



Constitution of Autism Queensland Limited

A company limited by guarantee

Version: 4

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Constitution

Autism Queensland Limited

1 Preliminary

1.1 Definitions

In this constitution:

Term	Definition
ACNC	the Australian Charities and Not-for-profits Commission
ACNC Act	means the <i>Australian Charities & Not-for-profits Commission Act 2012</i> (Cth).
ASD	Autism Spectrum Disorders as prescribed by DSM-V and all those disorders previously included in the description of autism spectrum disorders in DSM-IV, Autistic Disorder, Asperger's Disorder, PDD-NOS and Childhood Disintegrative Disorder, and for rule 2.1(a) (i) includes persons who may not have ASD who have special needs who would benefit from the services of the organisation.
Person on the autism spectrum	A person with a diagnosis of ASD
Board	Autism Queensland Limited Board of Directors
Business Day	a day that is not a Saturday, Sunday or public holiday in Brisbane in the State of Queensland
Company Secretary	means the secretary referred to in rule 11.1 and any other person appointed to perform the duties of a secretary of the Company under the <i>Corporations Act</i>
Corporations Act	<i>Corporations Act 2001</i> (Cth)
Guarantee amount	the amount set out in rule 5.1(b)
Gift Moneys	means all gifts of money or property (including contributions made in relation to an eligible fundraising event) made to the company
ITAA	the <i>Income Tax Assessment Act 1997</i> (Cth)

1.2 Interpretation

In this constitution:

- (a) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or Representative;
- (b) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (c) unless the contrary intention appears:
 - (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
 - (ii) a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns;
 - (iii) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iv) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (v) a reference to a rule is a reference to a rule of this constitution;
 - (vi) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced; and
 - (vii) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day,
- (d) headings are for convenience only and do not affect interpretation.

1.3 Application of the *Corporations Act*

- (a) The replaceable rules in the *Corporations Act* do not apply to the company.
- (b) Where an expression is used in a manner consistent with a provision of the *Corporations Act*, the expression has the same meaning as in that provision.

1.4 Exercising powers

- (a) The company may exercise any power, take any action or engage in any conduct which the *Corporations Act* permits a company limited by guarantee to exercise, take or engage in.
- (b) A power conferred on a person to do a particular act or thing under this constitution includes, unless the contrary intention appears, a power (exercisable in the same way

and subject to the same conditions) to repeal, rescind, revoke, amend or vary that act or thing.

- (c) A power conferred under this constitution to do a particular act or thing:
 - (i) may be exercised from time to time and subject to conditions; and
 - (ii) may, where the power concerns particular matters, be exercised for only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (d) Where a power to appoint a person to an office or position is conferred under this constitution (except the power to appoint a director under rule 8) the power includes, unless the contrary intention appears, a power to:
 - (i) appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and
 - (iii) appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (e) Where this constitution gives power to a person to delegate a function or power:
 - (i) the delegation may be concurrent with, or (except in the case of a delegation by the directors) to the exclusion of, the performance or exercise of that function or power by the person;
 - (ii) the delegation may be either general or limited in any way provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
 - (iv) the delegation may include the power to delegate; and
 - (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (f) For clarification, nothing restricts the company from exercising a power which in itself is not charitable, for any purpose which is incidental to the charitable objects of the company or which is intended to generate revenue for or otherwise further those objects.

2 Objects

2.1 Objects of company

- (a) The objects of the company are to provide support and services to persons living with autism and their families including by:
 - (i) facilitating and providing support and services to enhance the lives of persons on the autism spectrum and their families;
 - (ii) contributing to research into autism and the development of improved treatments, equipment and technology for persons living with autism;
 - (iii) facilitating positive community response to persons on the autism spectrum; and
 - (iv) advocating on behalf of persons on the autism spectrum and their families to all levels of the community and government.
- (b) To achieve these objects, the company may, without limitation:
 - (i) harness the resources of the community in support of the objects in rule 2.1(a);
 - (ii) establish and maintain affiliations and information exchange with other organisations having similar objects to those in rule 2.1(a);
 - (iii) act as trustee of any trust the purpose of which relates to the objects in rule 2.1(a);
 - (iv) promote the objects in rule 2.1(a);
 - (v) provide educational activities and a supportive, nurturing environment for children diagnosed with ASD who might not otherwise gain appropriate support and care in a mainstream education setting; and
 - (vi) do all other things incidental or conducive to the attainment of the objects in rule 2.1(a).

3 Not for profit

3.1 Promotion of the objects

The income and property of the company must only be applied towards promoting the company's objects set out in this constitution.

