under clause 14.

13. How to apply to become a Subscribing Member

13.1 An application to become a Subscribing Member of the Company may be made in writing to the secretary in any form prescribed or acceptable to the Board from time to time, which may include an online form, stating that the applicant:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) wishes to become a Subscribing Member;
- (c) supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time; and
- (d) agrees to pay any required Subscription.

13.2 Such application must:

- (a) include a signature or equivalent or equivalent acknowledgement by the applicant acknowledging that the applicant agrees to be bound by the Constitution; and
- (b) if required, be accompanied by a Subscription.

14. Board decides whether to approve Subscribing Membership

14.1 The Board must consider an application for a Subscribing Membership within a reasonable time after the secretary receives the application.

14.2 If the Board approves an application, the secretary must as soon as possible:

- (a) enter the new Subscribing Member on the register of Members; and
- (b) write to the applicant to tell them that their application was approved, and the date upon which they are admitted to Membership.

14.3 If the Board rejects an 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 Board may approve an application even if the application does not comply with clauses 13.1 and/or 13.2 . In that case, by applying to be a Subscribing Member, the applicant agrees to adhere to the various requirements in clauses 13.1 and to pay any Subscription required.

15. Subscription of Subscribing Members

15.1 The Board may, from time to time, determine the amount of the annual Subscription amount to be paid by each Subscribing Member for each Financial Year (if any).

15.2 The Board may in its discretion:

- (a) determine the times and manner in which the Subscription is payable;
- (b) charge different classes of Membership different Subscriptions;
- (c) determine that no Subscription is payable by a Member or Members (in whole or in part) in a given year;

- (d) extend the time for payment of the Subscription by any Member.
- 15.3
- 15.4 Each Subscribing Member must pay annually on or before 30 June, or such other date as the Board may from time to time determine, the amount of the Subscription determined by the Board under clause 15.1.
- 15.5 Subject to clause 15.6, a Subscribing Member whose Subscription is not paid within three (3) months after the relevant date under clause 15.4, ceases on the expiry of that period to be a Subscribing Member, unless the Board decides otherwise.
- 15.6 A person exercises all the rights and obligations of a Subscribing Member for the purposes of this Constitution if their Subscription is paid on or before the relevant date under clause 15.4, or within three (3) months thereafter, or such other time as the Board allows.
- 15.7 In addition to the annual Subscription amount to be paid in accordance with clause 15.1, each applicant to become a Subscribing Member is required to make a one-off payment of a Subscription amount (to be determined by the Board) either at the time of applying to become a Subscribing Member or within three (3) months of applying to become a Subscribing Member pursuant to clause 13, to be determined by the Board. If the application of the applicant is rejected, such Subscription will be returned to the Subscribing Member.
- 15.8 No part of any Subscription shall be refunded to a Member who ceases to be a Member in accordance with clause 17.
- 16. When a person becomes a Member
- 16.1 Other than Initial Members and subject to the Corporations Act, an applicant will become a Member when they are entered on the register of Members.
- 17. When a person stops being a Member
- 17.1 A Member's Membership will cease:
  - (a) on the date that the secretary receives written notice of resignation from that Member;
  - (b) in the case of an Ordinary Member, if they cease to be a Director of the Company;
  - (c) in the case of a natural person (who is not a Representative), upon that person dying;
  - (d) upon that Member becoming Bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally or that Member suffering mental incapacity or becoming a person whose property or person is liable to be dealt with in any way under a law relating to mental health;
  - (e) if the Member is expelled from the Company pursuant to clause 21;
  - (f) if, being a bodies corporate Subscribing Member:

- (i) that Member is dissolved or otherwise ceases to exist;
- (ii) that Member has:
  - (A) a receiver;
  - (B) a receiver and manager;
  - (C) a liquidator;
  - (D) an administrator;
  - (E) an administrator of deed of company arrangement; or
  - (F) a trustee or other person administering a compromise or arrangement between the Member and someone else,
- appointed to it;

- (g) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty-one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed; or
- (h) if they have not responded within three (3) months to a written request from the secretary that they confirm in writing that they want to remain a Member.

17.2 A Member may at any time, pursuant to clause 17.1(a), resign as a Member but shall continue to be liable for:

- (a) any monies due by the Member to the Company; and
- (b) any sum for which the Member is liable as a Member of the Company under clause 3.

18. Membership entitlements not transferable

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

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

19. Representative

19.1 This clause 19 only applies to Subscribing Members that are bodies corporate.

19.2 A Subscribing Member or an applicant for Subscribing Membership must appoint as its Representative a natural person.

19.3 The name and address of the Representative will be entered in the Register as the representative of the body corporate Subscribing Member.

