

Constitution Of The Human Factors and Ergonomics Society of Australia Ltd

Australian Company Number (ACN)

Australian Business Number (ABN) 45 375 161 852

A company limited by guarantee

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Preliminary

1. Name of the company

- 1.1 The name of the company is The Human Factors and Ergonomics Society of Australia Ltd (the **company**).

2. Type of company

- 2.1 The company is a not-for-profit public company limited by guarantee, established to operate as a **registered charity**.

Definitions and interpretation

3. Definitions

- 3.1 In this constitution:

- (a) **ACNC** means the Australian Charities and Not-for-profits Commission.
- (b) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
- (c) **Board** means the board of directors of the company acting collectively in accordance with this constitution.
- (d) **business day** means a day on which banks are open for business, other than a Saturday, Sunday or public holiday in the location of the company's registered office.
- (e) **By-laws** means rules made by the Board under this constitution to regulate the internal administration and governance of the company, consistent with this constitution and applicable laws.
- (f) **Company** means the company referred to in clause 1.
- (g) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (h) **chairperson** means the president, elected by members to be the company's chairperson under clause 34.3.
- (i) **general meeting** means a meeting of members, including an annual general meeting.
- (j) **IEA** means the International Ergonomics Association which is the international federation of ergonomics and human factors societies from around the world. It is a coalition of Federated Societies, which includes HFESA.
- (k) **members present** means, in connection with a general meeting, members present in person, present by use of audio- or audio-visual technology, or by proxy at the meeting.
- (l) **members' resolution** has the meaning given by clause 30.1(a).
- (m) **members' statement** has the meaning given under clause 30.1(b).
- (n) **registered charity** means a charity registered under the ACNC Act.

- (o) **secretary** means the company secretary appointed under clause 59. For the avoidance of doubt, on and from the date the company is registered, any reference in this constitution, the company's by-laws, policies, or records to 'General Secretary' is taken to be a reference to the secretary of the company.
- (p) **special resolution** means a resolution:
 - i. of which notice has been given under clause 24.3(d), and
 - ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.
- (q) **surplus assets** means any company assets that remain after paying all the company's debts and other liabilities, including the costs of winding up.
- (r) **virtual meeting platform** means any technology or combination of technologies that allows members to participate in a meeting, including by asking questions verbally and in writing, without being physically present at the meeting.

4. Reading this constitution with the Corporations Act

- 4.1 The replaceable rules set out in the Corporations Act do not apply to the company. This means that this constitution is the principal source for internal governance rules of the company.
- 4.2 While the company is a registered charity, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution that are inconsistent with those Acts, as they apply to a registered charity.
- 4.3 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.
- 4.4 Unless otherwise stated, a word or expression that is defined in the Corporations Act or used in that Act and covering the same subject has the same meaning as in this constitution.

5. Signing documents

- 5.1 Where the constitution says that an individual (such as a member or director) must sign a document, the individual may:
 - (a) sign a physical form of the document by hand, or
 - (b) sign an electronic form of the document using an electronic signature, in a way that identifies each person and indicates their intention.
- 5.2 Individuals may also sign separate copies of a physical or electronic document if each copy has the same wording.

6. Interpretation

- 6.1 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, and
 - (b) defined words are **bolded** the first time they are used in this constitution, and

- (c) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

Charitable purposes and powers

7. Purpose

- 7.1 The company's purpose is to pursue the charitable purpose of advancing the science, application and promotion of, and education in, human factors and ergonomics in Australia, to improve the safety, efficiency and usability of system, products and environment and the wellbeing of systems users.

8. Powers

- 8.1 Solely for carrying out the company's purpose(s), the company has all the powers of a company limited by guarantee under the Corporations Act.

9. Not-for-profit

- 9.1 The income and assets of the company must be applied solely to carry out its purpose(s) as stated in clause 7.
- 9.2 The company must not distribute any income or assets directly or indirectly to its members, except as provided in clause 83 or the following:
- (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, or
 - (b) making a distribution of income or assets to a member in furtherance of the company's charitable purpose(s).

10. Amending the constitution

- 10.1 The members may amend this constitution by passing a **special resolution**. However, if the members pass a special resolution to amend the constitution in a way that means the company would no longer be a charity, the special resolution will not take effect.
- 10.2 The company must notify the **ACNC** of any amendments to this constitution.
- 10.3 Any amendment to this constitution will take effect from the date of the special resolution, or from any later date specified in the resolution.

