

Constitution

Australian Cycling Promotion Foundation Limited

ACN

A company limited by guarantee
incorporated in Victoria
under the *Corporations Act 2001* (Cth)

Ref

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Constitution

of

Australian Cycling Promotion Foundation Limited

ACN

1. Definitions and Interpretation

1.1 Definitions

In this Constitution:

ACNC Act	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
Auditor	means the person appointed for the time being as the auditor of the Company.
Board	means the Directors present at a meeting, duly convened as a meeting of Directors, at which a quorum is present.
Business Day	means a day on which banks are open for business in Melbourne, Victoria excluding a Saturday, Sunday or public holiday in that city.
Chair	means the person occupying the position of chairperson under rules 4.6 or 8.4 (where appropriate).
Company	means Australian Cycling Promotion Foundation Limited ACN .
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).

Director	means a director of the Company .
Guarantee	means the guarantee provided by the Members pursuant to rule 3.3.
Managing Director	means a Director appointed as, or to perform the duties of, managing director of the Company.
Member	means a person whose name is entered in the Company's register of members.
Member Present	means, in connection with a meeting, a Member present at the venue or venues for the meeting in person, or by attorney or, where the Member is a body corporate, by representative.
Replaceable Rules	means the replaceable rules applicable to a public company under section 135 of the Corporations Act (as referred to in section 141 of the Corporations Act).
Secretary	means a person appointed to perform the duties of secretary of the Company and (where appropriate), includes any acting or assistant Secretary appointed under rule 11(a).
Special Resolution	has the meaning given to that term in the Corporations Act.

1.2 Interpretation

In this Constitution, unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate (whether or not having a separate legal personality);

- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this rule 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a rule, party, annexure, exhibit or schedule is a reference to a rule of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any rule, annexure, exhibit and schedule;
- (h) a reference to a document (including this Constitution) includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing and includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Melbourne, Victoria, Australia time;
- (k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a body, other than a party to this Constitution (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Constitution do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (o) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (p) a reference to a month is a reference to a calendar month;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (r) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
- (s) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia; and

- (t) an expression which is not defined in this Constitution has the same meaning as given under the Corporations Act.

1.3 **Business Day**

If anything under this Constitution is required to be done by or on a day that is not a Business Day, that thing must be done by or on the next Business Day.

1.4 **Replaceable Rules and Inconsistency**

- (a) If any of these rules are inconsistent with a provision of the Replaceable Rules, these rules will prevail to the extent of the inconsistency. To the extent that these rules do not modify or displace a Replaceable Rule, that Replaceable Rule applies.
- (b) If the Company is a registered charity, the ACNC Act will override any rules in this Constitution which are inconsistent with the ACNC Act.

1.5 **The Corporations Act and the ACNC Act**

Despite any other provision in this Constitution, if:

- (a) the Corporations Act or the ACNC Act prohibits a thing being done, the thing may not be done;
- (b) the Corporations Act or the ACNC Act requires something to be done, authority is given for that thing; and
- (c) a provision of this Constitution is or becomes inconsistent with the Corporations Act or the ACNC Act, that provision must be read down or, failing that, severed from this Constitution to the extent of the inconsistency.

2. **Public Company**

2.1 **Public Company Limited by Guarantee**

The Company is a public company limited by guarantee.

2.2 **Restriction on Shares**

The Company does not have the power to issue shares of any kind.

2.3 **Non-profit**

- (a) The Company is a non-profit organisation and must not carry on business for the purpose of distributing profit to Members.

- (b) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects and purposes of the Company as set out in rule 2.4 and no portion of it will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profits or otherwise to Members, except that nothing in this Constitution will prevent the payment in good faith of:
 - (i) remuneration to any officer or employee of the Company or to any Member in return for services actually rendered to the Company;
 - (ii) supply of goods or services to the Company in the ordinary course of business by a Member;
 - (iii) reasonable allowance and travelling expenses to Directors; or
 - (iv) making a payment to a Member in carrying out the Company's objects and purposes.

2.4 Objects and Purposes

The Company is established to be a charity whose object and purpose is to benefit the general community through advancing health by:

- (a) promoting the safety of cyclists by reducing the risks of serious injury and death through the:
 - (i) education of cyclists and motorists on road safety measures for cyclists;
 - (ii) gaining of political support and recognition of cycling as a legitimate mode of transportation; and
 - (iii) promotion of public investment developing safer cycling infrastructure; and
- (b) educating the general community on the health and environmental benefits of bicycle riding.