- 19.4 All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the body corporate Subscribing Member which is represented by that particular Representative.
- 19.5 If the appointment of a Representative by the body corporate Subscribing Member is made by reference to a position held, the appointment must identify the position.
- 19.6 Despite clause 18.1, a bodies corporate Subscribing Member may remove and replace a Representative where such body corporate gives written notice to the Board in a form approved by the Board.
- 19.7 A signature by a Representative of a bodies corporate Subscribing Member on behalf of that body corporate is taken to be the signature of that body corporate for the purposes of this Constitution.
- 19.8 Any power or right of a bodies corporate Subscribing Member as granted by this Constitution can be exercised by the Representative of that particular body corporate Subscribing Member.
- 19.9 Bodies corporate Subscribing Members are represented at General Meetings by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to clause 19.
- 19.10 The actions of a Representative bind the body corporate Subscribing Member which is represented by that particular Representative.
- 19.11 Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Subscribing Member himself or herself.

## Dispute resolution and disciplinary procedures

20. Dispute resolution
- 20.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between:
  - (a) a Member and another Member;
  - (b) a Member and the Board;
  - (c) a Member and the Company; or
  - (d) the Directors.
- 20.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 21 until the disciplinary procedure is completed.
- 20.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 20.4 If those involved in the dispute do not resolve it under clause 20.3, they must within 10 days:
  - (a) tell the Board about the dispute in writing;

- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

20.5 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
  - (i) for disputes between Members, a person chosen by the Board; or
  - (ii) 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 of Victoria.

20.6 A mediator chosen by the Board under clause (20.5(b)(i)):

- (a) may be a Member or former Member of the Company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

20.7 When conducting the mediation, the mediator must:

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

21. Disciplining Members

21.1 In accordance with this clause, the Board may resolve to warn, suspend or expel a Member from the Company if the Board consider that:

- (a) the Member has breached this Constitution; or
- (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.

21.2 At least 14 days before the Board meeting at which a resolution under clause 21.1 will be considered, the secretary must notify the Member in writing:

- (a) that the Board is considering a resolution to warn, suspend or expel the Member;
- (b) that this resolution will be considered at a Board meeting and the date of that meeting;
- (c) what the Member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and

- (e) that the Member may provide an explanation to the Board, and details of how to do so.

21.3 Before the Board passes any resolution under clause 21.1, the Member must be given a chance to explain or defend themselves by:

- (a) sending the Board a written explanation before that Board meeting; and/or
- (b) speaking at the meeting.

21.4 After considering any explanation under clause 21.3, the Board may:

- (a) take no further action;
- (b) warn the Member;
- (c) suspend the Member's rights as a Member for a period of no more than 12 months;
- (d) expel the Member;
- (e) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause); or
- (f) require the matter to be determined at a General Meeting.

21.5 The Board cannot fine a Member.

21.6 The secretary must give written notice to the Member of the decision under clause 21.4 as soon as possible.

21.7 Disciplinary procedures must be completed as soon as reasonably practical.

21.8 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.

22. Right of appeal of a disciplined member

22.1 The Board will establish a disciplinary Committee. The Disciplinary Committee will comprise of an independent panel of three (3) experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.

22.2 A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under clause 21.4. Written notice of such an appeal must be lodged with the secretary within seven (7) days of service of the notice required under clause 21.6.

22.3 Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to clause 22.2, the Disciplinary Committee must convene a meeting.

22.4 At the Disciplinary Committee meeting convened under clause 22.3:

- (a) the Member must be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and

- (b) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- 22.5 The Disciplinary Committee's decision, pursuant to clause 22.4(b), is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- 22.6 The Member the subject of these disciplinary procedures is entitled to:
  - (a) subject to clause 22.6(b), bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to clause 21 or 22; and
  - (b) if the support person is legally qualified, the Member must notify the Disciplinary Committee or the Board (as the case may be) at least five (5) Business Days before the meeting that the support person attending the meeting will be legally qualified.
- 22.7 Natural justice will be applied during every disciplinary process under clause 21 and 22, requiring the Board and the Disciplinary Committee, to act fairly, in good faith and without bias or conflict of interest when making decisions.

## General meetings of Members

- 23. General meetings called by Directors
- 23.1 At least two (2) Directors may call a General Meeting.
- 23.2 Notwithstanding section 111L of the Corporations Act, the Members may call a General Meeting, and the Company will do so, in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting.
- 24. General Meetings called by Members
- 24.1 If the Board does not call the meeting within 21 days of being requested under clause 23.2, 50% or more of the Members who made the request may call and arrange to hold a General Meeting.
- 24.2 To call and hold a meeting under clause 24.1 the Members must:
  - (a) as far as possible, follow the procedures for General Meeting set out in this Constitution;
  - (b) call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Members making the request at no cost; and
  - (c) hold the General Meeting within three (3) months after the request was given to the Company.
- 24.3 The Company must pay the Members who request the General Meeting any reasonable expenses they incur because the Board did not call and hold the meeting.
- 25. Annual General Meeting

25.1 Notwithstanding section 111L of the Corporations Act, a General Meeting, called the Annual General Meeting, must be held:

- (a) within 18 months after registration of the Company; and
- (b) after the first Annual General Meeting, at least once in every calendar year.

25.2 Notwithstanding section 111L of the Corporations Act, an Annual General Meeting which is convened must be done so in accordance with the requirements of the Corporations Act.