Members

11. Membership

- 11.1 The members of the company are those:
- (a) who are members at the time of adopting this constitution, and
 - (b) any other person admitted as a member, in accordance with this constitution, and have not since stopped being a member.
- 11.2 The directors may, from time to time, determine different classes of membership and the rights, obligations or restrictions attaching to each class, including, without limitation, voting rights and membership fees. Any such determination must be

recorded in a policy approved by the directors, made in accordance with this constitution and any **by-laws**.

12. Register of members

12.1 The **secretary** must keep a register of members which includes the following information:

- (a) for each current member:
 - i. name, and
 - ii. an email address or postal address nominated by the member for receiving notices, and
 - iii. date the membership started, and
- (b) for each person who stopped being a member in the last seven years:
 - i. name, and
 - ii. an email address or postal address nominated by the member for receiving notices, and
 - iii. dates the membership started and ended.

13. How to become a member

- 13.1 Any person at least 18 years old who, or any incorporated body which, supports the purposes of the company can apply in writing and pay any joining fee to become a member of the company.
- 13.2 The **Board**, or a person or committee with delegated responsibility for membership approvals, must consider each application for membership within a reasonable period after it is received and decide whether to accept or refuse the application.
- 13.3 The company must provide notice to the applicant about the decision to accept or refuse the application.
- 13.4 If the application is accepted, the secretary must add the applicant to the register of members. The date the applicant was added to the register of members is the day they become a member.

14. Members' rights and opportunities

- 14.1 A member can:
 - (a) attend and vote at **general meetings**, and
 - (b) raise a dispute using clause 19, and
 - (c) together with other members, ask the directors to call a general meeting, under clause 22, and
 - (d) together with other members, put forward resolutions at general meetings, under clause 30, and
 - (e) be elected or appointed a director (if the member is eligible to become a director) under clause 35, and
 - (f) inspect the members' register free of charge under clause 69, and

(g) inspect the company's records under clause 70.

15. Members' responsibilities

15.1 A member must:

- (a) comply with the company's constitution, and
- (b) notify the company if they change their name or address for notices, and
- (c) treat other members, staff, volunteers, and directors with respect, and
- (d) pay membership fees (if any) and provide the guarantee specified in clause 84.

16. Transfer of membership

16.1 Members cannot transfer their membership or their rights as members to another individual or incorporated body.

17. Membership fees

17.1 Pursuant to clause 11.2, the directors may decide to set or change a joining fee, annual membership fee, or both, and the due date for payment.

17.2 The company must give members at least one month's notice of any new fees or changes to fees.

17.3 If a member fails to pay the fees within two months of them becoming due, the company must notify that member and provide one month to rectify the default. If the member fails to rectify the default, then the member stops being a member, i.e. unfinancial for 3 calendar months.

17.4 A member that has not paid the required membership fee may not vote at any meeting of the company. All other membership rights and benefits are retained while they remain a member in accordance with clause 17.3

18. How to stop being a member

18.1 A member immediately stops being a member if they:

- (a) default on payment of the membership fee in accordance with clause 17, or
- (b) resign, in writing to the secretary, or
- (c) have not responded within one month to a written request from the secretary to confirm in writing that they want to remain a member, or
- (d) are an incorporated member and are wound up or otherwise dissolved or deregistered, or
- (e) are expelled under clause 20, or
- (f) die.

Dispute resolution and disciplinary procedures

19. Dispute resolution

19.1 This procedure applies to disputes under this constitution between a member or director and:

- (a) one or more members, or
 - (b) one or more directors, or
 - (c) the company itself.
- 19.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 20, until that disciplinary procedure is completed.
- 19.3 Those involved in the dispute must try to resolve it between themselves either within 14 days of becoming aware of it, or within a timeframe agreed on by those involved. If the dispute cannot be resolved within 14 days or within a timeframe agreed upon by those involved, they must:
- (a) inform the company's directors in writing, and
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute through mediation.
- 19.4 If those involved in the dispute cannot agree on the choice of mediator, then
- (a) for disputes between members, the directors will choose the mediator, or
 - (b) for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the company has its registered office will choose the mediator.
- 19.5 A mediator chosen by the directors:
- (a) must not have a personal interest in the dispute, and
 - (b) must be able to act impartially.
- 19.6 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard, and
 - (b) allow those involved a reasonable chance to review any written statements or other communication artefacts such as, but not limited to, audio/video recordings, and
 - (c) ensure that the mediation is conducted in a manner free from bias, and
 - (d) not make a decision on the dispute.
- 19.7 Each party must:
- (a) do their best to resolve the dispute at the mediation conference, and
 - (b) bear the costs of mediation as agreed between the parties.
- The terms of any agreement reached between the parties must be provided to the company.