2.5 Powers

Subject to rule 2.3, the Company has the following powers, which may only be used to carry out its objects and purposes as set out in rule 2.4:

- (a) the powers of an individual; and
- (b) all the powers of a public company limited by guarantee under the Corporations Act.

3. Members

3.1 Number of Members

The Company is a public company limited by guarantee. The Company must have at least one Member.

3.2 Limited Liability

The liability of the Members is limited in accordance with rule 3.3.

3.3 Guarantee

In a winding up of the Company, each Member, and each person who was a Member in the year ending on the date of the commencement of the winding up, undertakes to contribute a maximum of \$10 to the Company for the payment of the:

- (a) debts and liabilities of the Company incurred before the Member stopped being a Member;
- (b) costs, charges and expenses of any winding up; and
- (c) adjustments of the rights of the Members amongst themselves.

3.4 Admission to Membership

- (a) Subject to rules 3.7 and 3.8, the Members are:
 - (i) the initial Members named in the application for the Company's registration; and
 - (ii) any other person the Board admits to membership under rule 3.4(b).
- (b) The Board may from time to time in its absolute discretion admit any person to membership of the Company on receipt of a written application from the person in a form determined by the Board.
- (c) The Board may in its absolute discretion reject any applicant for membership.
- (d) A register of Members must be kept and contain the name and address of each Member, the date on which each Member was admitted to membership of the Company, and if applicable, the date of and reason(s) for termination of the Member's membership.

3.5 Classes of Membership

The Board may establish different classes of Members and prescribe the qualifications, rights and privileges of persons to become a Member of a particular class.

3.6 Variation of Rights

- (a) The rights of Members in a particular class may be varied or cancelled:
 - (i) with the written consent of Members with at least 75% of the votes in that class; or
 - (ii) with the sanction of a Special Resolution passed at a meeting of the Members in that class.
- (b) A meeting of a class of Members must be called and held in the same way, so far as possible, in which a meeting of the Members may be called and held.

3.7 Cessation of Membership

A Member ceases to be a Member if they:

- (a) die;
- (b) resign in writing;
- (c) become of unsound mind or become liable to be dealt with in any way under the law relating to mental health and the Board resolves that the person should cease to be a Member;
- (d) are convicted of an indictable offence;
- (e) are expelled in accordance with rule 3.8; or
- (f) are a company and:
 - (i) has a receiver or a receiver and manager appointed to its assets or some of them; or
 - (ii) passes a resolution or takes or has taken against it any action having the effect of its winding up.

3.8 Member's Conduct

- (a) If a Member:
 - (i) wilfully refuses or neglects to comply with the provisions of this Constitution; or
 - (ii) is guilty of any conduct which, in the unanimous opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company,

the Board has the power to suspend or expel the Member from the Company by resolution.
- (b) At least one week prior to the meeting of the Board at which a resolution under rule 3.8(a) is considered, the Company must provide the Member with:

- (i) notice of the meeting;
 - (ii) any allegations against them;
 - (iii) the intended resolution; and
 - (iv) advice that the Member may, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation or defence they think fit.
- (c) Any Member referred to in rule 3.8(a) may, by notice in writing lodged with the Secretary at least 24 hours prior to the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by a mediator elected by the then current president of the Law Institute of Victoria.
- (d) The role of the mediator is to assist in negotiating a resolution of the matter and, if agreed by the parties, make a decision that is binding on the Company and the relevant Member.
- (e) The reasonable costs of the parties incurred under the procedures under this rule 3.8 will be borne by the Company.

3.9 Effect of Cessation

A Member who ceases to be a Member continues to be liable for all moneys due by them to the Company and the Guarantee (if required by rule 3.3).

4. General Meetings

4.1 Annual General Meeting

- (a) The Company will be under no obligation to hold an annual general meeting in each calendar year unless:
- (i) an annual general meeting is required by the Corporations Act; or
 - (ii) the Board otherwise determines.
- (b) General meetings before which the annual accounts of the Company are to be tabled will be called annual general meetings. All other meetings of the Company will be called general meetings.
- (c) The Chair 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.