25.3 Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:

- (a) a review of the Company's activities;
- (b) a review of the Company's finances;
- (c) any auditor's report;
- (d) the election of Directors; and
- (e) the appointment and payment of an Auditor, if any.

25.4 Before or at the Annual General Meeting, the Board must give information to the Members on the Company's activities and finances during the period since the last Annual General Meeting.

25.5 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.

26. Notice of General Meetings

26.1 Notice of a General Meeting must be given to:

- (a) each Member;
- (b) each Director; and
- (c) the Auditor (if any).

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

26.3 Subject to clause 26.4, notice of a meeting may be provided less than 21 days before the meeting if consent to shorter notice is given in accordance with the Corporations Act (notwithstanding section 111L of the Corporations Act).

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

- (a) remove a Director;
- (b) appoint a Director in order to replace a Director who was removed; or
- (c) remove an Auditor.

26.5 Notice of a General Meeting must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two (2) or more places or virtually, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
- (d) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
  - (i) the proxy does not need to be a Member of the Company;
  - (ii) 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
  - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting; and
- (e) any other information required by the Corporations Act (notwithstanding section 111L of the Corporations Act).

26.6 If a General Meeting is adjourned (put off) for one month or more, the Members must be given new notice of the resumed meeting.

27. Quorum at General Meeting

27.1 For a General Meeting to be held, at least 50% of the Members with a right to vote at the General Meeting must be present (in person or by proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy of more than one Member).

27.2 No business may be conducted at a General Meeting if a quorum is not present.

27.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting:

- (a) the General Meeting, if convened upon the requisition of Members, shall be dissolved; or
- (b) in any other case 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:
  - (i) if the date is not specified – the same day in the next week;
  - (ii) if the time is not specified – the same time; and
  - (iii) if the place is not specified – the same place.

27.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is dissolved.

28. Auditor's right to attend meetings

- 28.1 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.
- 28.2 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.
- 29. Right of non-Members to attend General Meeting
- 29.1 The chairperson of a General Meeting may invite any person who is not a Member to attend and address a General Meeting.
- 30. Using technology to hold meetings
- 30.1 The Company may hold a General Meeting virtually or at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 30.2 Anyone using this technology is taken to be present in person at the meeting.
- 31. Chairperson for General Meetings
- 31.1 The Elected Chairperson is entitled to chair General Meeting.
- 31.2 The Members Present and entitled to vote at a General Meeting may choose a Director or Member to be the chairperson for that meeting if:
  - (a) there is no Elected Chairperson; or
  - (b) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or
  - (c) the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.
- 32. Role of the chairperson
- 32.1 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)).
- 32.2 The rulings of the chairperson of a General Meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.
- 32.3 The chairperson does not have a casting vote.
- 33. Adjournment of meetings
- 33.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.
- 33.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

- 33.3 A resolution passed at a General Meeting resumed after an adjournment is passed on the day it was passed.
- 33.4 It is not necessary to give any notice of an adjournment of a General Meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.
- 34. Cancellation or postponement of meetings
- 34.1 Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations Act) and this Constitution, the Board may cancel a General Meeting of the Company:
  - (a) convened by the Board; or
  - (b) which has been convened by the Members pursuant to clause 23.2 upon receipt by the Company of a written notice withdrawing the requisition signed by the Members who convened the meeting.
- 34.2 The Board may postpone a General Meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- 34.3 Where any General Meeting is cancelled or postponed or the venue for a General Meeting is changed, the Board must notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting.
- 34.4 Any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## Members' resolutions and statements

- 35. Members' resolutions and statements
- 35.1 Members with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the Company of a resolution they propose to move at a General Meeting (Members' resolution); and/or
  - (b) 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).
- 35.2 A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Member/s proposing the resolution.
- 35.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Member/s making the request.

- 35.4 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.
- 35.5 The percentage of votes that Members have (as described in clause 35.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 35.6 If the Company has been given notice of a Members' resolution under clause 35.1(a), the resolution must be considered at the next General Meeting held more than two (2) months after the notice is given.
- 35.7 This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.
- 36. Company must give notice of proposed resolution or distribute statement
- 36.1 If the Company has been given a notice or request under clause 35:
  - (a) 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
  - (b) 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. However, at a General Meeting, the Members may pass a resolution that the Company will pay these expenses.
- 36.2 The Company does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:
  - (a) it is more than 1,000 words long;
  - (b) the Board considers it may be defamatory;
  - (c) clause 36.1(b) 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
  - (d) 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.
- 37. Circular resolutions of Members
- 37.1 Subject to clause 37.3, the Board may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).
- 37.2 The Board must notify the Auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- 37.3 Circular resolutions cannot be used:

- (a) for a resolution to remove an Auditor, appoint a Director or remove a Director; or
- (b) where the Corporations Act or this constitution requires a meeting to be held.

37.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 37.5 or clause 37.6.

37.5 Members may sign:

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

37.6 The Company may send a 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 Meeting

38. How many votes a Member has

38.1 Each Ordinary Member has one vote both on a show of hands and a poll and on any resolution passed without a General Meeting.