20. Disciplining members

- 20.1 The directors may resolve to warn or expel a member who is not a director from the company if they believe:
- (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.
- 20.2 At least 14 days before the directors' meeting at which a resolution will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn or expel the member, and
 - (b) that this resolution will be considered at a directors' meeting, the date of which must also be provided, and
 - (c) the claims made against the member, and
 - (d) the nature of the resolution that is to be proposed at the meeting, and
 - (e) that the member may provide an explanation to the directors, as well as how the member can do so.
- 20.3 Before the directors pass any resolution, the member must be given a chance to explain or defend themselves.
- 20.4 After considering any explanation provided, the directors must decide to:
- (a) take no further action, or
 - (b) warn the member, or
 - (c) expel the member, or
 - (d) require the matter to be determined at a general meeting, or
 - (e) refer the decision to an independent person on conditions that the directors consider appropriate. This independent person can only make a decision that the directors themselves can make under this clause.
- 20.5 The secretary must give written notice to the member of the directors' decision as soon as possible.
- 20.6 The directors cannot fine a member.
- 20.7 Disciplinary procedures must be completed as soon as reasonably possible.
- 20.8 There will be no liability for any loss, damage or injury the member suffers due to any decision made in good faith under this clause.
- 20.9 Additional provisions for disciplining members and certified individuals will be made in a dedicated policy document, approved by the directors.

General meetings of members

21. Accountability to members

- 21.1 The company must take all reasonable steps to be accountable to its members, for example by holding an annual general meeting or sending a report about its activities and finances to members each financial year.
- 21.2 The directors may also call a general meeting at any time.

22. Members can request a general meeting

- 22.1 Members, acting for a proper purpose, can request that the directors call a general meeting, by sending a written request to the company that:
- (a) states any resolution to be proposed at the meeting, and
 - (b) is signed, by at least 5% of members who can cast votes at a general meeting (calculated as of midnight the day before the meeting is requested).
- 22.2 The directors must:
- (a) within 21 days of the members' request, give all members notice of a general meeting, and
 - (b) hold the general meeting within two months of the members' request.
- 22.3 If the directors do not call the meeting within 21 days of being requested to under clause 22.1, 50% or more of the members who made the request may call a general meeting.
- 22.4 The members must:
- (a) as far as possible, follow the procedures for a general meeting as set out in this constitution, and
 - (b) call the meeting using the list of members on the organisation's member register, which the company must provide to members making the request at no cost, and
 - (c) hold the general meeting within three months of the request being given to the company.
- 22.5 The company must reimburse the members who request the general meeting for any reasonable expenses they incur because the directors did not call and hold the meeting.

23. Using technology to hold general meetings

- 23.1 The company may hold a hybrid or virtual-only general meeting using an appropriate **virtual meeting platform**.
- 23.2 If the general meeting is held using a virtual meeting platform only, then:
- (a) the meeting location is taken to be the registered office of the company, and
 - (b) the meeting time is taken to be the time at the company's registered office.
- 23.3 If the general meeting is held at more than one physical venue (whether or not it is also held using a virtual meeting platform), then:
- (a) the meeting location is taken to be the main physical venue of the meeting, as set out in the notice of the meeting, and
 - (b) the meeting time is taken to be the time at the main physical venue of the meeting, as set out in the notice of the meeting.

24. Providing notice of a general meeting

- 24.1 Notice of a general meeting must be given at least 21 days before the meeting to:
- (a) each member entitled to vote at the meeting, and

- (b) each director, and
 - (c) the auditor (if applicable).
- 24.2 The notice of a general meeting may be provided less than 21 days before the meeting if members with at least 75% of the votes that may be cast at the meeting agree beforehand, but not if a resolution will be moved to:
- (a) remove a director, or
 - (b) appoint a director to replace a director who has been removed, or
 - (c) remove an auditor, if applicable.
- 24.3 The notice of a general meeting must be in writing and include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, hybrid or virtually, the virtual meeting platform that will be used), and
 - (b) a statement regarding the member's right to request documents be sent to them in electronic or physical form or request to not be sent documents, and
 - (c) the general nature of the meeting's business, and
 - (d) if applicable, that a special resolution will be proposed, as well as the wording of the proposed resolution, and
 - (e) 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, and
 - ii. the proxy form must be delivered to the company at either 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.
- 24.4 A meeting or notice of meeting is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting.
- 25. Quorum at general meetings**
- 25.1 For a general meeting to be held, at least 10% of members entitled to vote (a quorum) must be present (in person or by proxy).
- 25.2 When determining whether a quorum is present, a person may only be counted once. If they are a proxy of more than one member, they may be counted as present for each of the different members.
- 25.3 No business can be conducted at a general meeting if there is not a quorum present. A quorum must be present for the whole general meeting.
- 25.4 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and

place of the chair's choosing. If the chair does not specify one or more of those things, the meeting is adjourned to:

- (a) if no date is specified – the same day in the next week, and
- (b) if no time is specified – the same time, and
- (c) if no venue or virtual meeting platform is specified – the same venue and same virtual meeting platform.