4.2 Convening and cancelling General Meetings

- (a) Any two Directors may convene a general meeting of the Company whenever the Directors think fit.
- (b) The Directors must call and arrange to hold a general meeting on the request of Members with at least 5% of the votes that may be cast at the general meeting. The Directors must call the general meeting under this rule 4.2(b) within 21 days after the request is given to the Company.
- (c) Any Director may cancel any general meeting convened by that Director or the Board by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

4.3 General Meetings called by Members

- (a) If the Members request that the Directors call and arrange to hold a general meeting under rule 4.2(b) (**Request**), the Request must:
 - (i) be in writing;
 - (ii) state any resolution to be proposed at the general meeting;
 - (iii) be signed by the Members making the Request; and
 - (iv) be given to the Company.
- (b) Separate copies of a document setting out the Request may be used for signing by Members if the wording of the Request is identical in each copy.
- (c) The percentage of votes that Members have is to be worked out as at midnight before the Request is given to the Company.

4.4 Notice of General Meetings

- (a) Notice of a general meeting must be given in accordance with section 249H of the Corporations Act.
- (b) Notice of a general meeting must be given to:
 - (i) each Member entitled to vote at the meeting;
 - (ii) each Director; and
 - (iii) the auditor (if any).
- (c) Notice of a general meeting must be provided in writing at least 21 days before the meeting.

- (d) Subject to rule 4.4(e), notice of a general meeting may be provided less than 21 days before the meeting if:
 - (i) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (ii) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (e) Notice of a general meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a Director;
 - (ii) appoint a Director in order to replace a Director who was removed; or
 - (iii) remove an auditor.
- (f) Notice of a general meeting must include:
 - (i) 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);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
- (g) The accidental omission to give or send notice of any general meeting or the postponement of any general meeting or the non-receipt of a notice by any person entitled to receive such notice will not invalidate the proceedings or any resolution passed at any such general meeting.

4.5 **Quorum**

- (a) Subject to rule 4.6, no business may be transacted at any general meeting except the election of the Chair unless a quorum of Members is present.
- (b) Except as otherwise provided in this Constitution, one third of the Directors subject to a minimum of two directors who are Members Present, constitutes a quorum.
- (c) If there is no quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Chair or the Directors adjourn the meeting to a date, time and place determined by the Chair or the Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

4.6 **Conduct of Meetings**

- (a) Subject to rule 4.6(b), the Chair or, in the Chair's absence, the deputy Chair is entitled to preside as chairperson at every general meeting.

- (b) Where a general meeting is held and:
- (i) there is no Chair or deputy Chair; or
 - (ii) the Chair or deputy Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as Chair of the meeting,
- the Directors present may choose one of their number to be Chair of the meeting.
- (c) Subject to rule 4.6(b), the Members at a meeting of the Company must elect a Member Present to chair the meeting (or part of it) if:
- (i) the Chair or deputy Chair is not present, not available or declines to act as Chair for the meeting; and
 - (ii) the Directors have not elected a person to preside as Chair at the meeting or the person elected to preside as Chair is not present, available or declines to act as Chair for the meeting.
- (d) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to, the meeting by the Chair.
- (e) The Chair may make rulings without putting the question (or any question) to the vote if the Chair considers action is required to ensure the orderly conduct of the meeting.
- (f) At any time the Chair considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (g) The Company may hold a general meeting at two or more venues using any technology that gives each Member a reasonable opportunity to participate.
- (h) Any determination by the Chair in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to:
- (i) a right to vote (whether on a show of hands or on a poll); or
 - (ii) a determination to allow or disregard a vote,
- may only be made at the meeting and may be determined by the Chair.

4.7 **Adjournments**

- (a) During the course of the meeting, the Chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair. If the Chair exercises a right of adjournment of a meeting under this rule, the Chair has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

4.8 **Voting at General Meetings**

- (a) Each resolution submitted to a general meeting is to be decided by a show of hands of the Members Present and entitled to vote, unless a poll is demanded.
- (b) Unless a poll is demanded, a declaration by the Chair following a vote on a show of hands that a resolution has been passed or lost is conclusive.

4.9 **When a Poll is effectively demanded**

- (a) A poll may be demanded by:
 - (i) at least 5 Members Present and entitled to vote on the resolution;
 - (ii) Members Present with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chair of the meeting.
- (b) The poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

4.10 **Special Meetings**

All of the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members which may be held pursuant to this Constitution or the Corporations Act.