3.2 No income or property to a member

No income or property of the company may be paid or transferred, directly or indirectly, to a member except for payments to a member:

- (a) in return for services rendered by, or goods supplied, by the member to the company in the ordinary and usual course of business;
- (b) for reasonable and proper rent for premises leased by a member to the company; or
- (c) as principal payments on money lent by the member, and interest payments if the interest is at a commercial rate.

4 Membership

4.1 Members

- (a) The members are:
 - (i) the persons named as members with their consent in the application for registration of the company; and
 - (ii) any other person admitted to membership under this constitution.
- (b) The number of members of the company is unlimited.

4.2 Classes

- (a) Until otherwise decided by the members in a general meeting, the only class of membership is ordinary membership.
- (b) The company may award life membership to a person which will entitle that member to all of the privileges of ordinary membership and that member will not be required to pay an application or membership fee.

4.3 Application

- (a) Any individual, other than a person who is employed by the company, who:
 - (i) is not less than 18 years of age at the date of application; and
 - (ii) in the opinion of the Board, is supportive of the objects of the company;may apply to be a member of the company.
- (b) An application for membership must be in a form approved by the Board together with:
 - (i) any other documents or evidence as to qualification for membership that the Board requires; and
 - (ii) any application fee and membership fee as required by the Board.

- (c) If the applicant is a body corporate it must nominate one individual (**Representative**) to represent it in the company.
- (d) A Representative must consent to the nomination in writing.

4.4 Admission to membership

- (a) The Board may in its absolute discretion accept or reject an application for membership.
- (b) The Board need not give a reason for rejecting an application for membership.
- (c) If an application for membership is rejected, the Company Secretary must:
 - (i) give written notice of the rejection to the applicant; and
 - (ii) refund any application fee and membership fee paid by the applicant, as soon as reasonably possible.
- (d) If an application for membership is accepted, the Company Secretary must:
 - (i) give written notice of the acceptance to the applicant; and
 - (ii) enter the member's name and details in the register of members.

4.5 Notice by members

- (a) Each member must promptly notify the Company Secretary in writing of:
 - (i) any change in their qualification to be a member of the company; and
 - (ii) any change in their address or contact details.
- (b) Each body corporate member must promptly notify the Company Secretary in writing of any change in its Representative.

4.6 Fees

The application fee and membership fee payable by a member are determined by the Board from time to time.

4.7 Resignation and termination of membership

- (a) A member ceases to be a member if the member:
 - (i) resigns as a member by giving one months written notice to the company;
 - (ii) dies;
 - (iii) is terminated by the Board under rule 4.7(b);

- (iv) does not respond within 2 months to a written request from the Company Secretary (whether by email communication or otherwise) that the member confirm in writing that he or she wants to remain a member of the Company.
- (b) The Board may terminate a member's membership if the member:
 - (i) fails to notify the Company of a change in address or contact details and is unable to be contacted at the address in the register for a period of two months;
 - (ii) has membership fees in arrears;
 - (iii) is of unsound mind or is a patient under laws relating to mental health or whose estate is administered under the laws about mental health; or
 - (iv) has conducted himself or herself in a way the Board consider to be injurious or prejudicial to the character or interests of the company.
- (c) The Board must give the member written notice of its intention to terminate the member's membership and the reason for the proposed termination.
- (d) If the reason set out in the notice under rule 4.7(c) remains unresolved, in the opinion of the Board, for one month after the date of the notice, the member's membership is terminated.
- (e) The rights or privileges of membership may be reinstated at the absolute discretion of the Board.
- (f) Membership is personal to the member and is not transferable.

4.8 Dispute resolution

- (a) The dispute resolution procedure in this rule applies to disputes or disagreements under this constitution between a member or director and:
 - (i) one or more members;
 - (ii) one or more directors; or
 - (iii) the company.
- (b) Those involved in a dispute must try to resolve it between themselves within 14 days of knowing about it.
- (c) If those involved in the dispute do not resolve it under rule 4.8(b), they must within 10 days:
 - (i) tell the directors about the dispute in writing;
 - (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.

(d) The mediator must:

- (i) be chosen by agreement of those involved; or
- (ii) where those involved do not agree:
 - (A) for disputes between members, a person chosen by the directors; or
 - (B) for other disputes, a person chosen by either the Commissioner of the ACNC or the President or Vice President of the Queensland Law Society Incorporated.

(e) A mediator chosen by the directors under rule 4.8(d)(ii)(A):

- (i) may be a member or former member of the company;
- (ii) must not have a personal interest in the dispute; and
- (iii) must not be biased towards or against anyone involved in the dispute.