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

26. Right of non-members to attend meetings

26.1 The chair of a general meeting may invite any person to attend and address a general meeting.

26.2 If the company has an auditor, then the auditor must be given any communications relating to the general meeting that a member is entitled to receive. The auditor is also entitled to attend and address a general meeting, including by sending a written statement.

27. Choosing a chair for a general meeting

27.1 The **chairperson** is entitled to chair general meetings.

27.2 The members present who are entitled to vote at a general meeting may choose a director or member to be the chair for that meeting if:

- (a) there is no chairperson, or
- (b) the chairperson is not present within 30 minutes after the starting time set for the meeting, or
- (c) the chairperson is present but says they do not wish to act as the meeting's chair.

28. Role of the chair in a general meeting

28.1 The chair is responsible for the conduct of the general meeting and must give members a reasonable opportunity to make comments and ask questions (including to the auditor if there is one).

28.2 The chair does not have a casting vote.

29. Adjournment of general meetings

29.1 If a quorum is present, a general meeting must be adjourned if a majority of members in attendance direct the chair to do so.

29.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

29.3 If a general meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

Members' resolutions and statements

30. Members' resolutions and statements

- 30.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice signed by the members to the company of a resolution they propose to move for a proper purpose at a general meeting (**members' resolution**) with the wording of the resolution set out in full, or
 - (b) a written request to the company that the company give all its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (**members' statement**), with the wording of the statement set out in full, or
 - (c) both.
- 30.2 The calculation for the percentage of votes that members have is to be based on the situation as of midnight before the request or notice is given to the company.
- 30.3 If the company has been given notice of a members' resolution under clause 30.1, the resolution must be considered at the next general meeting held no more than two months after the notice is given.
- 30.4 The company must give all its members notice of the members' resolution or a copy of the members' statement at the same time, or as soon as practicable afterwards, and in the same way as it gives notice of a general meeting.
- 30.5 The company is responsible for the cost of giving members notice of the resolution or a copy of the members' statement if the company receives it in time to send it out to members with the notice of meeting.
- 30.6 If the company does not receive it in time to send it out with the notice of meeting, then the members requesting the meeting must meet the reasonable expenses that the company incurs when giving members notice of the members' resolution or a copy of the members' statement. At a general meeting, the members may pass a resolution that the company will pay these expenses.
- 30.7 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, or
 - (b) the directors consider it may be defamatory, or
 - (c) the members making the request are to bear the expenses of sending the notice out – unless the members give the company a sum that would meet all reasonable expenses that it would incur in giving the notice, 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.

31. Resolutions without meetings

- 31.1 The directors may put a resolution to the members to be passed without a general meeting being held. However, the company cannot pass resolutions for the following without holding a meeting:
- (a) a resolution to remove an auditor or remove a director, or
 - (b) where the Corporations Act or this constitution requires a meeting to be held.
- 31.2 A resolution is passed if 75% of the members entitled to vote on the resolution sign or agree to the resolution.
- 31.3 The members may sign in the way set out in clause 5. Alternatively, the company may send a resolution by email to members, and members may agree to it by sending a reply email to that effect and including the text of the resolution in their reply.
- 31.4 The company must notify the auditor (if applicable) as soon as possible that a resolution has or will be put to members and set out the wording of the resolution.

Voting at general meetings

32. Voting at general meetings

- 32.1 Each member has one vote.
- 32.2 A member or the chair may only challenge a person's right to vote at the time of the general meeting. The chair must decide whether the person may vote. The chair's decision is final.
- 32.3 Before a vote is taken, the chair must note whether any proxy votes with a voting direction have been received and, if so, how the proxy votes will be cast.
- 32.4 Voting must be conducted and decided by:
- (a) a show of hands, or
 - (b) a vote in writing, or
 - (c) online voting, or
 - (d) another method chosen by the chair that is fair and reasonable in the circumstances.
- 32.5 A resolution (other than a special resolution) is passed if at least 50% of the total votes are in favour of the resolution being passed.
- 32.6 If there is a vote conducted by a show of hands, the chair's decision is conclusive evidence of the result of the vote by show of hands. The chair 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.
- 32.7 A vote in writing may be demanded on any resolution instead of, or after, a vote by a show of hands by:
- (a) at least five members present who are entitled to vote on the relevant resolution, or