4.11 Procedure for Polls

- (a) When demanded, a poll may be taken in the manner and at the time the Chair directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the Chair considers appropriate.
- (c) The demand for a poll does not prevent a meeting from continuing in relation to any transaction or any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

4.12 Auditor's right to attend Meetings

- (a) The auditor (if any) is entitled to attend any general meeting of the Company and to be heard by the Members on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (b) The Company must give the auditor (if any) any communications relating to the general meeting that a Member is entitled to receive.

4.13 Casting vote

In the event of an equality of votes on a show of hands or on a poll, the Chair does not have a casting vote in addition to any vote to which the Chair may be entitled as a Member, attorney or properly appointed representative of a Member.

4.14 Representation and voting of Members

- (a) Subject to this Constitution, and any rights or restrictions for the time being attached to any class or classes of Members, at meetings of Members or classes of Members:
 - (i) each Member entitled to attend and vote may attend and vote in person, by attorney or (where the Member is a body corporate) by representative; and
 - (ii) each Member Present has one vote.
- (b) The power of attorney or proof of appointment of a representative must be produced for inspection at the Company's registered office not less than 24 hours before the time for holding the meeting or adjourned meeting, unless the document has previously been produced for inspection in accordance with this rule 4.14.

4.15 Circulating Resolutions

- (a) If all Members entitled to receive notice of a general meeting and to vote on a resolution of Members sign a document containing a statement that they are in

favour of the resolution set out in the document, a Members' resolution in those terms is passed when the last Member signs such a document.

- (b) For the purpose of this rule 4.15:
 - (i) two or more separate documents in identical terms, each of which is signed by one or more Members, will be treated as one document; and
 - (ii) an email or facsimile containing the text of the document expressed to have been signed by a Member that is sent to the Company is deemed to be a document signed by that Member at the time of its receipt by the Company.

4.16 Sole Member Resolutions

Where the Company has only one Member, it may pass a resolution by the Member recording it and signing the record.

4.17 Members' Resolutions and Statements

- (a) Members with at least 5% of the votes that may be cast on a resolution may give:
 - (i) written notice to the Company of a resolution they propose to move at a general meeting (**Members' Resolution**); and/or
 - (ii) 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**).
- (b) A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- (c) A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.
- (d) 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.
- (e) The percentage of votes that Members have (as described in rule 4.17(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a Members' Resolution under rule 4.17(a)(i), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- (g) This rule does not limit any other right that a Member has to propose a resolution at a general meeting.

4.18 **Company must give notice of proposed resolution or distribute statement**

- (a) If the Company has been given a notice or request under rule 4.17:
 - (i) 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
 - (ii) 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.
- (b) The Company does not need to send the notice of a proposed Members' Resolution or a copy of the Members' Statement to Members if:
 - (i) it is more than 1,000 words long;
 - (ii) the Directors consider it may be defamatory;
 - (iii) rule 4.18(a)(ii) 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
 - (iv) 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.

5. Directors

5.1 **Number of Directors**

- (a) The number of Directors must be not less than three, and at least two Directors must ordinarily reside in Australia.
- (b) Each Director must be a natural person.
- (c) The Members may, by ordinary resolution passed at a general meeting, impose or alter a higher minimum or maximum number of Directors, but may not reduce the minimum number of Directors as provided in rule 5.1(a).

5.2 Appointment of Director

- (a) The first Directors are the persons specified in the application to register the Company lodged under the Corporations Act and who have consented in writing to become Directors.
- (b) The Board may appoint any person eligible under rule 5.2(c) to be a Director by resolution at a general meeting of the Company.
- (c) A person is eligible for appointment as a Director if they are a Director who has been appointed pursuant to rule 5.2(e) or has been nominated by the Directors for appointment at a general meeting of the Company;
- (d) Notice of each person standing for appointment as a Director must be given to all persons entitled to receive notice of meetings of the Company at least seven days prior to the general meeting of the Company.
- (e) The Directors may appoint any Member to be a Director to fill a vacancy or as an addition to the existing Directors, provided that the person gives the Company their signed consent to act as a Director, and the Company confirms the appointment by resolution at the next annual general meeting. If the Company does not confirm the appointment at the next annual general meeting, that person ceases to be a Director at the end of the annual general meeting.
- (f) Bicycle Industries Australia Ltd ACN 094 666 538 shall have the irrevocable right to appoint at least two directors at all times.