38.2 For the avoidance of doubt, Subscribing Members do not have a right to vote at a General Meeting or on any resolution passed without a General Meeting.

39. Challenge to Member's right to vote

39.1 A Member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.

39.2 If a challenge is made under clause 39.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final and conclusive and a vote allowed by the chairperson shall be valid for all purposes.

40. How voting is carried out

40.1 Voting must be conducted and decided by:

- (a) a show of hands;
- (b) a vote in writing; or
- (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

40.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

40.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

40.4 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.

41. When and how a vote in writing must be held

41.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) Members Present with at least 50% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
- (b) the chairperson.

41.2 A vote in writing must be taken when and how the chairperson directs, unless clause 41.3 applies.

41.3 A vote in writing must be held immediately if it is demanded under clause 41.1:

- (a) for the election of a chairperson under clause 31.2; or
- (b) to decide whether to adjourn the meeting.

41.4 A demand for a vote in writing may be withdrawn.

42. Direct Voting

42.1 The Board will determine from time to time if Ordinary Members are entitled to vote by a Direct Vote on a matter or a resolution. If the Board has determined that Ordinary Members are entitled to vote by a Direct Vote, then the Ordinary Members must do so using the form prescribed by the Board from time to time, which may include electronic means.

42.2 If sent by post, the Direct Vote must be signed by the Ordinary Member or by a duly authorised officer or attorney.

42.3 If sent by electronic transmission, the Direct Vote is to be taken to have been signed if it has been signed or authorised by the Ordinary Member in the manner approved by the Board.

42.4 The Direct Vote must be received by the Company at least forty-eight (48) hours before the time of the relevant General Meeting in order to be valid.

42.5 A Direct Vote is valid if it contains the following information:

- (a) the Ordinary Member's name and address, or any applicable identifying notations such as the Ordinary Member's identification number or similar approved by the Board or specified in the notice of meeting; and
- (b) the Ordinary Member's voting intention on any or all of the resolutions to be put before the meeting.

42.6 A Direct Vote is valid unless the Company receives written notification changing the voting intention before the vote is cast.

42.7 The chairperson's decision as to whether a Direct Vote is valid is conclusive.

42.8 An Ordinary Member who has cast a Direct Vote is entitled to attend the meeting. The Ordinary Member's attendance cancels the Direct Vote unless:

- (a) the Ordinary Member instructs the Company otherwise; or
- (b) the Board has determined that Direct Votes are the only method permitted for voting on a resolution.

42.9 If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the chairperson of the meeting must:

- (a) on a vote by show of hands, count each Ordinary Member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote; and
- (b) on a poll, count the votes cast by each Ordinary Member who has submitted a Direct Vote directly for or against the resolution.

43. Disqualification

43.1 No person other than:

- (a) an Ordinary Member; or
- (b) a proxy or attorney of an Ordinary Member,

is entitled to vote at a General Meeting or in any resolution passed without a General Meeting.

44. Appointment of proxy

44.1 An Ordinary Member may appoint a proxy to attend and vote at a General Meeting on their behalf.

44.2 A proxy must be a Member.

44.3 A proxy appointed to attend and vote for an Ordinary Member has the same rights as the Ordinary Member to:

- (a) speak at the meeting;
- (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
- (c) join in to demand a vote in writing under clause 41.1.

44.4 An appointment of proxy (proxy form) must be signed by the Ordinary Member appointing the proxy and must contain:

- (a) the Ordinary Member's name and address;
- (b) the Company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meeting(s) at which the appointment may be used.

44.5 A proxy form must not be treated as invalid merely because it does not specify all of the information required by clause 44.4.

- 44.6 A proxy appointment may be standing (ongoing).
- 44.7 A proxy form may be revoked at any time by notice in writing to the Company.
- 44.8 Proxy forms must be received by the Company at the address stated in the notice under clause 26.5(d), at the Company's registered address, or by email if the notice of meeting so permits, at least 48 hours before a meeting.
- 44.9 A proxy does not have the authority to speak and vote for an Ordinary Member at a meeting while that Ordinary Member is at the meeting.
- 44.10 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 Ordinary Member:
  - (a) is, or becomes Bankrupt, suffers mental incapacity or is or becomes a person whose property or person is liable to be dealt with in any way under a law relating to mental health; or
  - (b) revokes the proxy's appointment.
- 44.11 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 45. Voting by proxy
- 45.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as an Ordinary Member on a show of hands).
- 45.2 When a vote in writing is held, a proxy:
  - (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also an Ordinary Member or holds more than one proxy, may cast the votes held in different ways.

## Directors

- 46. Number of Directors
- 46.1 The Company must have at least three (3) and no more than eleven (11) Directors.
- 46.2 Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in clause 46.1.
- 46.3 Subject to clauses 46.1 and 46.2, the Board may determine, from time to time, the number of Directors to hold office on the Board.
- 47. Election and appointment of Directors
- 47.1 The Initial Directors are the people who have agreed to act as Directors and who are named as proposed Directors in the application for registration of the Company.