- (b) members present with at least 5% of the votes that may be passed on the relevant resolution (worked out as at the midnight before the vote in writing is demanded), or
 - (c) the chair of the meeting.
- 32.8 A vote in writing must be conducted at the chair's direction, but must be held immediately if it is demanded for the following:
 - (a) the election of the chair under clause 27, or
 - (b) to decide whether to adjourn the meeting.
- 32.9 A demand for a vote in writing may be withdrawn.
- 33. Proxies**
- 33.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf. The member can decide how long the appointment is for. For example, it can be for a set number of meetings, or for a duration of time or standing (ongoing).
- 33.2 A proxy does not need to be a member.
- 33.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
 - (a) speak at the meeting, and
 - (b) vote (but only in the manner allowed by the appointment and subject to clause 33.4), and
 - (c) demand a vote in writing under clause 32.7.
- 33.4 If a proxy has two or more appointments that specify different ways to vote on a resolution, the proxy must not vote on a show of hands.
- 33.5 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting in person or by technology.
- 33.6 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, and
 - (b) must vote in the way specified on the proxy form, if applicable, and
 - (c) may cast the votes in different ways (if the proxy is also a member or holds more than one proxy).
- 33.7 An appointment of a proxy (by using a proxy form) must be signed by the member appointing the proxy and must contain:
 - (a) the member's name and address, and
 - (b) the company's name, and
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the length of the appointment, measured as a set number of meetings, or for a duration of time or standing (ongoing).

- 33.8 Proxy forms must be delivered to the address stated in the notice under clause 24.3(e) at least 48 hours before a meeting. The chair may accept late notices.
- 33.9 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) revokes the proxy's appointment, or
 - (b) revokes the authority of an agent who appointed the proxy, or
 - (c) is mentally incapacitated, or
 - (d) dies.

Directors

34. Number of directors

- 34.1 The company must have at least five directors and no more than twelve directors.
- 34.2 The office bearers of the company shall consist of:
- (a) a president
 - (b) a secretary, and
 - (c) a treasurer.
- 34.3 The president and treasurer will be elected by members of the company in a general meeting and each shall be one of the directors of the company.
- 34.4 The secretary is appointed in accordance with clause 59.

35. Initial directors upon registration of the company and transition arrangements

- 35.1 Upon the registration of the company the members of the board of the incorporated association will, subject to their consent, transition to directors of the company (as initial directors) and the individual holding the office of General Secretary of the incorporated association will, subject to their consent, be taken to be appointed as the secretary of the company (as initial secretary).
- 35.2 Clause 35.1 is subject to the following arrangements:
- (a) until the first annual general meeting following registration of the company, the Board will be constituted as referred to in clause 35.1, and each director will continue to hold the office held immediately prior to registration, and
 - (b) notwithstanding clause 40.1, the terms of office of the initial directors will expire at the first annual general meeting of the company held after the registration of the company. However, to provide for staggered rotation and continuity of office, the directors may, by resolution, determine that the terms of office of some initial directors will extend beyond that annual general meeting, up to a maximum of two years from the date of registration of the company. This power applies only in respect of the initial directors.
- 35.3 If an initial director vacates office prior to the first annual general meeting following registration of the company, the directors may appoint a replacement director who

shall hold office until that meeting and may assume the vacated office bearer role if applicable.

36. Who can be a director

36.1 An individual is eligible to be a company director if they:

- (a) are a member, and
- (b) are 18 years of age or older, and
- (c) have a director identification number, and
- (d) give the company their signed consent to act as a company director, and
- (e) are not ineligible to be a director under the Corporations Act or the ACNC Act.

37. How to become a director

37.1 Subject to clause 34, the members may elect a director by passing a resolution. Each election must be by separate resolution.

37.2 The directors may also appoint an individual as a director to fill a casual vacancy, or as an additional director, if that individual meets the eligibility requirements set out in clause 36.

37.3 A director appointed to fill a casual vacancy, or another director, may assume a vacated office bearer role if applicable, as determined by the Board.

38. What happens if there are too few directors

38.1 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act but only:

- (a) in an emergency, or
- (b) for the purpose of increasing the number of directors to three (or the number required to form a quorum), or
- (c) to call a general meeting.

39. Election of Chairperson

39.1 The president, elected in accordance with clause 34.3, is the company's chairperson.

39.2 The chairperson's responsibilities include:

- (a) managing board meetings, including setting the agenda, and
- (b) ensuring directors receive accurate, timely, and clear information, and
- (c) ensuring effective communication with members, and
- (d) managing disputes to ensure the company is run effectively.

40. Term of office

40.1 Elected directors hold office for a term of two years and are eligible for re-election for further terms of two years each, and a maximum service limit of 10 years, unless the members resolve to extend the maximum service limit for a particular director.

40.2 Directors appointed to fill a casual vacancy hold that office until the end of the term that would have been served by the former director they are replacing. Time spent filling a casual vacancy does not count towards a maximum service limit.

41. How to stop being a director

41.1 A director stops being a director if they:

- (a) resign in writing to the secretary, or
- (b) stop being a member, or
- (c) are removed from office under clause 42, or
- (d) are appointed for a term of office and are not reappointed, or
- (e) are disqualified from being a director under the Corporations Act or the ACNC Act, or
- (f) die.

42. How to remove a director

42.1 The members may remove a director by passing a resolution at a general meeting. Clause 30 does not apply. Instead, the process is as follows:

- (a) The members must provide notice of intention to move a members' resolution to remove a director at least two months before the meeting is to be held.
- (b) The company must provide a copy of the notice to the director as soon as practicable after it is received.
- (c) The director can give the company a written statement to circulate to the members and speak to the motion at the meeting.
- (d) The members must pass a resolution to remove the director.

Powers of directors

43. Powers, responsibilities and limitations

43.1 The directors may use all the powers of the company except any powers that, under the Corporations Act or this constitution, may only be used by members.

43.2 The directors may borrow or raise money, charge any property or business of the company or give any other security for a debt, liability or obligation of the company.

43.3 The directors are responsible for managing and directing the activities of the company to carry out the purpose(s) set out in clause 7.

43.4 The directors must decide on the responsible financial management of the company including:

- (a) any suitable written delegations of power under clause 44, and
- (b) how money will be managed – including how electronic transfers must be authorised, signed off or otherwise approved.

43.5 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a resolution passed at a general meeting.

44. Delegation of directors' powers

44.1 The directors may delegate any of their powers and functions to:

- (a) a committee, or
- (b) a particular director, or
- (c) a company employee, or
- (d) any other person, or
- (e) any combination of the above, as they consider it appropriate to do so.

44.2 The company must keep appropriate records of any delegations of powers.

45. Payments to directors

45.1 The company must not pay fees for acting as a director (also called sitting fees). This does not stop the company from making the following types of payments:

- (a) paying a director for work they do for the company other than as a director, or
- (b) reimbursing a director for expenses they have properly incurred for work in connection with the company's affairs.

45.2 Any payment made under this clause **Error! Reference source not found.** must be no more than is fair and reasonable to the company and approved by the directors in accordance with clause 50.

46. Execution of documents

46.1 The company may execute a document if the document is signed in accordance with clause 5 by:

- (a) two directors of the company, or
- (b) a director and the secretary, or
- (c) an individual or a combination of individuals authorised by the board for that purpose.

47. Validity

47.1 An act carried out by a director, or by a meeting of directors, or by a committee attended by a director, is not invalid just because:

- (a) of a defect in the appointment of the director, or
- (b) the individual is disqualified from being a director or has vacated office, or
- (c) the individual is not entitled to vote, or

if that circumstance was not known by the individual or the directors or committee, when the act was carried out.

Duties of directors**48. Governance Standards**

48.1 The company must ensure that it complies with the ACNC Governance Standards and, if applicable, ACNC External Conduct Standards.

49. Duties of directors

49.1 The directors must comply with their duties:

- (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, and
- (b) to act in good faith in the best interests of the company, and to further the charitable purpose(s) of the company set out in clause 7, and **Error! Reference source not found.**
- (c) not to misuse their position as a director, and
- (d) not to misuse information they gain in their role as a director, and
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 50, and
- (f) to ensure that the financial affairs of the company are managed responsibly, and
- (g) to not allow the company to operate while it is insolvent.

50. Conflicts of interest

50.1 A director who has a perceived or actual material conflict of interest in a company matter must let the other directors know.

50.2 The perceived or actual material conflict of interest, including the nature and extent of the interest and the relationship of the interest to the company, must also be recorded in the register of interests.

50.3 Each director who has a material personal interest in a matter must not:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter,
unless
- (c) their interest arises because they are a member of the company, and the other members have the same interest, or
- (d) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 80), or
- (e) their interest relates to a payment by the company under clause 79 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act, or
- (f) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (g) the directors who do not have a material personal interest in the matter pass a resolution that:
 - i. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and

- ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

51. When the directors meet

- 51.1 The directors may decide how, where, when, and how often they meet provided they meet not less than four times per year.

52. Calling directors' meetings

- 52.1 A director may call a directors' meeting by giving reasonable notice to all the other directors, or by the secretary giving reasonable notice of the meeting to all directors. The notice can be in writing or by any other means of communication.

53. Chairperson for directors' meetings

- 53.1 The chairperson must chair directors' meetings.
- 53.2 The directors at a directors' meeting may choose a director to chair that meeting if the chairperson is:
 - (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chair of the meeting.
- 53.3 Where the votes on a proposed resolution are equal, the chair of the meeting does not have a second or casting vote, and the vote is taken as lost.

54. Quorum at directors' meetings

- 54.1 The quorum for a directors' meeting is the presence of a majority of directors and must always be present during a directors' meeting.
- 54.2 If a directors' meeting cannot maintain a quorum due to one or more directors having a conflict of interest that prevents them from being present when a matter is discussed, directors may put the matter to members at the next general meeting, or at an earlier time if it is reasonable to do so.
- 54.3 The members can pass an ordinary resolution to deal with the matter.

55. Using technology to hold directors' meetings

- 55.1 The directors may hold their meetings (including hybrid meetings) by using any virtual meeting platform.
- 55.2 A director may only withdraw their consent to use the agreed-to platform within a reasonable period before the meeting.

56. Passing directors' resolutions at a meeting

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

57. Resolutions of directors without a meeting

- 57.1 A resolution can be passed without a meeting if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution by:

- (a) the method set out in clause 5, or
- (b) confirming their agreement by reply email to the company within five **business days**.

57.2 The resolution is passed when the last director signs or otherwise agrees to the resolution.

Professional Affairs Board

58. Establishment and operation

- 58.1 The company may establish a Professional Affairs Board (PAB) which works independently of the Board to carry out functions related to the certification, registration, and professional conduct of certified individuals.
- 58.2 The PAB shall:
- (a) operate independently, and
 - (b) comprise of at least three certified individuals, appointed in accordance with IEA guidelines and the PABs own charter, and
 - (c) have documented rules that describe the appointment of PAB members, their responsibilities and reporting structure, and
 - (d) establish and administer certification processes and maintain a public register of certified individuals, and
 - (e) manage complaints and disciplinary matters relating to certified individuals, including providing appropriate appeal processes, and
 - (f) report to the directors on its activities and finances.
- 58.3 The PAB shall be responsible for developing, approving and amending its own charter, which must be consistent with the company's charitable purpose(s) and the requirements for IEA-recognised certifying bodies.
- 58.4 Dissolution of the PAB may only occur by a special resolution passed by a majority of members.

Secretary

59. Appointment of secretary

- 59.1 The company must have at least one secretary, at least one of whom must also be a director.
- 59.2 The secretary must be at least 18 years old.
- 59.3 The secretary must give the company their signed consent to become a secretary before being appointed by directors.
- 59.4 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 59.5 The initial secretary is the individual who has agreed to act a secretary and who is named as a proposed secretary in the application for company registration.

60. Role of secretary

60.1 The directors may delegate the following to the secretary:

- (a) maintaining a register of the company's members (see clause 12), and
- (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and resolutions, and
- (c) notifying the ACNC of applicable changes, such as the resignation or appointment of a director, change of address, or change to the constitution.

61. How to stop being a secretary

61.1 The secretary stop being a secretary if they:

- (a) resign in writing to the company, or
- (b) are removed by resolution of the directors, or
- (c) are disqualified from managing corporations under the Corporations Act or the ACNC Act, or
- (d) die.

Financial matters

62. Funds

62.1 The company's money must be deposited into, and paid from, a company bank account.

63. Company's financial year

63.1 The company's financial year is from 1 July to 30 June.

64. How to appoint and remove an auditor

64.1 The members may appoint an auditor by passing a resolution at a general meeting.

64.2 The members may remove an auditor by passing a resolution in a general meeting.

Minutes and records

65. Records of members' meetings

65.1 The company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings, and
- (b) minutes of any other resolutions of members, and
- (c) a copy of a notice of each general meeting, and
- (d) a copy of any members' statement distributed to members under clause 30.3.

66. Records of directors' meetings

66.1 The company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of directors' meetings, and
- (b) minutes of proceedings and resolutions of meetings of any committees, and

- (c) minutes of any other resolutions of directors.

67. Signing minutes

- 67.1 The directors must ensure that minutes of a general meeting or a directors' meeting are signed in accordance with clause 5 and by:
 - (a) the chair of the meeting, or
 - (b) the chair of the next meeting.
- 67.2 The directors must ensure that the passing of a resolution passed without a meeting (of members or directors) is recorded and signed by a director within a reasonable time after the resolution is passed.

68. Financial and related records

- 68.1 The company 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 The company must also keep written records that correctly record its operations.
- 68.3 Records may be kept in physical or electronic format.

69. Inspecting the register of members

- 69.1 The company must allow members (and non-members) upon payment of a fee to inspect the register of members. To inspect the register, the person must submit their request in writing with their name, address and the purpose of their request.
- 69.2 Information that is accessed from the register of members must only be used in a manner relevant to the interests of rights of members as members or in a manner approved by the company.

70. Inspection of records

- 70.1 The company must give a member access to the records set out in clause 65.
- 70.2 The directors may give a member access to other records of the company. The director may choose to provide limited access or redacted copies of these records.

71. How long records must be kept for

- 71.1 The company must retain its records for at least seven years.
- 71.2 The directors must take reasonable steps to ensure that the company's records are kept safe.

72. Directors' access to documents

- 72.1 A director has a right to access the company's financial records at all reasonable times.
- 72.2 The directors may resolve to give a director or former director access to other records, including documents provided for, or available to, the directors.

By-Laws

73. By-laws

73.1 The directors may pass a resolution to make by-laws which the directors believe are necessary and reasonable or desirable for the proper control, administration, and management of the company's affairs, operations, finances, assets and property, and to give effect to this constitution.

73.2 All by-laws shall be consistent with the provisions of this constitution.

73.3 The directors may pass a resolution to amend or revoke the by-laws from time-to-time.

74. Relationship to other governance documents

74.1 This constitution establishes the overarching governance framework for the company. The directors may approve by-laws and policies to give effect to this constitution and may adopt additional governance documents that provide detailed guidance on the administrative, financial, and professional operations of the company.

74.2 Where practicable, the directors will take all reasonable steps to consult with members about the introduction of, or amendments to, other governance documents that materially affect members' rights or obligations.

Notice

75. What is notice

75.1 Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 76 to 78 unless specified otherwise.

75.2 Clauses 76 to 78 do not apply to a notice of proxy under clause 33.8.

76. Notice to the company

76.1 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, or
- (b) posting it to the company's registered office or to another address the company chooses for notice to be provided to, or
- (c) sending it to an email address the company has notified members is the company's email address.

77. Notice to members

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

- (a) in person, or
- (b) by sending it to the email address of the member (if any) nominated by the member for service of notices, or
- (c) by posting it to, or leaving it at, the address of the member (if any) nominated by the member for service of notices, or

- (d) by notifying the member via an email address they nominate that the notice is available for access via a website, in electronic form or at a specified place or address, if the member agrees to this method.
- 77.2 If a member elects to receive documents in physical form or electronic form, the company must take reasonable steps to send documents in the preferred manner.
- 78. When notice is taken to be given**
- 78.1 If a notice is:
 - (a) delivered in person, or left at the recipient's physical address, then it is taken to be given on the day it is delivered, or
 - (b) sent by post, then it is taken to be given on the seventh business day after it is posted to the recipient's address, postage costs are paid for, or
 - (c) sent by email or other electronic method, then it is taken to be given when it is sent, unless the sender receives an automated message that the notice has not been delivered, or
 - (d) given under clause 77.1(d), then it is taken to be given on the business day after the notification that the notice being available is sent, unless the sender receives an automated message that the notice has not been delivered.
- 78.2 If the delivery or receipt of a notice is not on a business day or is after 5.00pm on a business day, it is deemed to be received at 9.00am the following business day.

Indemnity and insurance

79. Indemnity

- 79.1 The company indemnifies its officers against any liability incurred in that capacity (other than to the company or a related body corporate), unless the liability did not arise out of conduct in good faith. In this clause and clause 80, 'officer' includes a director or secretary, and includes a director or secretary after they have stopped holding that office.
- 79.2 The indemnity is a continuing obligation and is enforceable by an officer:
 - (a) even if that individual is no longer an officer, and
 - (b) is enforceable without that individual first having to incur any expense or make any payment.

80. Insurance

- 80.1 To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay a premium for a contract that insures a current or former company officer against any liability they incur in that role.

Winding up

81. Winding up voluntarily

- 81.1 If permitted by law, the members may pass a special resolution at a general meeting to wind up the company voluntarily.

82. Surplus assets not to be distributed to members

- 82.1 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 charity which meets the requirements in clause 83.

83. Distribution of surplus assets

- 83.1 Any surplus assets that remain on the winding up of the company must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 7, and
 - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.
- 83.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the directors can do so. Failing that, the company may apply to the Supreme Court to make this decision.

84. Liability of members limited to the guarantee

- 84.1 Each member must contribute an amount not more than \$10 (the guarantee) to the property of the company if the company is wound up:
- (a) while they are a member, or within 12 months after they stop being a member, and
 - (b) at the time of winding up, the debts and liabilities of the company incurred before they stopped being a member, exceed the company's assets. These debts and liabilities also include any costs incurred in winding up the company.
- 84.2 The liability of each member is limited to the amount of the guarantee.