5.3 Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.
- (c) If notice of the intention to move a resolution to remove a Director at a general meeting is received by the Company, that Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed by the Company that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

5.4 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act or the ACNC Act ; or
- (f) is absent from:
 - (i) Board meetings for a continuous period of three months; or
 - (ii) three Board meetings in a 12 month period,
 without leave of absence from the Board and the Board resolves that the Director should cease to be a Director.

5.5 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

5.6 No Membership Requirement

Directors are not required to be Members.

5.7 Payments to Directors

- (a) The Company must not pay fees to a Director for their services as a Director.
- (b) The Company may:
 - (i) pay a Director for work that the Director undertakes for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work completed; or
 - (ii) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- (c) Any payment made under rule 5.7(b) must be approved by the Directors.

- (d) The Company may pay premiums for insurance indemnifying Directors, as permitted by any law (including the Corporations Act) and this Constitution.

5.8 Directors may lend to the Company

Any Director may lend money to the Company at interest with or without taking security over the Company's assets or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

6. Managing Director and Powers of Directors

6.1 Appointment of a Managing Director

- (a) The Directors may appoint any Director to the office of Managing Director for the period and on the terms as they determine. The Directors may at any time revoke such appointment, with or without cause.
- (b) A Managing Director's appointment automatically terminates if the Managing Director ceases for any reason to be a Director.

6.2 Powers of Directors and Managing Director

- (a) The business of the Company is managed by the Directors, who may exercise all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) The Directors may, on the terms and conditions and with any restrictions as they determine, delegate to a Managing Director any of the powers exercisable by them and may at any time withdraw, suspend or vary all or any of those powers conferred on the Managing Director. Any powers which are conferred may be concurrent with, to the exclusion of, or in addition to, the Director's own powers. The delegation must be recorded in the Company's minute book in accordance with section 251A of the Corporations Act.

7. Duties of Directors

The Directors must comply with their duties as directors at law (including under the Corporations Act and at common law), and with the duties described in Governance Standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director;
- (b) to act in good faith in the best interests of the Company and to further the objects and purposes of the Company as set out in rule 2.4;

- (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 rule 10.1;
- (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.

8. Proceedings of Directors

8.1 Proceedings

- (a) The Directors may meet together for the dispatch of business and may adjourn and otherwise regulate their meetings as they determine, provided that the Directors meet at least once each quarter.
- (b) A Directors' meeting may be called by a Director giving reasonable notice to every other Director
- (c) A notice may be given by mail, personal delivery, email or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.
- (d) A notice of Directors' meeting signed by the Secretary must be sent to all Directors that sets out:
 - (i) the date, time and place of the meeting; and
 - (ii) the items to be included on the agenda.
- (e) In the notice of Directors' meeting, all items that are to be discussed at the meeting must be listed in the agenda and no other business will be discussed. Directors may also request for an item to be placed on the agenda provided that the Secretary receives the request prior to the date that the notice of Directors' meeting is sent to the Directors.

8.2 Quorum

- (a) Until otherwise determined by the Directors, two Directors form a quorum at a Directors' meeting.
- (b) Where the number of Directors is insufficient to constitute a quorum of a meeting of Directors, the Directors will be deemed to constitute a quorum of a meeting of Directors to:

- (i) deal with an emergency;
- (ii) convene a general meeting of the Company; or
- (iii) appoint a person as a Director in accordance with rule 5.2(e).

8.3 Meetings by Technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director, consents to the use of each of the following technologies for holding a Directors' meeting:
 - (i) video conferencing;
 - (ii) telephone;
 - (iii) any other technology which permits each Director to communicate with every other Director; and
 - (iv) any combination of these technologies.
- (b) A Director may withdraw the consent given under rule 8.3(a) (in respect of a particular meeting or all meetings) within a reasonable period before the relevant Directors' meeting.

8.4 Chair of Directors

- (a) The Directors may elect one of their number as their Chair and may decide the period for which the Chair is to act as Chair. References to the Chair in this Constitution include, in the absence of the Chair, the deputy Chair (unless the context otherwise requires).
- (b) The Directors may elect one of their number as the deputy Chair.
- (c) Where a Directors' meeting is held and:
 - (i) a Chair has not been elected as provided by rule 8.4(a); or
 - (ii) the Chair is not present at the time appointed for the holding of the meeting or does not wish to Chair the meeting,

the deputy Chair is Chair of the meeting or, if rule 8.4(c)(i) or 8.4(c)(ii) applies to the deputy Chair, the Directors present may elect one of their number to be Chair of the meeting.