47.2 No later than the first Board meeting after registration of the Company, the Initial Directors shall nominate from among their number who shall hold office for an initial term of three (3) years and who shall hold office for an initial term of two (2) years, so long as half of the Initial Directors (rounded up to the nearest integer) serve an initial term of two (2) years.

47.3 Apart from the Initial Directors and Directors appointed under clause 47.9, the Members may elect a Director by a resolution passed in a General Meeting.

47.4 Each Director must be elected by a separate resolution, unless:

- (a) the Members Present have first passed a resolution that the elections may be voted on together, and
- (b) no votes were cast against that resolution.

47.5 If the number of Directors nominated exceed the number of vacancies, a ballot must be held. The Board may determine the manner in which a ballot will be carried out and may appoint scrutineers.

47.6 If insufficient nominations are received to fill all positions on the Board which are vacant, the candidate or candidates nominated will be deemed to be elected and further nominations will be received at the meeting at which the election is to take place.

47.7 If insufficient further nominations are received, any unfilled positions remaining on the Board will be deemed to be casual vacancies.

47.8 A person is eligible for election as a Director of the Company if, subject to ensuring that the qualifications, experience and criteria determined by the Board under clause 47.13 are satisfied, they:

- (a) give the Company their signed consent to act as a Director of the Company; and
- (b) are not ineligible to be a Director under the Corporations Act or the ACNC Act.

47.9 In the event of a casual vacancy occurring on the Board, the Board may appoint a person as a Director to fill such vacancy if that person:

- (a) is eligible to be a Director pursuant to clause 47.5;
- (b) gives the Company their signed consent to act as a Director of the Company; and
- (c) is not ineligible to be a Director under the Corporations Act or the ACNC Act.

47.10 Any Director appointed to fill a vacancy pursuant to clause 47.9, shall hold office for the remainder of the term of the vacating Director.

47.11 For the avoidance of doubt, time spent filling a casual vacancy pursuant to clause 47.9 will count toward the maximum consecutive term of a Director referred to in clause 49.2.

47.12 The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in accordance with clause 46.1, the Board may act:

- (a) for the purpose of increasing the number of Directors to the minimum or convening a General Meeting; or
- (b) in emergencies,

but for no other purpose.

47.13 Subject to clause 47.8, for the purpose of electing or appointing a Director in accordance with this clause 47, the Board may determine the particular qualifications, experience and any other relevant criteria (if any) a person must have in order to be appointed as a Director.

47.14 In assessing whether a person satisfies the criteria determined by the Board under clause 47.13 (if any), regard may be had to any information supplied by that person, and any information obtained from other sources.

48. Election of chairperson

48.1 The Board must, at the first meeting of the Board held after registration of the Company and thereafter at the first meeting of the Board held after the Elected Chairperson has retired, elect from amongst the Directors sitting on the Board at the time of the meeting an Elected Chairperson.

48.2 The Elected Chairperson shall hold office for a term of one (1) year (or a shorter period, if the Elected Chairperson has less than one (1) year remaining in his or her term as a Director), but shall be eligible for reappointment for further terms of one (1) year each, provided that the Elected Chairperson shall not hold office beyond their retirement or removal from the Board as a Director.

48.3 For the avoidance of doubt, there is no maximum consecutive number of terms for which a Director may be appointed to the office of Elected Chairperson.

48.4 In the event of a vacancy occurring in the position of Elected Chairperson, a Board meeting shall be called as soon as possible after such vacancy occurs in order for a new Elected Chairperson to be elected to a new term pursuant to clause 48.1.

49. Term of office

49.1 Subject to clause 47.2, Directors shall hold office for a term of three (3) years but shall be eligible for re-election for further terms of three (3) years each.

49.2 A Director may not hold office for a continuous period of more than nine (9) years unless a Special Resolution is passed allowing for such Director to hold office for a longer continuous period of one (1) or more further terms.

49.3 Once a Director has served the maximum term pursuant to clause 49.2, that Director is not eligible for reappointment or re-election to the Board until after a period of at least one (1) year has expired since the expiry of the Director's previous term on the Board.

49.4 For the avoidance of doubt, any term served by an Initial Director shall count towards the maximum term limit pursuant to clause 49.2.

50. When a Director stops being a Director
- 50.1 Any Director may resign from office on giving written notice to the Company at the Office of his or her intention to resign and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- 50.2 The office of a Director shall become vacant if the Director:
  - (a) dies;
  - (b) gives written notice of resignation as a Director to the Company;
  - (c) becomes Bankrupt or makes any arrangement or composition with creditors generally;
  - (d) suffers mental incapacity or becomes a person whose property or person is liable to be dealt with in any way under a law relating to mental health;
  - (e) is removed from office by the Company in General Meeting;
  - (f) ceases to be an Ordinary Member of the Company;
  - (g) is absent for three consecutive Directors' meetings without approval from the Board, unless the Board resolves that the Director should not vacate from his or her office as Director; or
  - (h) become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.
51. Alternate Directors
- 51.1 Alternate Directors shall not be permitted.

## Powers of Directors

52. Powers of Directors
- 52.1 The control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Corporations Act or by this Constitution required to be exercised in any other manner.
- 52.2 The Board must decide on the responsible financial management of the Company including:
  - (a) any suitable written delegations of power under clause 53, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 52.3 The Board cannot remove a Director or Auditor. Directors and Auditors may only be removed by a Members' resolution at a General Meeting.
53. Delegation of Directors' powers

53.1 The Board may delegate any of its powers and functions to a Committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as it considers appropriate.

53.2 Powers conferred under this clause 53 may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

53.3 The delegation must be recorded in the Company's minute book.

53.4 In respect of the establishment of a Committee under clause 53.1, unless inconsistent with the Constitution of the Company, the Board may:

- (a) appoint and remove members of the Committee, or make provision for the appointment and removal of members of the Committee;
- (b) determine the functions of any Committee; and
- (c) make and amend the terms of reference and procedures for meetings of any Committee.

54. Payments to Directors

54.1 Director Remuneration

- (a) The Company may pay reasonable remuneration to a Director for services as a Director, provided the remuneration:
  - (i) has been approved by the Members at a General Meeting or determined in accordance with a Director Remuneration Policy adopted by the Members; and
  - (ii) complies with section 202A of the Corporations Act 2001 (Cth) and ACNC Governance Standard 5.
- (b) The amount or structure of remuneration must be reasonable having regard to comparable benchmarks for not-for-profit entities (including the AICD NFP Governance & Performance Study).

54.2 Director reimbursement

The Company may also reimburse Directors for reasonable out-of-pocket expenses incurred in the performance of duties, or pay for services rendered to the Company other than as a Director, provided the payment is on arm's-length terms and approved by the Board.

54.3 Disclosure to Members

Details of all payments, benefits or reimbursements to Directors must be disclosed annually to Members and recorded in the Company's financial statements.

54.4 Voting on remuneration

The Board must ensure that any Director who is a recipient of remuneration does not participate in the determination or approval of their own remuneration.

54.5 Management Liability insurance

The Company may maintain Management liability (for its Directors' and Officers) as permitted by law.

54.6 Periodic Review

The Board must ensure that the Director Remuneration Policy and governance framework are independently reviewed at least once every three years, and that the findings are reported to Members.

55. Execution of documents

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

- (a) two Directors of the Company; or
- (b) a Director and the secretary,

to sign such instruments.

## Duties of Directors

56. Duties of Directors

56.1 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 ACNC Regulation which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the Objects;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 57;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

57. Conflicts of interest

57.1 The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.

57.2 Any interest of a Director must be dealt with in accordance with the provisions of the Corporations Act, which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.

57.3 Each Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may not:

- (a) be present while the matter is being considered at a meeting, subject to the Board determining that such Director may be present while the matter is being considered;
- (b) vote on the matter;
- (c) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; or
- (d) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement,

but may be counted in determining whether or not a quorum is present at any meeting of the Board considering that contract or arrangement or proposed contract or arrangement.

57.4 A Director's failure to make disclosure under this clause 57 does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

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

## Directors' meetings

58. When the Directors meet

58.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings, including how often, where and when they meet, as it thinks fit.

59. Calling Directors' meetings

59.1 A Director may call a Board meeting by giving reasonable notice to all of the other Directors.

59.2 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.

59.3 A notice of meeting of the Board need not be in writing.

60. Chairperson for Directors' meetings

60.1 The Elected Chairperson is entitled to chair Board meetings.

60.2 The Directors at a Board meeting may choose a Director to be the chairperson for that meeting if the Elected Chairperson is:

- (a) not present within 30 (thirty) minutes after the starting time set for the meeting; or

- (b) present but does not want to act as chairperson of the meeting.
- 61. Quorum at Directors' meetings
- 61.1 Unless the Board determine otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors.
- 61.2 A quorum must be present for the whole Board meeting.
- 61.3 A Director who is disqualified from voting on a matter pursuant to clause 57 shall be counted in the quorum despite that disqualification.
- 61.4 The Board may from time to time, by resolution, vary the quorum necessary for the transaction of the Board's business.
- 62. Using technology to hold Board meetings
- 62.1 The Board may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 62.2 The Directors' agreement may be a standing (ongoing) one.
- 62.3 A Director may only withdraw their consent within a reasonable period before the meeting.
- 63. Passing Board resolutions
- 63.1 A Board resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.
- 63.2 Each Director shall have one (1) vote.
- 63.3 In case of an equality of votes at a meeting of the Board, the chairperson is not entitled to a casting vote in addition to a deliberative vote.
- 64. Circular resolutions of the Board Directors
- 64.1 The Board may pass a circular resolution without a Board meeting being held.
- 64.2 A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 64.3 or clause 64.4.
- 64.3 Each Director may sign:
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 64.4 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.
- 64.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 64.3 or clause 64.4.
- 65. Validation of Act of Directors

65.1 All acts done:

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

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

## Secretary

66. Appointment and role of secretary

66.1 The Company must have at least one secretary, who may also be a Director.

66.2 At least one secretary of the Company must ordinarily reside in Australia.

66.3 A secretary must be appointed by the Board (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the Board.

66.4 The Board must decide the terms and conditions under which the secretary is appointed, including any remuneration.

66.5 The role of the secretary includes:

- (a) maintaining a register of the Company's Members; and
- (b) maintaining the minutes and other records of General Meetings (including notices of meetings), Board meetings and circular resolutions.

## Minutes and records

67. Minutes and records

67.1 The Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:

- (a) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
- (b) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees;
- (c) such matters as are required by the Corporations Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise; and
- (d) any resolutions passed without a meeting.

67.2 To allow Members to inspect the Company's records:

- (a) the Company must give a Member access to the records set out in clause 67.1; and
- (b) the Board may authorise a Member to inspect other records of the Company, including records referred to in clause 67.1 and clause 68.1.

67.3 The Board must ensure that minutes of a General Meeting or a Board meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

67.4 The Board 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.

68. Financial and related records

68.1 The Board must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

68.2 If required by the Corporations Act (notwithstanding section 111L of the Corporations Act), the Board must distribute copies of the financial reports of the Company and a Director's report.

68.3 The Company must also keep written records that correctly record its operations.

68.4 The Company must retain its records for at least 7 years.

68.5 The Board must take reasonable steps to ensure that the Company's records are kept safe.

## By-laws

69. By-laws

69.1 The Board may make by-laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interest, effects and property and to amend and repeal those by-laws from time to time.

69.2 A by-law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.

69.3 When in force, a by-law is binding on the Members and has the same effect as this Constitution.

## Notice

70. What is notice

- 70.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 71 to 73, unless specified otherwise.
- 70.2 Clauses 71 to 73 do not apply to a notice of proxy under clause 44.8.
- 71. Notice to the Company
- 71.1 Written notice or any communication under this constitution may be given to the Company, the Directors or the secretary by:
  - (a) delivering it to the Company's registered office;
  - (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided; or
  - (c) 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.
- 72. Notice to Members
- 72.1 Written notice or any communication under this constitution may be given to a Member:
  - (a) in person;
  - (b) by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the Member for service of notices; or
  - (c) by sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any).
- 72.2 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). A Member may elect to be sent documents in a physical form or electronic form by notifying the Company of the election, in accordance with the Corporations Act. The Company must take reasonable steps to comply.
- 72.3 If the Company does not have an address for the Member, the Company is not required to give notice in person.
- 72.4 The Company must send the Members of the Company, at least once in each financial year, a notice setting out the following or make such a notice readily available on a website:
  - (a) that they have a right to elect and to request to be sent documents in physical form under sections 110E and 110J of the Corporations Act;
  - (b) that they have a right to elect and to request to be sent documents in electronic form under sections 110E and 110J of the Corporations Act; and
  - (c) that they have a right to elect not to be sent annual financial reports under section 314 of the Corporations Act.

72.5 This clause 72.5 does not limit the way in which notice may be given, including under Division 2 of Part 1.2AA of the Corporations Act.

73. When notice is taken to be given

73.1 A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the Business Day after it is sent; and
- (d) given under clause 72.1(e) is taken to be given on the Business Day after the notification that the notice is available is sent.

## Financial year

74. Company's financial year

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

## Indemnity, insurance and access

75. Indemnity

75.1 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.

75.2 In this clause 75 and clause 76, 'officer' means:

- (a) a Director or secretary of the Company; or
- (b) a person whose role and/or activities meet the definition of an officer of the Company in accordance with the Corporations Act,

and includes:

- (c) a Director or secretary for a period of seven (7) years after they have ceased to hold that office;
- (d) chief executive officer (if appointed); and
- (e) any other person determined by the Board to be an officer of the Company.

75.3 In this clause, 'to the relevant extent' means:

- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and

- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 75.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.
- 75.5 An officer is only indemnified under this clause 75 to the extent that the indemnity is in respect of a liability:
  - (a) to another person (other than the Company or related bodies corporate of the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
  - (b) in connection with an application, in relation to such proceedings, in which the court grants relief to the officer (or former officer) under the Corporations Act.
- 75.6 The indemnity granted by the Company contained in this clause 75 shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring before the date of the deletion or modification.
- 76. Insurance
- 76.1 To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an officer (or former officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for
  - (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
  - (b) a liability arising out of conduct that contravenes the governance standards in sections 45.5 to 45.25 of the ACNC Regulation.
- 76.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- 76.3 Where an officer (or former officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the officer under clause 75 except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.
- 77. Directors' access to documents
- 77.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 77.2 If the Board agree, the Company must give a Director or former Director access to:
  - (a) certain documents, including documents provided for or available to the Directors; and

- (b) any other documents referred to in those documents.

## Winding up

- 78. Surplus assets not to be distributed to Members
- 78.1 If the Company is wound up, any Surplus Assets must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is a Registered Charity described in clause 79.1.
- 79. Distribution of Surplus Assets
- 79.1 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 Registered Charities:
  - (a) with charitable purposes and objects similar to, or inclusive of, the Objects;
  - (b) which is endorsed as a Deductible Gift Recipient;
  - (c) with a constitution which requires its income and property to be applied solely in promoting the objects; and
  - (d) with a constitution which prohibit the distribution of any Surplus Assets to its Members to at least the same extent as the Company.
- 79.2 The decision as to the Registered Charity or Registered 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.

## Definitions and interpretation

- 80. Definitions
- 80.1 In this constitution:
  - (a) ACNC means Australian Charities and Not-for-profits Commission.
  - (b) ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
  - (c) ACNC Regulation means Australian Charities and Not-for-profits Commission Regulation 2022 (Cth).
  - (d) Annual General Meeting means the meeting of Members under clause 25.1.
  - (e) Auditor means a financial auditor appointed to review and verify the accuracy of financial records and financial reports of the Company.
  - (f) Bankrupt means, in relation to a person, the state of being “insolvent under administration” as defined in the Corporations Act, or having signed an authority under section 188 of the Bankruptcy Act 1966 (Cth).

- (g) Board means the board of Directors of the Company.
- (h) Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria.
- (i) By-Laws means the by-laws adopted and amended by the Board from time to time in accordance with clause 69.
- (j) Committee means a committee established in accordance with clause 53.1.
- (k) Company means the Company referred to in clause 1.
- (l) Constitution means this constitution as amended or supplemented from time to time.
- (m) Corporations Act means the Corporations Act 2001 (Cth).
- (n) Deductible Gift Recipient means an institution, fund, authority or any other entity that is endorsed as a deductible gift recipient by the Commissioner of Taxation under Division 30 of the Income Tax Assessment Act 1997 (Cth) or is a specific listed deductible gift recipient under Division 30 of the Income Tax Assessment Act 1997 (Cth).
- (o) Director means any person holding the position of a director of the Company and Directors means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.
- (p) Director Remuneration Policy means the policy adopted by the Members from time to time setting out the principles for determining and reviewing payments or benefits to Directors.
- (q) Direct Vote means a vote cast pursuant to clause 42.
- (r) Disciplinary Committee means a Committee formed pursuant to clause 53.1 for the purpose of conducting disciplinary proceedings against a Member.
- (s) Elected Chairperson means Director elected to that position pursuant to clause 48.
- (t) Financial Year means the financial year of the Company determined under clause 74.
- (u) General Meeting means a meeting of Members and includes the Annual General Meeting.
- (v) Initial Director means a person who is named in the application for registration of the Company, with their consent, as a proposed Director of the Company.
- (w) Initial Member means a person who is named in the application for registration of the Company, with their consent, as a proposed Ordinary Member of the Company.

- (x) Member means each Ordinary Member and each Subscribing Member and Membership has the corresponding meaning.
- (y) Member Present means, in connection with a General Meeting, a Member Present in person or by proxy at the venue or venues for the meeting.
- (z) Member's Guarantee Amount means the amount referred to in clause 4.1.
- (aa) Objects means the charitable objects of the Company as set out in clause 6.
- (bb) Ordinary Member means any person admitted to Membership of the Company as an ordinary member under clause 11.
- (cc) Registered Charity means a charity that is registered under the ACNC Act.
- (dd) Representative means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate, as described in clause 19.
- (ee) Special Resolution has the meaning given to it by the Corporations Act.
- (ff) Subscribing Member means any person admitted to Membership of the Company as a subscribing member under clause 12.
- (gg) Subscription means the subscription fees payable by Subscribing Members pursuant to clause 15.
- (hh) 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.

81. Reading this constitution with the Corporations Act

81.1 The replaceable rules set out in the Corporations Act do not apply to the Company to the extent that this Constitution is inconsistent with such replaceable rules.

81.2 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.

81.3 If the Company is not a Registered Charity (even if it remains charitable), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.

81.4 A word or expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.

82. Interpretation

82.1 In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (b) reference to any statute, proclamation, rule, code, regulation or ordinance includes every amendment, re-enactment, consolidation, modification, reprint or replacement of that statute, proclamation, rule, code, regulation or ordinance and any subordinate legislation made under such statute, proclamation, rule, code, regulation or ordinance (such as regulations);
- (c) the singular includes the plural and vice versa;
- (d) each gender includes the other two genders;
- (e) the word 'person' means a natural person and any partnership, association, body or entity whether incorporated or not;
- (f) the words 'writing' and 'written' include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (g) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning; and
- (h) a reference to any clause or schedule is to a clause or schedule of this Constitution.

Annexure A      Form of Appointment of Proxy

National Nutrition Foundation Ltd

(incorporated under the *Corporations Act 2001*)

PROXY FORM

1. Your details  
(Please print your name and address)

Name of Member:

Address:

City:

State:

Postcode:

Telephone:

2. Appoints

Name:

(Please print name of proxy)

or failing the person so named, or if no person is named, the Chairperson of the Meeting to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the (Annual) General Meeting of National Nutrition Foundation Limited to be held on [insert date] commencing at [insert time] and at any adjournment thereof.

3. Directions

4. Signature

5. Date