

# Annexure B

## Constitution

**Australian Dental Association Ltd ABN [to be inserted on registration with ASIC]**

A Public Company Limited by Guarantee

*Corporations Act 2001 (Cth)*

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**1. Name and Nature of Association**

- 1.1 The name of the company is AUSTRALIAN DENTAL ASSOCIATION LTD (**Association**).
- 1.2 The Association is a public company limited by guarantee under the *Corporations Act 2001* (Cth).
- 1.3 The liability of the Members is limited. Every Member undertakes to contribute \$20 to the assets of the Association if it is wound up, while the person is a Member or within 1 year after the person ceases to be a Member.

**2. Objects**

- 2.1 The Objects of the Association are:
- (a) to encourage the improvement of the oral and general health of the public and to advance and promote the ethics, art and science of dentistry;
  - (b) to support members of the Association in enhancing their ability to provide safe, high quality professional oral health care to the community and advance the wellbeing of both the public and members;
  - (c) to establish, promulgate and encourage, by whatever name, a Code of Ethics for the observance of Members of the Association in the conduct of their profession;
  - (d) to advise upon, participate in, develop and promote continuing professional development for dentists and other persons engaged in the practice of dentistry;
  - (e) to carry on any other activity which is capable of being conveniently carried on in connection with the principal activities referred to in clause 2 and clause 3.1 or calculated directly or indirectly to enhance the value of the Association's property or rights or to provide services for the Association's membership; and
  - (f) to do all such other things as are incidental or conducive to the operation of the Association and otherwise for the attainment of all or any of the above Objects of the Association.

**3. Not for profit**

**No profits for Members**

- 3.1 Subject to clause 3.2, all of the assets and income of the Association must be applied solely in the furtherance of the Objects of the Association and no portion may be distributed directly or indirectly to any Member.
- 3.2 Nothing in clause 3.1 prevents the payment, in good faith, of a reasonable and proper amount, calculated on arms-length terms, in respect of:
- (a) remuneration payable to an employee of the Association who is also a Member, for services actually rendered to the Association;
  - (b) goods or services actually supplied by a Member to the Association in the ordinary and usual course of the Member's business;
  - (c) interest (at a rate not exceeding interest at the rate for the time being charged by the Association's bankers for overdrawn accounts) on money borrowed from a Member;

- (d) rent for premises demised or let by a Member to the Association; or
- (e) payment to a Member in their capacity as a Director, under clause 8.33 and 8.34.

### **Winding up**

- 3.3 Upon the winding up or dissolution of the Association, any remaining property after satisfaction of all debts and liabilities must not be paid to or distributed among the Members or former Members, but must be given or transferred to some other institution or organisation:
- (a) which has objects similar to the Objects of the Association; and
  - (b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 3.1.
- 3.4 The institution or organisation referred to in clause 3.1 shall be determined by the Voting Members at or before the time of winding up or dissolution of the Association and, in default or the absence of any such determination, by the Supreme Court of the Australian Capital Territory.

## **4. Members**

### **Membership**

- 4.1 The Members of the Association comprise:
- (a) subject to clause 4.4 regarding the categories of membership, the Members of the Association as at the date of the adoption of this Constitution; and
  - (b) such other persons as the Board admits as Members in accordance with this Constitution.
- 4.2 The persons that were members of the previously incorporated association immediately prior to the end of the general meeting at which this Constitution was adopted, who at that time were entitled to vote at general meetings of the incorporated association shall be admitted as a Voting Member in the same category of membership as set out in clause 4.5.
- 4.3 The persons that were members of the previously incorporated association immediately prior to the end of the general meeting at which this Constitution was adopted, who at that time were not entitled to vote at general meetings of the incorporated association shall be admitted as a Non-Voting Member in the same category of membership as set out in clause 4.7.

### **Voting Members**

- 4.4 There are two classes of membership of the Association:
- (a) Voting Members; and
  - (b) Non-Voting Members.
- 4.5 The categories of Voting Members of the Association comprise:
- (a) Active Members;
  - (b) such other voting membership categories as set out in the by-laws; and

- (c) such other persons as the Board admits as Voting Members in accordance with this Constitution.
- 4.6 For the purpose of clause 4.5(b) and 4.5(c), Voting Members must only comprise persons who are or have been registered dentists in Australia, or are eligible for registration as a dentist in Australia.

#### **Non-Voting Members**

- 4.7 The Non-Voting Members of the Association comprise:
  - (a) Honorary Members;
  - (b) such other non-voting membership categories as set out in the by-laws; and
  - (c) such other persons as the Board admits as Non-Voting Members accordance with this Constitution.

#### **Application for membership**

- 4.8 Every applicant admitted to membership of a Branch is required by that Branch to become, and remain a member of, the Association.
- 4.9 On the completion of an application in proper form for membership of a Branch pursuant to clause 4.8, such form must also contain an application for membership of the Association.
- 4.10 If a Branch accepts an applicant as a member, that applicant must pay the Association's Subscription for the applicable class of membership to the Branch or the Association (as the case may be) in accordance with clause 4.29.
- 4.11 Upon admitting the applicant to membership of the Branch, the Branch will notify the Association of the admission and, if the applicant paid the Subscription to the Branch pursuant to clause 4.29(a), forward the Subscription to the Association.
- 4.12 Upon receipt of the Subscription by the Association in accordance with clause 4.29, the applicant will become a member of the Association and the name and address of the applicant will be entered on the Association's Register of Members.
- 4.13 For the purposes of clause 4.14 the proper form for membership shall be such form as provided by the Branch under clause 4.9 provided that the Association may request further information from the Branch so as to comply with any member register requirements.
- 4.14 Membership is open to any individual who:
  - (a) meets the membership eligibility criteria prescribed from time to time by the Board for the relevant class of membership;
  - (b) demonstrates to the satisfaction of the Board that the individual is supportive of or has a bona fide interest in the achievement of the Objects of the Association;
  - (c) completes and lodges an application for membership:
    - (i) in the form and manner, and providing such supporting information, as may be from time to time prescribed by the Board; and
    - (ii) signed by the applicant and each proposer;
  - (d) signs and lodges a written undertaking as to their general agreement with the Objects of the Association;

- (e) pays the Subscription, if any, from time to time prescribed by the Board when lodging the application for membership; and
  - (f) is accepted to membership by the Board.
- 4.15 In respect of each application for membership duly made in accordance with this Constitution:
  - (a) the Secretary must provide the application to the Board or its duly authorised delegate promptly after receipt of the application;
  - (b) the Board or its duly authorised delegate must consider the application promptly and, after considering it, determine in the Board's sole and absolute discretion whether to accept or reject the application;
  - (c) if the application is accepted, the applicant must be admitted as a Member and the Secretary must:
    - (i) notify the applicant in writing of the admission to membership and the class and category, if any, of that membership; and
    - (ii) issue a receipt for the Subscription paid by the Member; and
    - (iii) cause the required details to be entered in the Register;
  - (d) if the application is rejected:
    - (i) the Secretary must notify the applicant in writing of the rejection of the application;
    - (ii) the Secretary must refund in full the Subscription paid with the application; and
    - (iii) that person may not apply for membership again within 1 year of the rejection; and
  - (e) the Board is not required to give reasons for accepting or rejecting any application.

#### **Members' obligations and rights**

- 4.16 The Members agree to be bound by the provisions of this Constitution, the By-Laws, the Code of Ethics and any other rules lawfully made by the Association.
- 4.17 For so long as a Member abides by the provisions of this Constitution, the Member will enjoy the rights and privileges of membership under the Act, this Constitution and the By-Laws.
- 4.18 Voting Members have the right to:
  - (a) receive notices of, attend and be heard at any general meeting;
  - (b) cast 1 vote in person or by proxy at any properly convened general meeting of Members; and
  - (c) cast 1 vote in any properly held postal or electronic ballot.
- 4.19 An Active Member who practices dentistry within the designated area of a Branch must, as a condition to membership of the Association, also be a Member of that Branch.
- 4.20 If a Member practises in two or more areas in respect of which there are different Branches that Member is only required to be a member of one of the Branches in which they practice. The Member may nominate the Branch where the Member



- wishes to be registered from the different Branch areas in which the Member practices.
- 4.21 If an Active Member changes the area in which they practice dentistry to the jurisdiction of another Branch they:
- (a) must become a member of that Branch within three calendar months following that change; and
  - (b) are not required to pay an additional Subscription in the same financial year and will continue to remain a member of the Association for the balance of the current membership period.
- 4.22 If an Active Member ceases to practice dentistry:
- (a) they must notify the relevant Branch immediately of such cessation and that Branch must notify the CEO; and
  - (b) their membership will be re-classified to the appropriate membership category.
- 4.23 Members must notify in writing the Association and its Branch of any changes to their address or membership status, within one month of such change.

### **Subscription**

- 4.24 Members are not required to pay entrance fees in respect of membership of the Association.
- 4.25 The annual Subscription fees for Members, if any, and the time and manner of payment of such fees are as determined by the Board from time to time.
- 4.26 The Board will determine the annual Subscription on or by 1 July each year and that Subscription will apply from 1 July of that year until 30 June of the following year.
- 4.27 The Subscription is payable:
- (a) in full in advance; or
  - (b) via an instalment payment plan (in advance or arrears),
- as approved by the Board or its delegate.
- 4.28 If a person applies for membership after 31 July the Board may reduce the Subscription payable by the applicant in such manner as they think fit. Such Members are only entitled to receive publications and documents issued after their admission to membership and such other publications of the Association as are customarily given to new Members.
- 4.29 All Subscription and dues (if any) from Members shall be:
- (a) collected by each Branch, on behalf of the Association, and forwarded on a monthly basis by the Branch directly to the Association; or
  - (b) if nominated by any Branch, collected by the Association on behalf of that Branch.
- 4.30 Members who are members of more than one Branch are only liable for one Subscription.
- 4.31 The Board may charge Members a levy provided that such a levy will not exceed in any one year an amount equal to one half of that Member's Subscription.

- 4.32 If any Member resigns or is reclassified after 31 July in any year the Board may in its absolute discretion refund all or part of the Subscription for that year.
- 4.33 If a Member's Subscription or any part of it remains unpaid for 2 months after it becomes payable, the Board or its duly authorised delegate may give the Member a notice of default:
- (a) requiring the Member to pay the unpaid Subscription within the time determined by the Board and specified in the notice; and
  - (b) informing the Member that their rights as a Member (under this Constitution or otherwise) may be suspended and they may be removed from membership if the Subscription remains unpaid within the time specified in the notice.
- 4.34 If a Member's Subscription or any part of it remains unpaid after the time specified in a notice given to the Member under clause 4.33, the Board or its duly authorised delegate may, in its absolute discretion and without any further recourse to the Member, suspend the Member's rights as a Member (under this Constitution or otherwise) until such time as the Member has paid all arrears of Subscription.

#### **Membership categories**

- 4.35 The Board may make and adopt By-Laws setting out, for each class of membership:
- (a) different categories of membership (if any) within that class;
  - (b) the eligibility criteria for each class or category (if any);
  - (c) any Subscription payable by Members in each class or category (if any); and
  - (d) the various rights, if any, of Members in each class or category (if any) in addition to the rights set out in clause 4.18 .
- 4.36 For the avoidance of doubt, nothing in clause 4.35 affects the rights and obligations of Members as set out in this Constitution.

#### **Register of Members**

- 4.37 A Register must be kept in accordance with the Act.
- 4.38 The following details must be entered and kept current in the Register in respect of each Member:
- (a) the Member's full name, residential address, postal address, telephone number and e-mail address;
  - (b) the date of admission to and cessation of membership;
  - (c) the class of membership; and
  - (d) such other information as the Board requires.
- 4.39 The Register must be open for inspection by Members in accordance with the Act.
- 4.40 Each Member must notify the Secretary in writing of any change in that Member's name, residential address, postal address, telephone number or e-mail address within 1 month after the change.
- 4.41 Every year each Branch must, prior to 31 July, forward to the Secretary a detailed list of its members current as at 30 June of the previous month.

- 4.42 Each Branch must notify the Secretary in writing of any changes in its membership including changes in classification of members of the Association and particulars of any members who have been granted leave of absence by the 15th of each month.

#### **Resignation from Membership**

- 4.43 A Member may resign from membership of the Association by giving written notice to the Secretary.
- 4.44 A Member's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.
- 4.45 A Member's liability for any fees, Subscriptions or other moneys in arrears at the date of resignation continues until discharged by payment.

#### **Removal from Membership**

- 4.46 Subject to clause 4.47, if a Member:
- (a) fails to comply with any of the provisions of this Constitution;
  - (b) has Subscriptions in arrears for a period of 2 months or more following the giving of a notice to that Member under clause 4.34; or
  - (c) conducts themselves in a manner considered to be injurious or prejudicial to the interests of the Association;
- the Member may be removed from membership by ordinary resolution of the Association (excluding, where necessary, the vote or votes of the Member(s) concerned) effective immediately.
- 4.47 A Member may only be removed under clause 4.46 if:
- (a) the Board has first given at least 2 months' written notice to the Member stating the intention to terminate the Member's membership, setting out:
    - (i) the grounds of the intended termination,
    - (ii) inviting the Member to provide to the Board any written representations which the Member wishes to be put to the meeting; and
    - (iii) specifying the time by which such representations must be received;
  - (b) the Board has included in the notice of the meeting a copy of the Member's written representations (unless the written representations were not provided by the Member in time to be included in the notice, in which case the written representations have, if required by the Member, been read out at the meeting); and
  - (c) whether or not the Member has provided written representations, the Member has been given a full and fair opportunity to address the meeting.

#### **Other cessation of Membership**

- 4.48 A Member otherwise ceases to be a Member if the Member:
- (a) dies;
  - (b) becomes bankrupt;
  - (c) resigns from membership of a Branch;

- (d) becomes of unsound mind or a person whose property is liable to be dealt with under a law regarding mental health;
  - (e) is expelled under clause 23; or
  - (f) is convicted of an indictable offence.
- 4.49 In the case of clause 4.48(a), Member benefits will be available to the Member's non-dental practitioner partner for the remainder of the subscription year or the six months following the Member's death, whichever is greater.

## **5. Branches**

- 5.1 The Association may recognise an organisation established in a State or Territory as the Branch of the Association in that State or Territory, for the purpose of furthering objects wholly or partly similar to those Objects of the Association for such State or Territory.
- 5.2 The Association recognises the organisations set out in Annexure A as Branches.
- 5.3 Recognition of an organisation as a Branch must be granted by unanimous resolution of Branch Presidents (or their representative) of all existing Branches as at the date the resolution is passed. Such resolution must be passed at a meeting convened by the Board specifically for such a purpose on not less than 28 days' notice.
- 5.4 It is a requirement for any organisation referred to in clause 5.1 to qualify, and remain qualified, for recognition as a Branch that its constitution (or other such governing document) provide that membership of the Association is obligatory for all Members.
- 5.5 Recognition of any organisation as the Branch of the Association for a State or Territory may only be withdrawn by the unanimous resolution of the Branch representatives of all the other Branches passed at a meeting convened by the Board specifically for such a purpose, at not less than 28 days' notice.
- 5.6 If recognition of an organisation as a Branch is withdrawn in accordance with clause 5.5, the Association may exercise its powers conferred in clauses 5.1 and 5.3 upon any other organisation that complies with this clause 5.
- 5.7 Each Branch recognised in accordance with clause 5.3 must comply with the provisions of this Constitution and any By-Laws and any reference to a "Branch" in this Constitution or By-Laws will be taken as referring not only to the individual members of the Association who are also members of the Branch but also to the Branch itself.
- 5.8 If an organisation which is recognised for the time being as the Branch for a particular State or Territory is an unincorporated body then reference in this Constitution or By-Laws to a "Branch" will mean all the members of the Association for the time being who are also members of such unincorporated organisation and will be taken to refer collectively to all such members.
- 5.9 The Board may determine by resolution agreed to by not less than three-quarters of the votes recorded at the meeting of the Board that any matter or matters shall be primarily the concern of the Association. Until such a resolution is rescinded, no Branch may take steps or otherwise act in relation to any such matters without obtaining the prior written approval of the Board or the Chair.

- 5.10 The Board may adopt a policy statement agreed to by not less than three-quarters of the votes recorded at a meeting of the Board on a matter affecting two or more Branches and such policy statement will be binding on all Branches.

## **6. General meetings**

### **Calling of general meetings**

- 6.1 General meetings of the Association may be called and held at the times and places and in the manner determined by the Board.
- 6.2 The Association must provide reasonable means by which Members have an adequate opportunity to raise with the Board concerns about the governance of the Association.
- 6.3 Voting Members may only call or requisition a general meeting in accordance with the Act.
- 6.4 The Board will, on the requisition in writing of not less than 500 Voting Members or 50 Voting Members from each of three Branches convene a general meeting of the Association.
- 6.5 A requisition of Voting Members for a general meeting:
- (a) must state the purpose of the meeting;
  - (b) must be signed by the Voting Members making the requisition;
  - (c) may consist of several documents in similar form each signed by one or more of the members making the requisition; and
  - (d) must be lodged with the CEO.
- 6.6 If the Board fails to convene a general meeting to be held within 90 days after the date at which a sufficient requisition of Voting Members for the meeting is lodged with the CEO any one or more of the Voting Members who made the requisition may convene a general meeting to be held not less than six months after that date.
- 6.7 The business of a general meeting may be any business that may properly be dealt with in accordance with this Constitution.
- 6.8 A general meeting convened by a Voting Member or Voting Members in the manner specified in clause 6.6 will be convened in the same manner as general meetings are convened by the Board and any Voting Member who incurs expense directly arising from the convening of the general meeting under this clause is entitled to be reimbursed by the Association for reasonable expenses so incurred. The CEO will determine whether such expenses are reasonable.

### **Notice of general meetings**

- 6.9 Notice of every general meeting must be given to every Voting Member, Director and the auditor, if any, for the time being of the Association. No other person is entitled to receive notices of general meetings.
- 6.10 Notice of a general meeting:
- (a) subject to the provisions of the Act permitting short notice and notice for special resolutions, must be given not less than 21 days prior to the meeting;
  - (b) may be given by any form of communication permitted by the Act; and

- (c) must specify:
  - (i) the place, the date and the time of the meeting;
  - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
  - (iii) the general nature of the business to be transacted;
  - (iv) if it is proposed to move a special resolution at the meeting, the intention to propose the special resolution and the resolution; and
  - (v) any other matters required by the Act.

6.11 The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

#### **Business at general meetings**

6.12 Except as permitted by the Act or with the approval of the Board, no person may move at any general meeting any business of which notice has not been given under clause 6.10, other than the following at an annual general meeting:

- (a) the receipt and confirmation of the minutes of the preceding annual general meeting and of any special general meeting held since that meeting;
- (b) the receipt and consideration of the accounts and reports of the Board and the auditors;
- (c) the appointment and payment of an auditor;
- (d) the announcement of the election of Directors;
- (e) the election of Honorary Life Members (if any); and/or
- (f) any other business which the Act requires to be transacted at an annual general meeting.

#### **Adjournment of general meetings**

6.13 The Chair of any general meeting at which a quorum of Voting Members is present may, with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting to another time and to another place.

6.14 The only business that may be transacted at any adjourned general meeting is the business left unfinished at the meeting from which the adjournment took place.

6.15 When a general meeting is adjourned under clause 6.13 for 30 days or more, notice of the adjourned meeting must be given in the same manner as in the case of an original meeting.

6.16 When a general meeting is adjourned under clause 6.13 for less than 30 days, it is not necessary to give a further notice of the adjourned meeting.

#### **Cancellation of general meetings**

6.17 The Board may cancel or postpone any general meeting (other than a meeting which has been called or requisitioned by Members) at any time prior to the date on which it is to be held.

- 6.18 If a general meeting has been cancelled or postponed, notice of the cancellation or postponement must be given in the same manner as in the case of the original meeting.

#### **Attendance at general meetings**

- 6.19 A person, whether or not a Member, who is invited or requested by the Board to attend a general meeting is entitled to attend that general meeting.
- 6.20 Voting Members have the right to attend general meetings.

#### **Quorum at general meetings**

- 6.21 No business may be transacted at a general meeting unless a quorum is present when the meeting proceeds to business.
- 6.22 A quorum for the purposes of a general meeting is:
- (a) in the case of a Special General Meeting convened on the requisition of members, 100 Voting Members entitled under the Constitution to vote present in person; and
  - (b) in any other case, 15 Voting Members entitled under the Constitution to vote, present in person.
- 6.23 For the purpose of calculating a quorum, Voting Members will be regarded as present in person under clause 6.22 whether present personally or by proxy.
- 6.24 If a quorum is not present within 30 minutes from the time appointed for the meeting or a longer period allowed by the Chair:
- (a) if the meeting was called or requisitioned by Members, it must be dissolved; or
  - (b) in any other case, it must be adjourned to the same day in the next week at the same time and place, or to another day, time and place determined by the Board.
- 6.25 Notwithstanding any other provision of this Constitution, if a general meeting is adjourned under sub-clause 6.24(b):
- (a) not less than 5 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting;
  - (b) a quorum for the purpose of the adjourned meeting is 10; and
  - (c) if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting must be dissolved.

#### **Chair of general meetings**

- 6.26 The Chair, or in their absence, the Deputy Chair, if any, is entitled to chair every general meeting and is responsible for the conduct of the general meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions, including of the auditor (if any).
- 6.27 The Directors present at a general meeting must elect one (1) of the Directors present to chair the meeting if any of the following apply:
- (a) there is not then a Chair or Deputy Chair;
  - (b) neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting; or

- (c) neither the Chair nor the Deputy Chair is willing to act.
- 6.28 The Members present at a general meeting must elect one (1) of the Members present to chair the meeting if either of the following applies:
  - (a) there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or
  - (b) all Directors present decline to chair the meeting.
- 6.29 Except as provided by the Act, the general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the Chair.
- 6.30 The Chair of a general meeting may, in their discretion, refuse admission to, or expel from, the meeting any person:
  - (a) using a recording device;
  - (b) in possession of a placard or banner;
  - (c) in possession of an object considered by the Chair to be dangerous, offensive or liable to cause disruption;
  - (d) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
  - (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - (f) whose conduct, in the reasonable opinion of the Chair, is inappropriate; or
  - (g) who is not a Member, Director or auditor of the Association.

## **7. Voting at general meetings**

- 7.1 At a general meeting, a resolution put to the vote of the meeting must be decided by a majority vote of the Voting Members present or represented and entitled to vote at the meeting. If the votes are equal, the question is decided in the negative.
- 7.2 The Chair of a general meeting is not entitled to a second or casting vote on any resolution, whether by show of hands or on a poll.
- 7.3 A Member whose Subscription (if any) is more than 2 months in arrears at the date of a general meeting is not a Financial Member of the Association and shall not be entitled to vote at that meeting or until such time as they become a Financial Member.

### **Show of hands**

- 7.4 At a general meeting, a resolution put to the vote of the meeting, must be decided on a show of hands unless a poll is demanded in accordance with clause 7.8.
- 7.5 On a show of hands, every Voting Member present in person and entitled to vote on the resolution has 1 vote.
- 7.6 For the avoidance of doubt, on a show of hands a Voting Member may not vote by proxy.
- 7.7 If a poll is not duly demanded, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the book containing the minutes of the proceedings of the Association, is conclusive evidence



of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **Poll**

- 7.8 A poll may be demanded in respect of a resolution at a general meeting by:
- (a) at least 3 Voting Members entitled to vote on the resolution; or
  - (b) the Chair.
- 7.9 A poll may be demanded in respect of a resolution at a general meeting:
- (a) before the vote on that resolution is taken;
  - (b) before the voting result on a show of hands is declared; or
  - (c) immediately after the voting result on a show of hands is declared.
- 7.10 A poll may not be demanded on the election of a chair.
- 7.11 Every Voting Member present in person or by proxy has:
- (a) the right to join in the demand for a poll; and
  - (b) 1 vote in the poll.
- 7.12 The demand for a poll may be withdrawn.
- 7.13 If a poll is duly demanded, it must be:
- (a) secret;
  - (b) taken in the manner directed by the Chair;
  - (c) on a question of adjournment of, or election of a Chair, for a meeting, taken immediately; and
  - (d) on any other question, taken either at once or after an interval or adjournment or otherwise as directed by the Chair and does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll is demanded.
- 7.14 In the case of any dispute as to the admission or rejection of a vote, the Chair's determination made in good faith in respect of the dispute is final.
- 7.15 The result of the poll is the resolution of the meeting at which the poll is demanded.

### **Circulating resolutions**

- 7.16 This clause applies to resolutions which the Act, or this Constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 7.17 The Association may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 7.18 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- 7.19 The resolution is passed when the last member signs.
- 7.20 If the Association receives by facsimile or electronic transmission a copy of a document referred to in this clause 7.16 it is entitled to assume that the copy is a true copy.

### **Postal or electronic ballot**

- 7.21 Notwithstanding any other provision of this Constitution, to the extent permitted by law, a resolution of the Members decided by postal or electronic ballot conducted in accordance with this Constitution is as valid and effective as if it had been passed at a general meeting duly called and constituted.
- 7.22 Without limiting the purposes for which the Board may conduct a postal or electronic ballot amongst the Members, a postal or electronic ballot must be held for the election of Elected Directors under clause 8.10(e) and the results must be declared at the relevant annual general meeting.
- 7.23 All postal or electronic ballots must be held in such a manner as to provide a reasonable opportunity for the Members to cast a vote and otherwise in the manner prescribed from time to time by the Board.

### **Proxies**

- 7.24 A Voting Member entitled to vote at a general meeting may appoint one (1) other Voting Member as their proxy, to attend and vote in their place at a general meeting.
- 7.25 The proxy must be appointed in writing, in the form from time to time required by the Board, and signed by the Voting Member appointing the proxy.
- 7.26 A person attending a general meeting as proxy has all the rights and powers of the relevant Voting Member, except where expressly stated to the contrary in:
- (a) the document appointing the proxy;
  - (b) this Constitution; or
  - (c) the Act.
- 7.27 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.
- 7.28 A document appointing a proxy is valid at any adjournment of a meeting to which the proxy relates, unless otherwise specified in the document.
- 7.29 A document appointing a proxy may appoint the proxy for a period of up to 1 year, for all or stipulated general meetings during that period.
- 7.30 A document appointing a proxy is invalid unless the document appointing the proxy is received by the Association:
- (a) at the Association's registered office (or other address or electronic address specified for that purpose in the notice convening the meeting); and
  - (b) at least 24 hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote.
- 7.31 A vote made under a proxy is valid despite any of the following facts, unless the Association receives written notice of the fact before the commencement of the meeting at which the vote is cast:
- (a) the Voting Member has died;
  - (b) the Voting Member has become mentally unfit to vote; or

- (c) the proxy or authority under which the proxy was signed has been revoked.
- 7.32 A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

## **8. Board of Directors**

### **Duties owed by Directors**

- 8.1 The Directors are subject to and must comply with duties owed at law.
- 8.2 A Director must notify the Board if any circumstances arise which has the potential to impact their eligibility to continue as a Director of the Association.

### **Number of Directors**

- 8.3 The number of Directors must be not less than 4 and not more than 7.
- 8.4 If the number of Directors is reduced below the minimum number prescribed by this Constitution, the continuing Director or Directors may act only to:
- (a) appoint additional Directors to the minimum number prescribed by this Constitution; or
  - (b) convene a general meeting.
- 8.5 Subject to clause 8.6, the Board must comprise:
- (a) a minimum of 3 and up to 5 Elected Directors; and
  - (b) up to 2 Board Appointed Directors.
- 8.6 At the time of election or appointment of each Director to the Board:
- (a) no more than 2 Elected Directors may reside in the same State or Territory; and
  - (b) if an Appointed Director is, or is eligible to be, an Active Member, then no more than 3 Directors may reside in the same State or Territory.
- 8.7 The Association may, by ordinary resolution, increase the maximum number of Directors and may determine in what rotation the Directors appointed as the result of any such alteration are to go out of office.

### **Director Eligibility and Board Composition Policy**

- 8.8 The Board must agree from time to time a Director Eligibility and Board Composition Policy.
- 8.9 The Director Eligibility and Board Composition Policy must set out the Board's criteria for the appointment or election of Directors and the preferred composition of the Board in a skills matrix and must include the following Director eligibility criteria:
- (a) for Elected Directors, that a person is a Voting Member;
  - (b) that no Director is an employee of the Association, Branch or any related entity employing staff of the Association;
  - (c) that no Director holds a directorship (or similar governance role) of a Branch, which for the sake of clarity means that any such Branch

- directorship must be relinquished, at the latest, on election to the Board under this Constitution;
- (d) that any candidate has not been a member of the Board Nominations Committee within the 3 years immediately prior;
- (e) that the candidate will not, on election, be in breach of the tenure requirements in clause 8.13; and
- (f) the person is not prohibited by law from being a director of a company.

### **Elected Directors**

8.10 An Elected Director is appointed at an annual general meeting in accordance with the following:

- (a) the Board must call for nominations no earlier than 3 months before the meeting;
- (b) any 2 Voting Members or a Branch may nominate candidates to be appointed as an Elected Director;
- (c) the nomination must be:
  - (i) in the form prescribed by the Board;
  - (ii) signed by the nominee and each proposer; and
  - (iii) given to the Board in the manner and within the time prescribed by the Board;
- (d) if the number of candidates who are eligible for election in accordance with this Constitution:
  - (i) is less than or equal to the number of vacancies for Elected Directors; and
  - (ii) are determined by the Board Nomination Committee to have skills and expertise that aligns with the Board's Director Eligibility and Board Composition Policy,

then those candidates will automatically become Elected Directors from the close of the general meeting;

- (e) if the number of candidates who are eligible for election in accordance with this Constitution is more than the number of vacancies:
  - (i) a list of the names of all candidates who are eligible for appointment in accordance with this Constitution, including the name of the Members who nominated the candidate, will be provided to the Board Nominations Committee at least 42 days before the general meeting;
  - (ii) the Board Nominations Committee must meet as is necessary to recommend candidates to the membership which aligns with the Board's Director Eligibility and Board Composition Policy;
  - (iii) the candidates recommended for consideration by Voting Members shall be included in the notice of general meeting at which the candidates will be voted on;
  - (iv) if a candidate does not receive at least 50% support from Voting Members, at the general meeting, the Board Nomination

Committee will make a further recommendation to the Voting Members at another general meeting called for that purpose; and

- (f) at the meeting, the Secretary must announce which persons have been elected as Elected Directors under this clause.

### **Rotation of Elected Directors**

- 8.11 Each Elected Director will serve for a term of approximately 3 years commencing from the annual general meeting at which the Elected Director was appointed, but is eligible for re-appointment as a Director if not then disqualified by this Constitution or the Act from being re-appointed.
- 8.12 There will be a staggered rotational system of appointment of Elected Directors such that at each annual general meeting, approximately one-third of Elected Directors, each of whom has served a term of approximately 3 years, must retire from office.
- 8.13 An Elected Director may not serve more than 3 consecutive 3 year terms. If an Elected Director has served 3 consecutive terms, that Director may only be eligible for election to the Board when a period of 1 year has elapsed since that Director retired from the Board.
- 8.14 The Elected Directors in office at the close of the general meeting at which this Constitution is adopted must retire on a staggered basis over the next 3 annual general meetings of the Association, in the order determined by clause 8.43.

### **Board Appointed Directors**

- 8.15 The Board may appoint up to 2 Board Appointed Directors.
- 8.16 The Board may only appoint a person as a Board Appointed Director if that person is eligible for appointment in accordance with the Director Eligibility and Board Composition Policy.
- 8.17 Each Board Appointed Director will serve for a term of up to 2 years, or such lesser period as the Board may determine, but is eligible for re-appointment as a Director if not then disqualified by this Constitution or the Act from being re-appointed.

### **Resignation from office**

- 8.18 A Director may resign from office by giving written notice to the Secretary.
- 8.19 A Director's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.

### **Removal from office**

- 8.20 The Association may, by ordinary resolution, remove any Director from office.
- 8.21 At any general meeting at which it is proposed to remove a Director under clause 8.20, the Director must be given the opportunity to present their case, orally or in writing or by both of those means.
- 8.22 A Director who is removed under clause 8.20 retains office until the dissolution or adjournment of the general meeting at which the Director is removed.
- 8.23 If a Director removed under clause 8.20 was an Elected Director, the Association may, by ordinary resolution, appoint a person to take that Director's place.

- 8.24 The term of appointment of a Director appointed under clause 8.23 continues until the annual general meeting at which the person who was removed from office would have been required to retire pursuant to this Constitution if he or she had not been removed.
- 8.25 A Director removed from office under clause 8.20 may not be elected or appointed to the Board for 2 years after their removal.

#### **Vacation of office**

- 8.26 Without limiting any other provision of this Constitution, the office of a Director becomes vacant if required by the Act or if the Director:
- (a) becomes prohibited from being a director of a company by reason of the Act, any order made under the Act or otherwise at law;
  - (b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
  - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (d) ceases to be a Member;
  - (e) becomes an employee of the Association or any related entity employing staff of the Association; or
  - (f) the Association resolves that the office of that Director be vacated.

#### **Casual vacancies**

- 8.27 If a casual vacancy arises in relation to an Elected Director, the Board may appoint a person who is eligible for appointment in accordance with this Constitution as Director to fill the casual vacancy until the next annual general meeting.
- 8.28 The appointment of Elected Directors for the next annual general meeting must include the appointment of a person to fill the vacancy (but such vacancy is not to be taken into account in determining the number of directors who must retire by rotation at the annual general meeting).
- 8.29 Any person appointed under clause 8.27 is eligible as a candidate in that election if not then disqualified by this Constitution or the Act.
- 8.30 The term of appointment of a Director appointed under clause 8.28:
- (a) continues until the annual general meeting at which the person who vacated office early would have been required to retire pursuant to this Constitution if he or she had not vacated office early; and
  - (b) shall not be calculated as a term for the purpose of clause 8.13.

#### **Time appointment or retirement takes effect**

- 8.31 Directors who are elected at a general meeting take office immediately after the end of the meeting.
- 8.32 Directors who retire at a general meeting continue to hold office until the end of the meeting.

### **Directors' expenses**

- 8.33 Directors may be paid all reasonable travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board or any of its committee or general meetings or otherwise in the execution of their duties as Directors, provided that such expenses have first been approved by the Board in its discretion.
- 8.34 In addition to expenses under clause 8.33, Directors may be remunerated for their role as Directors provided that such fees are approved annually in advance by the Voting Members.

### **Branch matters**

- 8.35 The Association shall not act in or be concerned with any matter which properly falls solely within the ambit or jurisdiction of one of the Branches without the prior written request in writing made on behalf of the Branch concerned. The determination of whether or not a matter does properly fall solely within the ambit or jurisdiction of a Branch shall lie at all times with the Board subject to clause 5.9.
- 8.36 Any matter which falls within the ambit or jurisdiction of two or more Branches may be deemed to be a matter within the proper ambit or jurisdiction of the Association. The determination of whether or not a matter falls within the ambit or jurisdiction of two or more Branches shall be at all times with the Board.

### **Board Nominations Committee**

- 8.37 The Board must establish a Board Nominations Committee to:
- (a) determine the eligibility of persons nominated for election or being considered for appointment as Director;
  - (b) manage the nominations process;
  - (c) assess and recommend candidates to members for elected positions to the Board; and
  - (d) assess and recommend candidates to the Board for Appointed Directors, in accordance with the Board's Director Eligibility and Board Composition Policy.
- 8.38 Subject to clause 8.39 the Board must agree from time to time in writing its policy regarding the composition, role and procedures of the Board Nominations Committee (**Board Nominations Committee Policy**).
- 8.39 The Board Nominations Committee must comprise:
- (a) one independent chair;
  - (b) one Director from the Board, in the following order, provided that the Director is not seeking re-election or re-appointment to the Board in the year in which they are participating on the Board Nominations Committee:
    - (i) Chair;
    - (ii) Deputy Chair; or
    - (iii) another member appointed by the Board; and
  - (c) one nominee from each Branch Council.

- 8.40 The Board Nominations Committee Policy must include the following eligibility criteria for appointment to the Board Nominations Committee, that the person:
- (a) is not a candidate being considered by the Board Nominations Committee for election (or re-election) or appointment (or reappointment) to the Board;
  - (b) is not at the relevant time an employee of the Association;
  - (c) has not during the previous 12 month period been an employee of the Association; and
  - (d) has not been a member of the Board Nominations Committee for more than 6 years.

### Transitional Board

- 8.41 For the purposes of clauses 8.42 and 8.43, the term of office of the Transitional Directors commences from the close of the 2023 AGM at which the Transitional Directors were elected and not the date the Association was registered as a company with the Australian Securities and Investments Commission..

### Transitional provisions for Transitional Directors

- 8.42 The term of the Transitional Directors shall be subject to the transitional provisions set out in this clause but must not exceed 3 consecutive 3 year terms which shall be calculated by including time served on the Federal Executive immediately prior to the adoption of this Constitution.
- 8.43 In order to transition to a staggered 3 year rotational system:
- (a) the Transitional Directors will hold office until they are required to retire under this clause 8.43;
  - (b) at least 2 months before the first annual general meeting next following adoption of this Constitution:
    - (i) the Transitional Directors must determine the order in which the Transitional Directors shall rotate off the Board over the course of the next 3 following annual general meetings of the Association in accordance with this clause 8.43(b);
    - (ii) for these purposes the Transitional Directors must agree which of them will be the first to rotate off the Board at the first annual general meeting next following the adoption of this Constitution, being one-third (rounded up to the nearest whole number), of the Transitional Directors (the **First Transitional Group**);
    - (iii) the Transitional Directors must also agree which of them will rotate off the Board at the second annual general meeting following adoption of this Constitution (the **Second Transitional Group**) provided that there is to be an equal number of Transitional Directors in the First Transitional Group and the Second Transitional Group; and
    - (iv) the remaining Transitional Directors who do not comprise the First Transitional Group and the Second Transitional Group shall form the following subsequent group (**Third Transitional Group**) to rotate off the Board at the third annual general meeting following the adoption of this Constitution;



- (c) for the purposes of deciding the order in which the Transitional Directors shall rotate off the Board as required by clause 8.43(b):
  - (i) the Transitional Directors must retire in the order based on their length of service on the Federal Council (i.e. those longest serving on the Federal Council to be first rotated off the Board); and
  - (ii) in the event the Board cannot agree on the order of rotation as between any two or more Transitional Directors who have served on the Board for the same period of time, then the question shall be resolved by the drawing of lots;
- (d) at the first annual general meeting following the adoption of this Constitution, each of the Directors in the First Transitional Group shall retire from office but unless they are otherwise disqualified by this Constitution, shall be eligible for re-election;
- (e) at the second annual general meeting following adoption of the Constitution, each of the Directors in the Second Transitional Group shall retire from office but unless they are otherwise disqualified by this Constitution, shall be eligible for re-election;
- (f) at the third annual general meeting following adoption of this Constitution, each of the Directors comprising the Third Transitional Group shall retire from office but unless otherwise disqualified by this Constitution, shall be eligible for re-election; and
- (g) if one or more Transitional Directors resign or are removed from office before they are due to be rotated off the Board as required by clause 8.43(b) then the Board must agree on the order of rotation and number of Transitional Directors to retire for the remaining annual general meetings to be held under these transitional provisions.

## **9. Chair and Deputy Chair**

- 9.1 At the first Board meeting held after the vacation of office of the Chair under clause 9.4 the Board must elect an Elected Director as Chair who shall hold the office of Chair under clause 9.3.
- 9.2 If there is no Deputy Chair, the Board may elect a Director as Deputy Chair at any time.
- 9.3 The election of the Chair or Deputy Chair (if any) may be held by any means determined by the Board, but in the event of an equality of votes, the matter must be determined by the drawing of lots.
- 9.4 A Director elected by the Board as Chair or Deputy Chair holds that office until:
  - (a) the expiration of that Director's current term of office as Director;
  - (b) the Director ceases to be a Director in accordance with this Constitution;
  - (c) the Director resigns from the office of Chair or Deputy Chair (as the case may be) by written notice to the Secretary; or
  - (d) the Board, by ordinary resolution excluding the relevant Director, removes the Director from the office of Chair or Deputy Chair (as the case may be).

- 9.5 A Director who is re-appointed as a Director following expiration of the term during which the Director was elected as Chair is eligible for re-election as Chair, provided that the Director has not then already served 2 consecutive full terms as Chair.
- 9.6 The Chair or, in their absence, the Deputy Chair (if any) is entitled to preside as chairperson at every Board meeting.
- 9.7 The Directors present at a board meeting must elect 1 of the Directors present to chair the meeting if any of the following apply:
- (a) there is not then a Chair or Deputy Chair;
  - (b) neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting; or
  - (c) neither the Chair nor the Deputy Chair is willing to act.

## **10. Powers of the Board**

- 10.1 The governance of the Association is the responsibility of the Board duly appointed under and in accordance with this Constitution.
- 10.2 The Board may exercise all the powers of the Association which are not, by the Act or by this Constitution, required to be exercised by the Association in general meeting.
- 10.3 If the Association holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board may exercise any and all voting rights conferred by the membership, shares or interests in any manner it considers fit.

## **11. Board meetings**

### **Convening of Board meetings**

- 11.1 Subject to the provisions of the Act and this Constitution, the Board may meet for the dispatch of business and regulate its meetings as it thinks fit.
- 11.2 The Board must meet at least 4 times in each financial year.
- 11.3 Any Director may request the Secretary to convene a Board meeting at any time and the Secretary must comply with such request.

### **Notice of Board meetings**

- 11.4 Notice of each Board meeting must be given to each Director at least 24 hours before the meeting or otherwise as determined by the Board, except all Directors may waive in writing the required period of notice for a particular meeting.
- 11.5 Notice of Board meeting may be given to a Director by:
- (a) mail or delivery to the usual place of residence of the Director; or
  - (b) mail or delivery to any other address, or
  - (c) e-mail to the e-mail address given by the Director to the Secretary for that purpose
- unless and until the Director informs the Secretary that he or she may not be contacted at that other address or e-mail address.

### **Mode of Board meetings**

- 11.6 A Board meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable time before the meeting.
- 11.7 If a Directors' meeting is held using any technology and all the Directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- 11.8 The following provisions apply to a technology meeting:
- (a) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
  - (b) at the commencement of the meeting each Director must announce their presence to all the other Directors taking part in the meeting.
- 11.9 If the Secretary is not present at a technology meeting, one of the Directors present must cause minutes of the meeting to be taken.
- 11.10 A Director may not leave a technology meeting by disconnecting their link to the meeting unless that Director has previously notified the chairperson of the meeting.
- 11.11 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the chairperson to leave the meeting.
- 11.12 A meeting by electronic communications shall not be invalidated by a voluntary or involuntary disconnection of a participant provided that there shall remain or be reconnected sufficient Directors able to communicate with each other as constitutes a quorum.

### **Quorum at Board meetings**

- 11.13 A quorum for the purposes of a Board meeting is half the number of Directors then on the Board, rounded up to the nearest whole number.
- 11.14 The quorum must be present at all times during the meeting.
- 11.15 If a quorum is not present within 30 minutes from the time appointed for a Board meeting or a longer period allowed by the chairperson:
- (a) the meeting must be adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the chairperson may determine; and
  - (b) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting lapses.

### **Voting at Board meetings**

- 11.16 Questions arising at a Board meeting must be decided by a majority vote of Directors present and voting. If the votes are equal, the question is decided in the negative.
- 11.17 The Chair or chairperson does not have a second or casting vote at Board meetings.

### **Resolution in writing**

- 11.18 A resolution in writing signed by all Directors is as valid and effectual as if it had been passed at a Board meeting duly convened and held.

- 11.19 A resolution in writing may consist of several documents in like form, each signed by one (1) or more Directors and if so signed it takes effect on the latest date on which a Director signs one (1) of the documents.
- 11.20 In relation to a resolution in writing:
- (a) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
  - (b) a resolution bearing an electronic copy of a signature is to be treated as signed.

### **Validity of acts**

- 11.21 All acts done by the Board or a Committee or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person as a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

### **Conflicts of Interest**

- 11.22 The Board must agree from time to time in writing on its policy for the regulation of conflicts of interest.
- 11.23 If there are not enough Directors to form a quorum as a result of one (1) or more Directors having an interest which disqualifies them from voting, then one (1) or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting and the Association in general meeting may pass a resolution to deal with the matter.
- 11.24 A Director may only be engaged to provide goods or services to or on behalf of the Association if:
- (a) that Director is for bona fide reasons considered by Board, agreed to be a suitable person to provide, such goods or services;
  - (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
  - (c) the goods or services are provided on arms-length terms;
  - (d) the provision of the goods and services is disclosed clearly and expressly to the Members in the Association's annual report; and
  - (e) the Board agrees, by ordinary resolution excluding the interested Director, to the provision of the goods or services by the Director.

## **12. Committees and advisory groups**

- 12.1 The Board may appoint one or more committees or advisory groups consisting of such Directors or other persons as the Board thinks fit.
- 12.2 Unless specified otherwise in any terms of reference for a committee or advisory group, the Board may appoint any member of a committee as chairperson of that committee.
- 12.3 In the exercise of any powers delegated to it, a committee or advisory groups must:
- (a) conform to the directions of the Board;
  - (b) report to the Board; and

- (c) otherwise conduct its meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.
- 12.4 The Board may delegate any of its powers, except this power to delegate, to a committee or advisory groups.
- 12.5 For the sake of clarity, the Board may also disband or dissolve any such committee or advisory group.

### **Policy and Advisory Committee**

- 12.6 The Board must establish an advisory committee to support the Association in its work and consider and recommend policy to the Board (**Policy and Advisory Committee**).
- 12.7 Subject to clause 12.8, the Board must agree and set out in writing in the By-Laws the composition and operation of the Policy and Advisory Committee.
- 12.8 The Policy and Advisory Committee must:
  - (a) comprise at least one member from each Branch;
  - (b) have each State and Territory represented separately;
  - (c) such other members as set out in the By-Laws; and
  - (d) meet at least twice in each financial year and at least one meeting must be held in person.
- 12.9 For the purpose of clause 12.8(b), where:
  - (a) two or more States or Territories are represented by one Branch under clause 5.1, that Branch may appoint a representative for each of the States or Territories it represents; and
  - (b) where a State or Territory is not represented by a Branch, the Association may appoint a representative for that State or Territory.
- 12.10 The Board may not exercise the powers of clause 12.5 in relation to the Policy and Advisory Committee.

## **13. Secretary**

- 13.1 The Board shall appoint (on the terms and conditions it sees fit), and terminate the appointment of, the Secretary of the Association.
- 13.2 The Secretary is responsible for carrying out all acts and deeds required by this Constitution or the Act to be carried out by the secretary of the Association.

## **14. Chief Executive Officer**

- 14.1 The Board may appoint any person to the position of chief executive officer for the period and on the terms and conditions (including as to remuneration) the Board sees fit.
- 14.2 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on the CEO any of the powers that the Board can exercise.
- 14.3 The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.

14.4 If the CEO becomes incapable of acting in that capacity, the Directors may appoint any other person other than a Director to act temporarily as CEO until such time as the position can be filled permanently.

14.5 For the avoidance of doubt, the CEO may, at the discretion of the Board, also be the Secretary appointed under clause 13.

## **15. By-Laws**

15.1 The Board may make, adopt, amend and repeal By-Laws with respect to any matter or thing for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the Objects of the Association, which By-Laws are binding on the Members.

15.2 To the extent of any inconsistency, this Constitution prevails over the By-Laws, Code of Ethics and any policy statements.

## **16. Indemnities and insurance**

### **Officers' liabilities to third parties**

16.1 Every officer and past officer of the Association is indemnified against a liability incurred by that person as an officer, other than a liability:

- (a) to the Association or a related body corporate;
- (b) for a pecuniary penalty under section 1311G of the Act or for compensation under section 1317H of the Act;
- (c) to the extent that the Association is not precluded by law (including the Act) from doing so; or
- (d) which arises from conduct that involves a lack of good faith.

### **Officers' costs and expenses**

16.2 Every officer and past officer of the Association is indemnified by the Association against a liability for costs and expenses incurred by that person as an officer, other than legal costs incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under clause 16.1;
- (b) in defending or resisting proceedings in which judgement is made against the person or the person is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this sub-clause does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with any application in relation to those proceedings in which the Court denies relief to the person.

### **Insurance premiums**

- 16.3 The Association may pay the premium on a contract insuring a person who is or has been an officer of the Association against:
- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
  - (b) any other liability incurred by the person as an officer of the Association, except a liability which arises from conduct that involves:
    - (i) a wilful breach of duty in relation to the Association;
    - (ii) a contravention of section 182 of the Act (misuse of position); or
    - (iii) a contravention of section 183 of the Act (misuse of information).

### **17. Seal and execution of documents**

- 17.1 The Association may have a Seal.
- 17.2 If the Association has a Seal:
- (a) the Board must provide for its safe custody; and
  - (b) it may only be used by authority of the Board.
- 17.3 The Association may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
- (a) 2 Directors;
  - (b) a Director and the Secretary; or
  - (c) a Director and some other person appointed by the Board for the purpose.
- 17.4 The Association may execute a document, including a deed, without use of the Seal if the document is signed by:
- (a) 2 Directors; or
  - (b) a Director and the Secretary.
- 17.5 Notwithstanding clauses 17.3 and 17.4, any document, including a deed, may be executed by the Association in any other manner permitted by law.

### **18. Accounts, audit and records**

#### **Financial year**

- 18.1 The financial year of the Association commences on the 1st day of July and ends on the 30th day of June in the following calendar year.

#### **Banking of monies**

- 18.2 All monies of the Association must be banked in a bank account in the name of the Association at such bank as the Board may from time to time direct.

#### **Accounts, records and reports**

- 18.3 The Association 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.
- 18.4 The Association must also keep written records that correctly record its operations.
- 18.5 The Board must provide for the safe custody of the books, records, documents, instruments of title and securities of the Association.

#### **Audit**

- 18.6 A registered company auditor must be appointed to the Association.
- 18.7 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.
- 18.8 The auditor or their representative is entitled to attend any general meeting and be heard on any part of the business of the meeting which concerns the auditor. The auditor or their representative, if present at the meeting, may be questioned by the Members about the audit.

#### **Rights of inspection**

- 18.9 Subject to the Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Association or any of them are open to the inspection of Members.
- 18.10 A Member does not have the right to inspect any document of the Association except as provided by the Act or authorised by the Board.
- 18.11 Active Members are entitled to receive a copy of the Annual Accounts of the Association.

### **19. Notices**

#### **Persons authorised to give notices**

- 19.1 A notice given under this Constitution may be given:
  - (a) on behalf of the Association by a solicitor for the Association, the Secretary or a Director; or
  - (b) on behalf of a Member by a solicitor, secretary or director of the Member.
- 19.2 The signature of a person on a notice given by the Association or a Member may be written, printed or stamped.

#### **Method of giving notices**

- 19.3 A notice by the Association or a Member may be given under this Constitution by any of the following means:
  - (a) by hand delivering it to the street address of the addressee;
  - (b) by sending it by prepaid post (or by airmail if outside Australia) to the street or postal address of the addressee; or
  - (c) by sending it by e-mail to the e-mail address of the addressee.

#### **Address for notices**

- 19.4 For the purposes of clause 19.3:



- (a) the street and postal address of the Association is the registered office of the Association, or such other address as was last formally notified by the Association to the Member;
- (b) the e-mail address of the Association are the details last formally notified by the Association to the Member;
- (c) the street and postal addresses and e-mail address of a Member are the details last formally notified by the Member to the Secretary.

#### **Time notice is given**

19.5 A notice given in accordance with this Constitution is deemed to be given, served and received at the following times:

- (a) if hand delivered to the street address of the addressee, at the time of delivery;
- (b) if sent by express post to the street or postal address of the addressee in Australia, on the next business day after posting;
- (c) if sent by post other than express post to the street or postal address of the addressee, on the 5<sup>th</sup> business day after posting; or
- (d) if sent by e-mail, at the time transmission is completed.

#### **Proof of giving notices**

19.6 The sending of a notice by e-mail and the time of completion of transmission may be proved conclusively by production of a print out of an acknowledgement of receipt of the e-mail or equivalent proof that the email was successfully transmitted.

### **20. Amendment of Constitution**

20.1 Subject to clause 6.10(c)(iv), the Constitution may be amended by a special resolution.

### **21. Formalities omitted**

21.1 If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all members.

### **22. Dispute resolution**

22.1 The dispute resolution procedure in this clause 21 applies to disputes (disagreements) under this Constitution between a Member or Director and:

- (a) one or more Members;
- (b) one or more Directors, or
- (c) the Association.

22.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 21 until the disciplinary procedure is completed.

- 22.3 Those involved in the dispute must try to resolve the dispute between themselves within 14 days of knowing about it.
- 22.4 If those involved in the dispute do not resolve the dispute under clause 22.3, they must within 10 days:
- (a) tell the Directors about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 22.5 The mediator must:
- (a) be chosen by agreement of those involved; or
  - (b) where those involved do not agree:
    - (i) for disputes between Members, a person chosen by the Directors, or
    - (ii) for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the Association has its registered office.
- 22.6 A mediator chosen by the Directors under clause 22.5(b)(i):
- (a) may be a Member or former Member of the Association;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 22.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and
  - (d) not make a decision on the dispute.

## **23. Disciplining Members**

- 23.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Association if the Directors consider that:
- (a) the Member has breached this Constitution, or
  - (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Association.
- 23.2 At least 14 days before the Directors' meeting at which a resolution under clause 23.1 will be considered, the Secretary must notify the Member in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
  - (b) that this resolution will be considered at a Directors' meeting and the date of that meeting;
  - (c) what the Member is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and

- (e) that the Member may provide an explanation to the Directors, and details of how to do so.
- 23.3 Before the Directors pass any resolution under clause 23.1, the Member must be given a chance to explain or defend themselves by:
  - (a) sending the Directors a written explanation before that Directors' meeting; and/or
  - (b) speaking at the meeting.
- 23.4 After considering any explanation under clause 23.3, the Directors may:
  - (a) take no further action;
  - (b) warn the Member;
  - (c) suspend the Member's rights as a Member for a period of no more than 12 months;
  - (d) expel the Member;
  - (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or
  - (f) require the matter to be determined at a general meeting.
- 23.5 The Directors cannot fine a Member.
- 23.6 The Secretary must give written notice to the Member of the decision under clause 23.4 as soon as possible.
- 23.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 23.8 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

## **24. Interpretation**

- 24.1 In this Constitution, unless the context requires otherwise:
  - (a) a reference to any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation and a reference to a specific provision of such legislation is a reference to the equivalent provision in any later amended, re-enacted or replacement legislation;
  - (b) a reference to this Constitution, where amended, means this Constitution as so amended;
  - (c) a reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule of this Constitution;
  - (d) a word which denotes:
    - (i) the singular denotes the plural and vice versa;
    - (ii) any gender denotes the other genders; and
    - (iii) a person denotes an individual and a body corporate;
  - (e) where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

- (f) an expression used but not defined in this Constitution has the same meaning as given in the Act;
  - (g) writing includes any mode of representing or reproducing words in a visible form; and
  - (h) a reference to 'dollars' or '\$' means Australian dollars.
- 24.2 Headings and any table of contents must be ignored in the interpretation of this Constitution.

### Calculation of time

- 24.3 In this Constitution, unless the context requires otherwise:
- (a) a reference to a time of day means that time of day in the state or territory in which the Association's registered office is located;
  - (b) a reference to a business day means a day during which banks are open for general banking business in the state or territory in which the Association's registered office is located;
  - (c) for the purposes of determining the length of a period (but not its commencement) a reference to:
    - (i) a day means a period of time commencing at midnight and ending 24 hours later; and
    - (ii) a month means a calendar month which is a period commencing at the beginning of a day of 1 of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month;
  - (d) where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event; and
  - (e) a provision of this Constitution, except that specifying the time for deposit of proxies with the Association, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

### Replaceable rules

- 24.4 Each of the provisions of the Act which would but for this clause apply to the Association as a replaceable rule within the meaning of the Act are displaced and do not apply to the Association.

## 25. Definitions

- 25.1 In this Constitution, unless the context requires otherwise:
- (a) **Act** means the *Corporations Act 2001* (Cth);
  - (b) **Active Members** are the registered dentists who are members of a Branch and who have been admitted to membership of the Association in accordance with this Constitution;
  - (c) **Association** means Australian Dental Association Ltd ABN [to be inserted upon registration with ASIC];

- (d) **Board** means the National Board of Directors of the Association;
- (e) **Board Appointed Director** means a Director appointed to the Board in accordance with clause 8.15;
- (f) **Board Nominations Committee** means the board nominations committee established under clause 8.37;
- (g) **Board Nominations Committee Policy** has the meaning given to that term in clause 8.38;
- (h) **Branch** means an organisation for the time being recognised as the Branch of the Association in a State or Territory in accordance with clause 5.1, and listed in Annexure A to this Constitution;
- (i) **Branch Council** means the body (by whatever name called) authorised by the constitution or other governing document of the Branch to govern and manage the affairs of such Branch;
- (j) **Branch President** means the President of a Branch, by whatsoever name called, duly appointed in accordance with the constitution or other governing document of the Branch;
- (k) **By-Laws** means by-laws made or adopted under clause 15;
- (l) **CEO** means the chief executive officer of the Association, appointed under clause 14.1;
- (m) **Chair** means the chair of the Board, appointed from time to time under clause 9.1 (who may be referred to as the President);
- (n) **chairperson** means the person entitled to preside as chair at a particular:
  - (i) board meeting, as determined under clauses 9.5 and 9.7; or
  - (ii) general meeting, as determined under clauses 6.26 to 6.28;
- (o) **Code of Ethics** means the document of that name, adopted by the Board for the purpose of encouraging and maintaining the highest standards of professional conduct by Members of the Association;
- (p) **committee** means a committee appointed by the Board under clause 12.1;
- (q) **Constitution** means this constitution of the Association as amended from time to time;
- (r) **Deputy Chair** means the deputy chair of the Board, if any, elected from time to time under clause 9.2 (who may be referred to as the Vice President);
- (s) **Director** means a person appointed in accordance with this Constitution to perform the duties of a director of the Association;
- (t) **Director Eligibility and Board Composition Policy** means a written policy made by the Board, as updated from time to time, in accordance with clause 8.8 regarding Director eligibility and the composition of the Board;
- (u) **Elected Director** means a Director appointed to the Board in accordance with clause 8.10;
- (v) **Federal Council** means those people who were identified in clause 31 of the Association's constitution prior to the adoption of this Constitution;

- (w) **Federal Executive** means those people elected in accordance with clauses 62-71 of the Association's constitution prior to the adoption of this Constitution;
- (x) **Financial Member** means a Member who had paid all fees and Subscriptions;
- (y) **First Transitional Group** means the group of Transitional Directors who will be first to rotate off the Board after the adoption of this Constitution as contemplated by clause 8.43(b)(ii);
- (z) **Honorary Life Members** are individuals who have made an outstanding contribution to the advancement of the dental profession or to the art and science of dentistry and have been elected as an Honorary Life Member of the Association at a general meeting;
- (aa) **Honorary Members** are individuals distinguished in dental or allied sciences, or any individual who has rendered distinguished service to the Association or to the promotion of any such sciences or to any individual who, in the opinion of the Board, may further advance the interests of the dentistry or allied sciences profession, who has been elected as an Honorary Member by the Board. Honorary Members are elected for a period of not less than 12 months and not more than three years but they are eligible for re-election. Honorary Members are Non-Voting Members;
- (bb) **Member** means a person who, at the relevant time, is a member of the Association in accordance with this Constitution (whether a Voting Member or a Non-Voting Member), unless otherwise specified;
- (cc) **Non-Voting Member** means a person who, at the relevant time, is a Non-Voting Member of the Association in accordance with clause 4.7;
- (dd) **Objects** means the objects of the Association as set out in clause 2;
- (ee) **Policy and Advisory Committee** has the meaning given to that term in clause 12.6;
- (ff) **Register** means the register of Members kept by the Association under the Act;
- (gg) **Seal** means the common seal of the Association (if any);
- (hh) **Second Transitional Group** means the group of Transitional Directors who will be second to rotate off the Board after the adoption of this Constitution as contemplated by clause 8.43(b)(iii);
- (ii) **Secretary** means the person appointed as secretary of the Association under clause 13.1;
- (jj) **special resolution** means a resolution passed at a general meeting of the Association passed by at least 75% of the votes cast by the Voting Members present in person, by representative, or by proxy and entitled to vote on the resolution;
- (kk) **Subscription** means the annual subscription fee payable by the Members in accordance with clause 4.25;
- (ll) **Third Transitional Group** means the group of Transitional Directors who will be third to rotate off the Board after the adoption of this Constitution as contemplated by clause 8.43(b)(iv);

- (mm) **Transitional Directors** means the Directors referred to in clause 8.41 as the Transitional Directors; and
- (nn) **Voting Member** means a person who, at the relevant time, is a Voting Member of the Association in accordance with clause 4.1.

# Annexure A

## Branches

The Association recognises the following organisations as Branches:

- Australian Dental Association (New South Wales Branch) Limited
- Australian Dental Association (NT Branch) Incorporated
- The Australian Dental Association (Queensland Branch)
- Australian Dental Association South Australian Branch Incorporated
- Australian Dental Association, Tasmanian Branch Incorporated
- Australian Dental Association Victorian Branch Inc.
- Australian Dental Association (WA Branch) Inc.