8.5 Directors' voting rights and exercise of Powers

- (a) Subject to this Constitution, resolutions put to Directors are decided by a majority of votes of Directors present and entitled to vote.
- (b) Directors each have one vote.

- (c) In the case of an equality of votes at a Directors' meeting, the Chair of the meeting does not have a casting vote in addition to the Chair's deliberative vote.
- (d) Subject to rule 10 and the Corporations Act, a Director:
 - (i) may enter into contracts with, or otherwise have dealings with, the Company; and
 - (ii) may hold other offices in the Company.
- (e) A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (f) Despite having an interest in any contract or arrangement, a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

8.6 Committees

- (a) The Directors may delegate any of their powers to committees consisting of any one or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. A delegate of the Directors may be authorised by the Board to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not in conflict with, or superseded by, any regulations made by the Directors under rule 8.6(a).
- (c) Nothing in this rule 8.6 limits the power of the Directors to delegate.
- (d) The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

8.7 Circulating Resolutions

- (a) A resolution in writing, signed or otherwise agreed to by no less than 75% of the Directors, will be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.
- (b) Any such resolution may consist of several counterparts, each signed by one or more of the Directors.
- (c) The Company may send a resolution in writing by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect.

- (d) A resolution in writing is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in rule 8.7(b) or rule 8.7(c).

8.8 Defects in Appointments

All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.

9. By-Laws

- (a) The Directors may pass a resolution to make by-laws to give effect to this Constitution.
- (b) The Members and Directors must comply with the by-laws as if they were part of this Constitution.

10. Material Personal Interests

10.1 Declaration of Interest

- (a) Any Director who has a material personal interest in a matter that relates to the affairs of the Company, including in a contract or proposed contract, any office or any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting unless section 191(2) of the Corporations Act applies.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

10.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) be present while the matter is being considered at the meeting; or

(b) vote on the matter,

unless:

- (c) sections 195(2) or (3) of the Corporations Act allows the Director to be present; or
- (d) the interest does not need to be disclosed under section 191 of the Corporations Act.

11. Secretaries

- (a) The Company must have at least one Secretary who ordinarily resides in Australia. Subject to any contrary provisions of the Corporations Act, Secretaries may be appointed by the Directors. The Directors may also appoint acting and assistant Secretaries.
- (b) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.
- (c) The Directors may at any time remove a Secretary.

12. Execution of Documents

12.1 Execution

The Company may execute a document if the document is signed by:

- (a) two Directors;
- (b) a Director and a Secretary; or
- (c) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

12.2 Directors' Interests

A Director may sign a document notwithstanding that the Director is interested in the contract or arrangement to which the document relates.

13. Minutes of Proceedings

- (a) The Board must, in accordance with the Corporations Act, cause proper minutes to be made of:
 - (i) all appointments of officers and servants made by it;

- (ii) all resolutions passed by the Company in accordance with rule 4.15;
 - (iii) all resolutions passed by Directors in accordance with rule 8.7;
 - (iv) disclosures and notices of Directors' interests;
 - (v) names of the Directors present at all meetings of the Company and of the Board and of committees of the Board; and
 - (vi) the proceedings and resolutions of all meetings of the Company, Board, and committees of the Board.
- (b) Such minutes recorded and signed in accordance with section 251A of the Corporations Act are evidence of the proceeding, resolution or declaration to which they are related unless the contrary is proved.
- (c) Where minutes have been so entered and signed, unless the contrary is proved:
- (i) the meeting will be deemed to have been duly held and convened;
 - (ii) all proceedings that are recorded in the minutes as having taken place at the meeting will be deemed to have duly taken place; and
 - (iii) all appointments that are recorded in the minutes as having been made at the meeting will be deemed to have been validly made.
- (d) The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the Corporations Act.

14. Accounts and Audit

- (a) The Board must cause the Company to keep written financial records that:
- (i) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
 - (ii) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the auditor (if any) to inspect those records at all reasonable times.
- (b) If required by the Corporations Act or the ACNC Act, the Board must cause:
- (i) the Company to prepare a financial report and a Directors' report; and
 - (ii) the Company's financial report for each financial year to be audited or reviewed (as the case may be) and obtain an auditor's report.