(f) When conducting the mediation, the mediator must:

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

5 Change of status and Winding up

5.1 Change of status

(a) If, during its lifetime, the company ceases to be endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA, any surplus Gift Moneys that the company may hold at that time must be transferred to a fund, authority or institution:

- (i) which is charitable at law;
- (ii) gifts to which can be deducted under division 30 of the ITAA; and
- (iii) which has been approved in writing by the company.

5.2 Limited liability on winding up

(a) If the company is wound up while a person is a member, or within one year after the person ceases to be a member, the person must contribute to the assets of the company for the:

- (i) payment of the debts and liabilities of the company contracted before the person ceased to be a member; and
- (ii) costs of winding up, up to an amount not exceeding the guarantee amount.

(b) Each member of the company agrees the guarantee amount under rule 5.1(a) is \$1.

5.3 No distribution of profits to members on a winding up

Where property remains after the winding-up or dissolution of the company (other than Gift Moneys) and satisfaction of all its debts and liabilities, it must not be distributed among members.

(a) Subject to rule 5.1, property referred to in rule 5.2(a) must be given to another fund, authority or institution:

- (i) with objects similar to the objects of the company; and
- (ii) has a similar endorsement as the company from the Commissioner of Taxation for the purposes of the ITAA; and
- (iii) meets the requirements of section 149C(5) of the *Taxation Administration Act 2001* (Qld).

(b) The fund, authority or institution to receive property under rule 5.2(b) must be decided by the directors at or before the time of the winding-up or dissolution. If the directors do not wish to decide, or do not decide, the members by ordinary resolution must decide. If the members do not decide, the decision must be referred to the Supreme Court of the state or territory in which the company's registered office is located.

6 Annual General Meeting

6.1 Annual general meeting

The directors may decide to call an annual general meeting of members.

6.2 Business at annual general meetings

(a) The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (i) the consideration of the annual financial report, directors' report (including a review of the Company's activities) and auditor's report;
- (ii) the election of directors;
- (iii) the appointment of the auditor; and
- (iv) the fixing of the auditor's remuneration.

(b) All other business transacted at an annual general meeting and all business transacted at other general meetings is special business.

The auditor or reviewer, if any, and its representative may attend and be heard on any part of the business of a meeting concerning the auditor or reviewer. The auditor or reviewer, if any, or its representative, if present at the meeting, may be questioned by the members, as a whole, about the audit or review, if undertaken.

6.3 Provisions about general meetings apply to annual general meeting

The provisions of this constitution about general meetings apply, with necessary changes, to annual general meetings.

7 General meetings

7.1 Calling general meetings

A general meeting may only be called:

- (a) by a directors' resolution; or
- (b) as otherwise provided in the *Corporations Act*.

7.2 Postponing or cancelling a meeting

- (a) The directors may:

- (i) postpone a meeting of members;
 - (ii) cancel a meeting of members; or
 - (iii) change the place for a general meeting,

if they consider that the meeting has become unnecessary, or the venue would be unreasonable or impractical or a change is necessary in the interests of conducting the meeting efficiently.

- (b) A meeting which is not called by a directors' resolution and is called under a members' requisition under the *Corporations Act* may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

7.3 Notice of general meetings

- (a) Notice of a general meeting must be given to each person who at the time of giving the notice is a member, director or auditor of the company.
- (b) The directors may decide the content of a notice of a general meeting, but the notice must include the general nature of the business to be transacted at the meeting and any other matters required by the *Corporations Act*.
- (c) Unless the *Corporations Act* provides otherwise:
 - (i) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
 - (ii) except with the approval of the directors or the Chair, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to that resolution and a copy of which has been made available to members to inspect or obtain.
- (d) A person may waive notice of any general meeting by written notice to the company.

7.4 Non-receipt of notice

- (a) Subject to the *Corporations Act*, the:
 - (i) non-receipt of a notice of any general meeting by; or
 - (ii) accidental omission to give notice to,

any person entitled to notice does not invalidate anything done (including the passing of a resolution) at that meeting.

(b) A person's attendance at a general meeting waives any objection that person may have to:

- (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
- (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

7.5 Technology

The company may hold a meeting of its members using virtual meeting technology provided the technology gives the persons entitled to attend the meeting, as a whole, a reasonable opportunity to participate without being physically present in the same place.

7.6 Admission to general meetings

(a) The Chair of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (i) in possession of a pictorial-recording or sound-recording device;
- (ii) in possession of a placard or banner;
- (iii) in possession of an article considered by the Chair to be dangerous, offensive or liable to cause disruption;
- (iv) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
- (v) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or
- (vi) who is not entitled to receive notice of the meeting.

The Chair may delegate the powers conferred by this rule to any person.

- (b) A person, whether a member or not, requested by the directors or the Chair to attend a general meeting is entitled to be present and, at the request of the Chair, to speak at the meeting.

7.7 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a Chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum of members for a general meeting is 3 persons entitled to vote.
- (c) In determining whether a quorum is present, individuals attending as proxies and attorneys are counted. If an individual is attending both as a member and as a proxy or attorney, the individual is counted only once.
- (d) If a quorum is not present within 30 minutes after the time appointed for the general meeting:
 - (i) where the meeting was called at the request of members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, and at the time and place, the directors present decide; or
 - (B) if they do not make a decision, to the same day in the next week at the same time and place.
- (e) At an adjourned meeting, if a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

7.8 Chair

- (a) The Chair of the Board is entitled to take the chair at every general meeting.
- (b) If at any general meeting:
 - (i) the Chair of the Board is not present at the specified time for holding the meeting; or
 - (ii) the Chair of the Board is present but is unwilling to act as Chair of the meeting, the Deputy Chair of the Board is entitled to take the chair at the meeting.
- (c) If at any general meeting:
 - (i) there is no Chair of the Board or Deputy Chair of the Board;

- (ii) the Chair of the Board and Deputy Chair of the Board are not present at the specified time for holding the meeting; or
- (iii) the Chair of the Board and the Deputy Chair of the Board are present, but each is unwilling to act as Chair of the meeting,

the directors present may choose another director as Chair of the meeting and if no director is present or if each of the directors present are unwilling to act as Chair of the meeting, a member chosen by the members present is entitled to take the chair at the meeting.

7.9 Acting Chair

- (a) A Chair of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chair**).
- (b) Where an instrument of proxy appoints the Chair as proxy for part of the proceedings for which an acting Chair has been nominated, the instrument of proxy is taken to be in favour of the acting Chair for the relevant part of the proceedings.

7.10 Conduct at general meetings

The Chair of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the Chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the *Corporations Act*, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chair under this rule is final.

7.11 Adjournment and postponement by the Chair

- (a) Despite rules 7.2(a) and 7.2(b), where the Chair considers that:
 - (i) there is not enough room for the number of members who wish to attend the meeting; or
 - (ii) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out,

the Chair may postpone the meeting before it has started, whether or not a quorum is present.

- (b) A postponement under rule 7.11(a) is to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place is taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (c) The Chair may at any time during the course of the meeting:
 - (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and
 - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for any period or periods he or she decides without effecting an adjournment. No business may be transacted, and no discussion may take place during any suspension of proceedings unless the Chair otherwise allows.
- (d) The Chair's rights under rules 7.11(a) and 7.11(c) are exclusive and, unless the Chair requires otherwise, no vote may be taken or demanded by the members present about any postponement, adjournment or suspension of proceedings.
- (e) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (f) Where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting.

7.12 Decisions at general meetings

- (a) Except where a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. A decision made in this way is for all purposes, a decision of the members.
- (b) If the votes are equal on a proposed resolution the Chair of the meeting has a casting vote, in addition to any deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:
 - (i) before the show of hands is taken;
 - (ii) before the result of the show of hands is declared; or
 - (iii) immediately after the result of the show of hands is declared.
- (d) Unless a poll is duly demanded, a declaration by the Chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the company's minute book is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

7.13 When poll may be demanded

- (a) A poll may be demanded by:
 - (i) the Chair;
 - (ii) at least five members entitled to vote on the resolution; or
 - (iii) by members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (c) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the Chair of the meeting directs. The result of the poll as declared by the Chair is the resolution of the meeting at which the poll was demanded.

7.14 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting:
 - (i) on a show of hands, each member present has one vote;
 - (ii) where a person is entitled to vote by virtue of rule 7.15 in more than one capacity, that person is entitled only to one vote on a show of hands;
 - (iii) if the person appointed as 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; and
 - (iv) on a poll, each member present has one vote.
- (b) Where any of the membership fee or other amount payable to the company has not been duly paid that member is not entitled to vote.
- (c) A member is not entitled to vote on a resolution if, under the *Corporations Act* the notice which called the meeting specified that:
 - (i) the member must not vote or must abstain from voting on the resolution; or
 - (ii) a vote on the resolution by the member must be disregarded for any purposes.
- (d) If the member referred to in rule 7.14(c) or a person acting as proxy, attorney or Representative of that member does tender a vote on that resolution, their vote must not be counted.
- (e) An objection to the validity of a vote tendered at a general meeting must be:
 - (i) raised before or immediately after the result of the vote is declared; and

- (ii) referred to the Chair of the meeting, whose decision is final.
- (f) A vote tendered, but not disallowed by the Chair of a meeting under rule 7.14(e), is valid for all purposes, even if it would not otherwise have been valid.
- (g) The Chair may decide any difficulty or dispute which arises as to the number of votes which may be cast by or on behalf of any member and the decision of the Chair is final.

7.15 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a general meeting may vote:
 - (i) in person;
 - (ii) by not more than one proxy; or
 - (iii) by not more than one attorney.
- (b) A proxy, attorney or Representative may, but need not, be a member of the company.

7.16 Appointment of proxies

- (a) Any member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy may be a member who is not entitled in their own right to vote on a particular resolution.
- (c) The document appointing a proxy must:
 - (i) be in the form approved by the Board;
 - (ii) be signed by the appointor or his attorney;
 - (iii) set out the name of the person to be appointed as proxy;
 - (iv) allow the member to direct the proxy to vote for or against (or abstain from voting on) any proposed resolution;
 - (v) set out the period of appointment including whether it is valid only for stipulated meetings; and
 - (vi) be received by the Company at least 48 hours (or a lesser period as the Board may decide and stipulate in the notice of meeting) before the time for holding the meeting or poll at which the person named in the document proposes to vote.
- (d) Unless otherwise specified or revoked a proxy appointment is valid:
 - (i) for 12 months after the date of its execution; or

- (ii) for any adjournment of the meeting, as well as for the meeting to which it relates.
- (e) The proxy document is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.

7.17 Circulating resolutions

- (a) This rule 7.17 applies to resolutions which the *Corporations Act*, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the *Corporations Act* to remove an auditor.
- (b) The company 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.
- (c) 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.
- (d) The resolution is passed when the last member signs.
- (e) If the company receives by facsimile transmission or electronic mail a copy of a document referred to in this rule 7.17 it is entitled to assume that the copy is a true copy.

8 Directors

8.1 Directors

The Board will consist of at least three and not more than nine directors. At least one director must have a lived experience with ASD.

8.2 Qualification for membership of the Board

- (a) No person may be a director unless that person:
 - (i) is a member of the Company;
 - (ii) is not precluded from being:
 - (A) a director under the *Corporations Act*; and
 - (B) a responsible entity under the *ACNC Act*;
 - (iii) holds all necessary approvals or clearances from government required as a consequence of the nature of the Company's objects and activities.

8.3 Election of directors

All directors are to be elected by the Members at a general meeting, with the process for election to be determined by the Board from time to time.

8.4 Retirement of directors

- (a) Each director must retire from office at the third annual general meeting following his or her appointment as a director and, if eligible and nominated, may be re-elected.
- (b) Notwithstanding rule 8.4(a), the Board may determine which of the directors, are to retire from time to time and, to the extent the law permits, the date of their retirement.

8.5 Resignation

A director may resign from the Board by written notice delivered to the Company Secretary. The resignation takes effect when the notice is received by the Company Secretary, or on a later date specified in the notice.

8.6 Removal

- (a) Subject to the *Corporations Act*, a director may be removed from office by resolution of the members present and entitled to vote at a general meeting of the company convened for that purpose. At the meeting the director must be given the opportunity to present his or her case orally or in writing.
- (b) A director removed under rule 8.6(a) retains office until the dissolution or adjournment of the general meeting at which he or she is removed.

8.7 Vacating office

In addition to the circumstances prescribed by the *Corporations Act* and this constitution, the office of a director becomes vacant if the director:

- (a) becomes an insolvent under administration, suspends payment generally to creditors or compounds with or assigns the director's estate for the benefit of creditors;
- (b) becomes a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws about mental health;
- (c) is absent from meetings of the directors during a period of three consecutive calendar months without leave of absence from the directors where the directors have not, within 14 days of having been served by the Company Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (d) resigns office by written notice to the company;
- (e) is removed from office under rule 8.6 in accordance with the *Corporations Act*;
- (f) becomes disqualified from being a director under the *Corporations Act* or a responsible entity under the *ACNC Act* or any order made under the *Corporations Act* or *ACNC Act*;

- (g) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (h) ceases to be qualified as a director under rule 8.2.

8.8 Time appointment or retirement takes effect

- (a) Directors who are appointed at a meeting of members take office immediately after the end of the meeting.
- (b) Directors who retire at a meeting of members continue to hold office until the end of the meeting.

8.9 Casual vacancies and additional directors

- (a) The Board has power to appoint a qualified person as a director either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- (b) Any person appointed under this rule holds office until the termination of the next general meeting of the Company and is then eligible for re-election.

8.10 Directors who are unable to fulfil their duties due to illness or incapacity

- (a) A director may be removed from office by the Board if the Board resolves under its policy that the director is unable to fulfil their duties due to physical or mental illness or other incapacity.
- (b) The Board will implement a policy about directors who are unable to fulfil their duties due to physical or mental illness or other incapacity for the purpose of making a determination under rule 8.10(a).

8.11 Directors' interests

- (a) A director is not disqualified by reason only of being a director (or the fiduciary obligations arising from that office) from:
 - (i) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the company or in which it has interest;
 - (ii) being a member, creditor or otherwise being interested in any body corporate (including the company), partnership or entity, except as auditor of the company;
 - (iii) entering into any agreement or arrangement with the company; or
 - (iv) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the company, except as auditor of the company.

- (b) Each director must comply with the *Corporations Act* on the disclosure of the director's interests.
- (c) The directors may make regulations requiring the disclosure of interests that a director, and any person taken by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.
- (d) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under rule 8.11(c).
- (e) A director who has a material personal interest in a matter that is being considered by the directors must not be present at a meeting while the matter is being considered nor vote on the matter, except where permitted by the *Corporations Act*.
- (f) If a director has an interest in a matter, then subject to rules 8.11(c), 8.11(g) and the constitution:
 - (i) that director may not be counted in a quorum at the Board meeting that considers the matter that relates to the interest;
 - (ii) that director may not participate in and vote on matters that relate to the interest;
 - (iii) the company can proceed with any transaction that relates to the interest and the director may participate in the execution of any relevant document by or on behalf of the company;
 - (iv) the director may retain the benefits under the transaction that relates to the interest even though the director has the interest; and
 - (v) the company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (g) If an interest of a director is required to be disclosed under rule 8.11(b), rule 8.11(f)(iv) applies only if the interest is disclosed before the transaction is entered into.
- (h) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
 - (i) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, if the director complies with the disclosure requirements applicable to the director under rule 8.11(a) and under the *Corporations Act* about that interest.
 - (j) A director who is interested in any contract or arrangement may, despite that interest, witness the fixing of the company seal to any document evidencing or otherwise connected with that contract or arrangement.

8.12 Directors' remuneration

The directors of the company may be paid reasonable remuneration in an amount approved by the members by special resolution passed at a general meeting.

8.13 Directors' expenses

- (a) The company may pay the directors' travelling and other expenses that they properly incur:
 - (i) in attending directors' meetings or any meetings of committees of directors;
 - (ii) in attending any general meetings of the company; and
 - (iii) in connection with the company's business.
- (b) The directors must approve all payments the company makes to its directors.

8.14 Financial benefit

To the extent, if any, required by the *Corporations Act* or *ACNC Act*, a director must ensure that the *Corporations Act* or *ACNC Act* are complied with in relation to any financial benefit given by the company to the director or to any related party of the director.

9 Powers and duties of directors

9.1 General powers

- (a) The directors are responsible for managing the business of the company and may exercise all powers and do all things that are within the company's power and are not expressly required by the *Corporations Act* or this constitution to be exercised by the company in a general meeting.
- (b) The Board may make regulations, by-laws and policies consistent with the constitution, which in the opinion of the Board are necessary or desirable for the proper control, administration and management of the company's finances, affairs and property, or are necessary for the convenience, comfort and well-being of the members (including the terms of entry of members to the company's premises and any event or function sponsored, promoted, facilitated or conducted by the company) and amend or rescind any regulations and by-laws.
- (c) A regulation, policy or by-law of the company made by the Board may be disallowed by the company in a later general meeting. A resolution or regulation made by the company in general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

9.2 Power to borrow and give security

- (a) The directors may exercise all the powers of the company to:
 - (i) borrow or raise money in any other way;

- (ii) charge mortgage or otherwise encumber any of the company's property or business or any of its property; and
- (iii) issue debentures or give any security for a debt, liability or obligation of the company or of any other person.

(b) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the company.

9.3 Powers of appointment

The directors may:

- (a) appoint or employ any person as an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for any period and on any other conditions they decide;
- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
- (c) remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

9.4 Directors' duties

- (a) The directors must comply with their duties as directors and with the duties described in Governance Standard 5 of the Regulations made under the *ACNC Act* which are:
 - (i) 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;
 - (ii) to act in good faith and the best interests of the company and to further the purposes of the company set out in rule 2.1;
 - (iii) not to misuse their position as a director;
 - (iv) not to misuse information they gain in their role as a director;
 - (v) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 8.11;
 - (vi) to ensure that the financial affairs of the company are managed responsibly; and
 - (vii) not to allow the company to operate while it is insolvent.

10 Proceedings of directors' meetings

10.1 Meetings of directors

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum, constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A meeting by telephone or other electronic means is to be taken to be held at the place where the Chair of the meeting is or at any other place the Chair of the meeting decides on, if at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the Chair may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

10.2 Calling meetings of directors

- (a) A director may, whenever the director thinks fit, call a meeting of the directors.
- (b) A Company Secretary must, if requested by a director, call a meeting of the directors.

10.3 Notice of meetings of directors

- (a) Notice of a meeting of directors must be given to each person who is, at the time the notice is given a director, except a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may, if necessary, be given immediately before the meeting; and
 - (iv) may be given in person or by post or by telephone, fax or other electronic means.
- (c) A director may waive notice of a meeting of directors by giving notice to that effect in person or by post or by telephone, fax or other electronic means.

- (d) Failure to give a director notice of a meeting of directors does not invalidate anything done or any resolution passed at the meeting if:
 - (i) the failure occurred by accident or inadvertent error; or
 - (ii) the director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

10.4 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) The quorum for a directors' meeting is 3 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.
- (c) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

10.5 Chair and Deputy Chair of directors

- (a) The directors may elect, for any period they decide:
 - (i) a director to the office of Chair of directors; and
 - (ii) may elect one or more directors to the office of Deputy Chair of directors.
- (b) The Chair of directors is entitled (if present within ten minutes after the time appointed for the meeting and willing to act) to preside as Chair at a meeting of directors.
- (c) If at a meeting of directors:
 - (i) there is no Chair of directors;
 - (ii) the Chair of directors is not present within ten minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chair of directors is present within that time but is not willing or declines to act as Chair of the meeting,

the Deputy Chair if any, if then present and willing to act, is entitled to be Chair of the meeting or if the Deputy Chair is not present or is unwilling or declines to act as Chair of the meeting, the directors present must elect one of themselves to chair the meeting.

10.6 Decisions of directors

- (a) The directors, at a meeting at which a quorum is present, may exercise any authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present and entitled to vote on the matter.
- (c) If the votes are equal on a proposed resolution the Chair of the meeting has a casting vote in addition to his or her deliberative vote.

10.7 Written resolutions

- (a) A resolution in writing of which notice has been given to all directors and which is signed or consented to by all of the directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted and may consist of several documents in the same form, each signed or consented to be one or more of the directors.
- (b) A director may consent to a resolution by:
 - (i) signing the document containing the resolution (or a copy of that document);
 - (ii) giving to the company a written notice (including by fax or other electronic means) addressed to the Company Secretary or to the Chair of directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (iii) telephoning the Company Secretary or the Chair of directors and signifying assent to the resolution and clearly identifying its terms.

10.8 Committees of directors

- (a) The directors may delegate their powers to one or more committee of directors which may include also any individual who is not a director.
- (b) The committee must exercise the powers delegated in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under rule 10.8(b).

10.9 Appointment of advisory group

- (a) The directors may establish an advisory group. The directors may appoint and remove members of the advisory group and terminate an advisory group at any time.
- (b) The functions of the advisory group will be decided by the directors.

- (c) The directors may specify:
 - (i) the manner in which proceedings of an advisory group are conducted;
 - (ii) the matters which the advisory group must consider in carrying out its functions; and
 - (iii) any other matters concerning the advisory group or its functions that the directors decide.
- (d) For the avoidance of doubt, an advisory group established under rule 10.9(a) will not be delegated with any power of the Board.

10.10 Delegation to a director

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

10.11 Validity of acts

- (a) All acts done at any meeting of the directors or by a committee or by any person acting as a director are, notwithstanding that it is afterwards discovered:
 - (i) that there was some defect in the appointment of any of the directors; or
 - (ii) the committee or the person acting as a director or that any of them were disqualified,valid as if every person had been duly appointed and was qualified and continued to be a director or a member of the committee (as the case may be).

11 Company Secretary and Executive officer

11.1 Company Secretary

- (a) The company must have at least one Company Secretary appointed by the directors.
- (b) The directors may suspend or remove a Company Secretary from that office.

11.2 Executive officers

- (a) The directors may appoint an executive officer for a period, at the remuneration and on the conditions the directors decide.
- (b) The remuneration payable by the company to an executive officer must not include a commission on, or percentage of, operating revenue.
- (c) The directors may:

- (i) delegate to an executive officer any powers, discretions and duties they decide;
- (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and
- (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.

(d) An act done by a person acting as an executive officer is not invalidated by:

- (i) a defect in the person's appointment as an executive officer;
- (ii) the person being disqualified to be an executive officer; or
- (iii) the person having vacated office,

if the person did not know that circumstance when the act was done.

12 Indemnity and insurance

12.1 Officer's right of indemnity

Rules 12.2 and 12.4 apply:

- (a) to each person who is or has been a director, alternate director, Company Secretary or executive officer of the company; and
- (b) to any other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate,

(each an **Officer** for the purposes of this rule).

12.2 Indemnity

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company or of a related body corporate.

12.3 Scope of indemnity

The indemnity in rule 12.2:

- (a) does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance;
- (b) is enforceable without the Officer having to first incur any expense or make any payment; and

(c) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer or auditor of the company or its related bodies corporate.

12.4 Insurance

The company may, to the extent the law permits:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each Officer against any Liability incurred by the Officer as an officer or auditor of the company or of a related body corporate including, but not limited to:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (c) a Liability arising from negligence or other conduct.

12.5 Savings

Nothing in rule 12.2 or 12.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into before the adoption of this constitution.

12.6 Contract

The company may enter into an agreement with any Officer to give effect to the rights conferred by this rule or the exercise of a discretion under this rule on any terms as the directors think fit which are not inconsistent with this rule.

13 Minutes

13.1 Contents of minutes

The Board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the directors present at each meeting of the company, the Board and of committees; and
- (b) details of all resolutions and proceedings of general meetings of the company and of meetings of the Board and committees.

13.2 Signing of minutes

The minutes of a meeting of the Board or of a committee or of the company, if signed by the Chair of the meeting or by the Chair of the next meeting, are *prima facie* evidence of the matters stated in the minutes.

14 Inspection of records

14.1 Inspection by member

Except as provided by law, this constitution or as authorised by a directors' resolution, a person who is not a director does not have the right to inspect any of the Board papers, books, records or documents of the company.

14.2 Access by director

The company may enter into contracts, and procure that its subsidiaries enter into contracts, on any terms the directors think fit, to grant a director or former director continuing access for a specified period after the director ceases to be a director to Board papers, books, records and documents of the company which relate to the period during which the director or former director was a director of the company.

15 Seal

15.1 Safe custody of seal

The company may have a common seal, in which case the directors must provide for the safe custody of the seal and any duplicate common seal.

15.2 Use of seal

If the company has a common seal or duplicate common seal:

- (a) it may only be used with the authority of the directors; and
- (b) every document to which it is affixed must be signed by a director and countersigned by:
 - (i) a second director;
 - (ii) the Company Secretary; or
 - (iii) by a person appointed by the directors for the purpose.

16 Notices

16.1 Method of service

- (a) The company may give a notice to a member by:
 - (i) delivering it personally;

- (ii) sending it by prepaid post to the member's address in the register of members or any other address the member gives the company for notices; or
- (iii) sending it by fax or other electronic means to the fax number or electronic address the member gives the company for notices.

(b) Where a member does not have a registered address or where the company believes that member is not known at the member's registered address, all notices are taken to be:

- (i) given to the member if the notice is exhibited in the company's registered office for a period of 48 hours; and
- (ii) served at the commencement of that period,

unless and until the member informs the company of the member's address.

16.2 Time of service

- (a) A notice from the company properly addressed and posted is taken to be given and received on the 3 days after the day of its posting.
- (b) A notice sent or given by fax or other electronic transmission:
 - (i) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
 - (ii) is taken to have been given and received on the day of its transmission.
- (c) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

16.3 Evidence of service

A certificate signed by a director or Company Secretary stating that a notice has been given under this constitution is conclusive evidence of that fact.

16.4 Other communications and documents

Rules 16.1 to 16.3 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

17 General

17.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered for the purposes of the *Corporations Act*, the Federal Court of Australia and the courts which may hear appeals from those courts.

17.2 Prohibition and enforceability

Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.

18 Accounts, audit and records

18.1 Financial Year

The financial year of the company begins at 1 January and ends at 31 December each year.

18.2 Accounts

- (a) The directors must cause proper accounting and other records to be kept in accordance with the *Corporations Act* or the *ACNC Act* as the case may be.
- (b) The directors must distribute copies of the statement of profit or loss and other comprehensive income, statement of financial position and statement of cash flows (including every document required by law to be attached to them) as required by the *Corporations Act* or the *ACNC Act* as the case may be.

18.3 Audit

- (a) A registered company auditor must be appointed if required by the *Corporations Act* or the *ACNC Act* as the case may be.
- (b) The remuneration of the auditor must be fixed, and the auditor's duties regulated in accordance with the *Corporations Act* or the *ACNC Act* as the case may be.