- (c) Audited financial reports laid before the Company in general meetings are conclusive except as regards to errors notified to the Company within three months of the relevant general meeting. If the Company receives a notice of an error within that period, it must immediately correct the report and the report as corrected is conclusive.
- (d) Subject to section 247A of the Corporations Act, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by resolution passed at a general meeting.
- (e) If required by the Corporations Act, the Directors must present the accounts, as audited by the Auditor (if any), to the Members at the next annual general meeting following the end of the relevant financial year, and must provide a summary form of the accounts to the Members at the annual general meeting.

15. Dividends, Interest and Reserves

No portion of the income, property, profits or financial surplus of the Company may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Directors, or their related parties (as that term is defined in the Corporations Act), except as provided by this Constitution.

16. Notices

16.1 Notice Requirements

Any notice, demand, approval, consent or other communication under this Constitution (**Notice**) must be in writing and must be delivered:

- (a) personally;
- (b) by facsimile;
- (c) by prepaid registered post; or
- (d) sent by email to a current email address for notices,

to a party at the address of the party set out in the relevant Company register (**Nominated Contact Details**).

16.2 When Notices considered given and received

A Notice given in accordance with rule 16.1 takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by prepaid post, two Business Days after the date of posting (or five Business Days after the date of posting if posted to or from outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9.00 am and 5.00 pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt or transmission.

17. Indemnity of Officers, Insurance and Access

- (a) In this rule 17:
 - (i) **Officer** means:
 - (A) a Director or Secretary or executive officer of the Company; or
 - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,

and includes a former officer;
 - (ii) **Duties of the Officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer by the Company or, where applicable, the subsidiary of the Company;
 - (iii) **to the Relevant Extent** means:
 - (A) to the extent the Company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including a subsidiary or an insurer under any insurance policy); and
 - (C) where the Liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the Duties of the Officer in relation to another corporation, to the

extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and

- (iv) **Liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind, including legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.
- (b) The Company is to indemnify each Officer out of the assets of the Company to the Relevant Extent against any Liability incurred by the Officer in, or arising out of, the conduct of the business of the Company or in, or arising out of, the discharge of the Duties of the Officer for the period ending seven years after the date the Officer ceases to be an officer of the Company, except for fraud and wilful misconduct or any Liability arising out of conduct involving lack of good faith.
- (c) Subject to this rule 17, where the Directors consider it appropriate, the Company may execute an indemnity document in any form in favour of any Officer of the Company or a subsidiary.
- (d) Where the Directors consider it appropriate, the Company may to the Relevant Extent:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer of the Company or a subsidiary against any Liability incurred by the Officer in, or arising out of, the conduct of the business of the Company or in, or arising out of, the discharge of the Duties of the Officer; and
 - (ii) bind itself in any contract or deed with any Officer of the Company to make the payments.
- (e) Where the Directors consider it appropriate, the Company may:
 - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.

18. Winding up

18.1 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, unless that Member or former Member is a charity described in rule 18.2(b).

18.2 Distribution of Surplus Assets

- (a) In this rule 18.2:
- (i) **Contributions** have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).
 - (ii) **Fund-Raising Event** has the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).
 - (iii) **Gift Funds** mean:
 - (A) gifts of money or property for the principal purpose of the Company;
 - (B) Contributions made in relation to a Fund-Raising Event held for the principal purpose of the Company; and
 - (C) money received by the Company because of such gifts and Contributions.
- (b) Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including Gift Funds) that remain after the Company is wound up must be distributed to one or more charities:
- (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in rule 2.4;
 - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and
 - (iii) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- (c) The decision as to the charity or charities to be given the surplus assets must be made by a resolution of Directors at or before the time of winding up. If the Directors do not make this decision, the Company may apply to the Supreme Court to make this decision.
- (d) If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus Gift Funds must be transferred to one or more charities that meet the requirements of 18.2(b)(i), 18.2(b)(ii), and 18.2(b)(iii), as decided by the Directors.

19. Modification or repeal of this Constitution

- (a) This Constitution and any of its provisions may be modified, repealed or replaced by Special Resolution.

- (b) Subject to an express intention otherwise, a Special Resolution to amend this Constitution is invalid if it results in the Company losing its status as a charity for the purposes of the ACNC Act.

Consent to terms of this Constitution

The persons named below as a Member consent to become a Member and agree to the terms of this Constitution.

Dated: