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# Constitution



**People with Disability Australia**

**(ACN 621 720 143)**

**(A public company limited by guarantee)**

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## Part A – preliminary matters

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### 1 Defined terms and interpretation

- (a) The Dictionary in Schedule 1:
  - (i) defines some of the terms used in this constitution;
  - (ii) sets out the rules of interpretation which apply to this constitution; and
  - (iii) clarifies the effect of the *Corporations Act 2001* (Cth) on this constitution.
- (b) The interpretation clause in Schedule 1 sets out rules of interpretation for this constitution.

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### 2 Nature of company and liability

- (a) The company is a public company limited by guarantee.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of one dollar to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

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## Part B – Purpose

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### 3 Purpose and activities of the company

#### 3.1 Purpose

The purpose of the company is to be a leading disability rights, advocacy and representative organisation of and for all people with disability, which strives for the realisation of our vision of a socially just, accessible, and inclusive community, in which the human rights, belonging, contribution, potential and diversity of all people with disability are recognised, respected and celebrated with pride.

#### 3.2 Activities

The activities of the company must be conducted in the furtherance of its purpose and will include:

- (a) working within the framework of, and seeking to bring into reality, the rights recognised in the United Nations Convention on the Rights of

Persons with Disabilities – a treaty we played a key role in bringing into force, both internationally and in Australia;

- (b) working with and for all people with all types of impairment/disability, and with all specific disability population groups, including women with disability, children and young people with disability, First Peoples with disability, and people with disability from culturally and linguistically diverse backgrounds;
- (c) working on issues that concern all people with disability, learning from and linking our individual experiences to create comprehensive agendas for social change that leave no-one behind;
- (d) a fundamental commitment to self-help, mutual support and self-representation for all people with disability, by all people with disability;
- (e) advocating on behalf of people with disability, particularly where our rights have been infringed to address the discrimination, marginalisation, poverty and human rights abuses to which people with disability are often subject in our community;
- (f) empowering people with disability to take control of their own lives by providing information, advice, education and mutual support, by providing personal advocacy support to individuals and groups whose rights have been violated, and by identifying and promoting social change to realise human rights. The services will not be limited to members of the company;
- (g) promoting access to proper and adequate representation of people with disability on all bodies which make decisions that affect our lives;
- (h) encouraging the development and coordination of self-help groups of people with disability;
- (i) fostering communication, cooperation and partnerships with other community organisations with similar aims; and
- (j) all such things as are lawful and conducive to the attainment of the purpose of the company.

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## **Part C – Members and membership**

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### **4 Membership**

#### **4.1 Members of the company**

- (a) Each properly registered individual voting member of the Association as at the date it converted from an incorporated association under

the *Associations Incorporation Act 2009* (NSW) to a company limited by guarantee under the *Corporations Act 2001* (Cth) (**Conversion**) will:

- (i) automatically become a member of the company upon Conversion;
  - (ii) have the rights and obligations of an Individual Member described in the table at Schedule 2; and
  - (iii) be required to pay any membership fees determined under rule 4.7.
- (b) Each properly registered Body Corporate voting member of the Association as at the date of Conversion will:
- (i) automatically become a member of the company upon Conversion;
  - (ii) have the rights and obligations of an Organisational Member described in the table at Schedule 2; and
  - (iii) be required to pay any membership fees determined under rule 4.7.
- (c) Each non-voting member of the Association will upon Conversion cease to be a member of the company, but may apply for membership if that member meets the requirements of, and is admitted into membership in accordance with rule 4.2.
- (d) Any person or Body Corporate may apply to be a member of the company in accordance with rule 4.2.
- (e) If an applicant is admitted as a member of the company the secretary must ensure that:
- (i) the applicant is given notice of admission as a member of the company; and
  - (ii) the name and details of the applicant are entered in the members' register in accordance with rule 4.6.
- (f) The secretary must ensure that each applicant not admitted as a member of the company is informed of this decision.

## **4.2 Becoming a member**

To become a member of the company the applicant must:

- (a) have a commitment to the purposes and activities of the company described at rule 3;

- (b) complete and lodge a membership application in such form as determined by the directors from time to time;
- (c) ensure that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;
- (d) satisfy the eligibility criteria and on-going requirements for the class of membership to which the applicant is applying as described at Schedule 2 or as otherwise adopted by the directors from time to time;
- (e) pay any joining and annual fee that may be required under rule 4.7; and
- (f) subject to rule 5.5(e), be admitted into membership by the directors or a delegate of the directors.

#### **4.3 Member's rights**

Each member has the rights associated with the particular class of membership to which the member belongs as described in Schedule 2.

#### **4.4 Membership not transferable**

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

#### **4.5 Representatives**

- (a) Each Organisational Member must nominate a representative (**Delegate**) for all communications with the company and to attend general meetings of members.
- (b) An Organisational Member may nominate a new Delegate from time to time but must notify the company of any re-nominations as soon as practicable after such renomination has occurred.

#### **4.6 Registers**

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 4.6(a), the following must be entered in the register in respect of each member:
  - (i) the name and address of the member;
  - (ii) the class of membership to which the member belongs;
  - (iii) the date membership started and the date it stopped;
  - (iv) for Organisational Members only, the name of the nominated Delegate and



- (v) any other information required by the directors or the law from time to time.

#### **4.7 Membership fees**

The joining and annual membership fees associated with each membership class are those amounts described in the table at Schedule 2 unless the members resolve to change such amounts by a Special Resolution.

#### **4.8 Membership renewal**

The directors may, at their discretion, send a notice to one or more members requiring that member to confirm or to renew membership of the company and/or to confirm or update that member's details (**Membership Renewal Notice**).

#### **4.9 Organisational Member**

- (a) The requirements for an Organisational Member set out in the table at Schedule 2 must be satisfied for as long as the entity remains an Organisational Member.
- (b) The Organisational Member must notify the directors as soon as practicable after it becomes aware that it no longer satisfies the requirements set out in the table at Schedule 2.
- (c) The directors may, at their absolute discretion, cancel any Organisational Member's membership if it no longer meets the requirements for an Organisational Member set out in the table at Schedule 2.
- (d) An Organisational Member is responsible for any statement, action taken, or decision made on its behalf by its Delegate.

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## **5 Ceasing to be a member**

### **5.1 General overview**

- (a) There are a number of reasons why a member's membership will stop. For instance, if a member:
  - (i) resigns from membership. See rule 5.2;
  - (ii) automatically stops being a member. See rule 5.3;
  - (iii) is expelled from membership. See rule 5.4; or
  - (iv) no longer complies with the membership eligibility criteria set out at rule 4.2 or any additional requirements associated with

the class of membership to which the member belongs as set out in the table at Schedule 2.

- (b) The directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they so determine from time to time so long as they are consistent with the requirements set out in this rule 5.

## **5.2 Resignation from membership**

A member may resign from membership of the company at any time by providing written notice to the company addressed to the president or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

## **5.3 Automatic stopping of membership**

A member's membership will automatically stop if the member:

- (a) dies, or in the case of an Organisational Member, becomes insolvent or is wound up;
- (b) fails to pay any required membership fee in accordance with rule 4.7 within two months after the date on which that membership fee becomes due or such later time as the directors may determine; or
- (c) fails to respond to a Membership Renewal Notice within one month after the return due date specified in that notice or such later time as determined by the directors.

## **5.4 Disciplining, suspension and expulsion of member**

- (a) This rule 5.4, together with rule 5.5, describes what needs to happen when considering whether or not to discipline a member. In summary the process involves:
  - (i) putting the member in question on notice and giving the opportunity to provide information;
  - (ii) passing a directors' resolution to warn, suspend, expel or otherwise discipline that member; and
  - (iii) if the disciplinary action is to expel the member, let that member know about the right to have the decision reviewed by the members.
- (b) So long as the steps set out in rules 5.4 and 5.5 are followed, the directors may resolve to warn, suspend, expel or otherwise discipline a member if that member:

- (i) has refused or neglected to comply with the provisions of this constitution; or
- (ii) has acted in a way that, in the opinion of the directors, is prejudicial to the interests or reputation of the company.

**(Member Disciplinary Resolution)**

- (c) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must let the member know:
  - (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
  - (ii) the reasons why the directors are considering taking the determined action;
  - (iii) of the right for the member to give the directors, orally, in writing or in some other way, any explanation or defence relevant to the proposed disciplinary action;
  - (iv) the date, place and time of the meeting at which the resolution is to be considered; and
  - (v) of the right for the member to attend the meeting at which the resolution is to be considered but not to be present during any director deliberations or the putting of or voting on the resolution.
- (d) A director that is also a member (or a director, member or employee of a member) subject to a Member Disciplinary Resolution is not entitled to vote on that resolution.
- (e) Directors must notify the relevant member about the directors' decision within 7 days after the date a Member Disciplinary Resolution is passed. If the decision is to warn, suspend or otherwise discipline a member (other than expulsion), then the directors decision is final. If the decision is to expel the member then the notice must let the member know:
  - (i) that the directors have resolved to expel the member; and
  - (ii) the process to be followed if the member wishes to appeal the decision as described at rule 5.5.

**(Expulsion Notice)**

## **5.5 Appeal of member expulsion**

- (a) A member to be expelled in accordance with a Member Disciplinary Resolution may appeal against that resolution. Such an appeal must be made to the president or the secretary of the company and must be received within 7 days after the date of the Expulsion Notice described at rule 5.4(e) or such later time as the directors may decide in their complete discretion.
- (b) If an appeal notice is received by the directors within the required timeframe, the directors must ensure that a resolution confirming the expulsion is considered by the members at a general meeting called in accordance with the Corporations Act to consider this resolution only. The member the subject of a Member Disciplinary Resolution must be given the opportunity to make representations at the meeting in relation to the decision of the directors to expel that member.
- (c) If the Member Disciplinary Resolution is confirmed by a resolution of the members, the member's expulsion takes effect from the date of the Member Disciplinary Resolution. If the members do not confirm the Member Disciplinary Resolution then the member's membership continues in full effect.
- (d) If the member does not provide the company with an appeal notice within the required timeframe then:
  - (i) the directors are not required to ensure that a resolution confirming the expulsion is considered by the members; and
  - (ii) the member's expulsion takes effect from the date of the Member Disciplinary Resolution.
- (e) A member that has been expelled from membership of the company may only be readmitted into membership if first agreed by a Special Resolution of members.

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## **6 General meetings**

### **6.1 Calling general meetings**

- (a) A general meeting of members may be initiated by:
  - (i) a resolution of the directors;
  - (ii) the members in accordance with the Corporations Act; or
  - (iii) the court in accordance with the Corporations Act.

- (b) A meeting of members may be held at one or more physical venues using Virtual Meeting Technology, or using Virtual Meeting Technology only, so long as it:
  - (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chair of the meeting to be aware of proceedings in each place; and
  - (iii) enables the members in each place to vote on a Show of Preference and on a poll.

## **6.2 Notice of general meetings**

- (a) Subject to any relevant law relating to Special Resolutions and consent to short notice, at least 21 days' notice of a general meeting of members (including an annual general meeting) must be given to each person who is at the date of the notice:
  - (i) a member of the company eligible to receive notices of meetings;
  - (ii) a director of the company; or
  - (iii) an auditor of the company.
- (b) A notice of a general meeting must specify:
  - (i) the date, time and place of the meeting;
  - (ii) the Virtual Meeting Technology (if any) that will be used to facilitate the meeting;
  - (iii) the general nature of the business to be transacted at the meeting; and
  - (iv) any other matters required under the law.
- (c) A person who is entitled to receive notice of a meeting or who is requested by the president to attend a general meeting is entitled to be present whether or not the person is a member or a Delegate of an Organisational Member.

## **6.3 Quorum at general meetings**

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.

- (b) The quorum for a general meeting of members is 30 members present in person or by proxy.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting and the meeting was called by members, then the meeting must be dissolved. Otherwise:
  - (i) the meeting stands adjourned to the following week at a time and place communicated by the chair of the meeting;
  - (ii) at the adjourned meeting the quorum is 10 members present and entitled under these rules to vote at a general meeting if there is more than one member; and
  - (iii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

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

- (a) The president must preside as chair at each general meeting.
- (b) If the president is absent or is unwilling to act, then a vice-president, if one has been appointed, must preside as chair at the meeting.
- (c) If the president and vice-president(s) are absent or are unwilling to act, then the members present at that meeting may elect a person present to chair the meeting.

#### **6.5 Conduct of general meetings**

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
  - (i) proper and orderly debate or discussion; and
  - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

## 6.6 Decisions at general meetings

- (a) Except in the case of any resolution which under this constitution or as a matter of law requires a Special Resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and that decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members, the chair has a second or casting vote in addition to any vote the chair may have in the capacity as a member or a Delegate of an Organisational Member.
- (c) Unless a poll is demanded, a resolution put to the vote of a general meeting must be decided by a majority of members voting in favour of that resolution, with each member present indicating a preference by a means appropriate to that member (a **Show of Preference**).
- (d) A member may only exercise one vote on a Show of Preference regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a Show of Preference is taken or before or immediately after the declaration of the result of the Show of Preference:
  - (i) by the chair of the meeting;
  - (ii) by at least five members present and entitled to vote on the relevant resolution; or
  - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) Unless a poll is demanded, a declaration by the chair on the result of a vote on a Show of Preference is decisive of the outcome of that resolution. Such declaration does not need to refer to the number or proportion of votes for or against the resolution.
- (g) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

## 6.7 Voting rights

Each member has the voting rights associated with the class of membership to which that member belongs as described in the table at Schedule 2.

## 6.8 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - (i) if an Individual Member, in person or through other means as approved by directors from time to time;
  - (ii) if an Organisational Member, through its Delegate in person or through other means as approved by directors from time to time; or
  - (iii) by proxy in a form as the directors may prescribe or accept.
- (b) A proxy may be a member of the company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a Delegate or proxy to establish to the satisfaction of the chair that the person has been validly appointed as a Delegate or proxy and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:
  - (i) the person specified by the company in the proxy form; or
  - (ii) if no person is specified in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy is received:
  - (i) at the registered office of the company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
  - (ii) at least 24 hours before the time scheduled for the commencement of the meeting.
- (f) Unless otherwise permitted by the chair, the authority of a proxy to speak and vote for a member at a general meeting is suspended while that relevant member is present at the meeting.



- (g) The chair may hold as many proxies as are given to the chair. All other proxy holders may hold a maximum of five proxies.

## **6.9 Use of Virtual Meeting Technology**

- (a) Where a general meeting is held using Virtual Meeting Technology:
  - (i) a member participating in the meeting through that technology is taken to be present in person at the meeting;
  - (ii) a member voting at the meeting through that technology is taken to be voting in person at the meeting; and
  - (iii) the conduct of the meeting must comply with any policies and procedures relating to the conduct of meetings using Virtual Meeting Technology as determined by the directors from time to time.
- (b) If, before or during a meeting, any technical difficulty occurs that may materially impact the participation of members who are not present in the same location as the chair of the meeting, the chair may:
  - (i) continue the meeting; or
  - (ii) adjourn the meeting until the difficulty is remedied or to such other time and location as the chair deems appropriate.
- (c) The inability of one or more members to access, or to continue to access, the meeting using Virtual Meeting Technology will not affect the validity of the meeting or any business conducted at the meeting, provided that sufficient members are able to participate in the meeting as are required to constitute a quorum.
- (d) Subject to the Corporations Act and this constitution, the directors may make policies and procedures relating to the conduct of meetings using Virtual Meeting Technology.

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## **Part D – Not-for-profit**

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### **7 No profits for members**

- (a) Subject to rule 7(b), the assets and income of the company must be applied solely in furtherance of the purpose of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.
- (b) The company may, with the approval of the directors, make payments in good faith to a member of the company:

- (i) by way of reasonable and proper remuneration for any goods supplied or services rendered to the company (including payment as a consultant);
  - (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
  - (iii) by way of reasonable and proper rent for premises let by that member to the company;
  - (iv) if it arises from participation in any social impact bond, or similar, program; and
  - (v) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.
- (c) For the avoidance of doubt, nothing in this rule 7:
- (i) prevents a member from receiving such services as may ordinarily be provided by the company in the course of undertaking its activities; or
  - (ii) prohibits a member from receiving a benefit that is directly related to its membership of the company.

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## Part E – Directors and secretary

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### 8 Directors

#### 8.1 Number of directors

- (a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is 11.
- (b) The directors may change the maximum number of permitted director positions in accordance with the Corporations Act.
- (c) If at any time the number of directors falls below three, the remaining director or directors may act but only:
  - (i) in an emergency;
  - (ii) for the purpose of convening a general meeting of the company; or
  - (iii) for the purpose of increasing the number of directors to three.

## 8.2 Becoming a director

Subject to rule 8.20, a person may become a director in three ways:

- (a) election by members, such election to be for a term of two years (**Member Elected Directors**);
- (b) appointment by the directors, such appointment to be for a term of up to two years with the precise period determined by the directors at the time of appointment (**Board Appointed Directors**); and
- (c) appointment by the directors of any person to fill any vacancy in the number of elected directors however arising, such appointment, if made, to be for the period up to the next annual general meeting at which point that director must retire, sometimes called a 'casual vacancy' (**Casual Appointment**).

## 8.3 Rules about the composition of the board

Subject to rule 8.2(c):

- (a) nine of the director positions are reserved for, and may only be filled by Member Elected Directors; and
- (b) two director positions are available, and may only be filled by Board Appointed Directors.
- (c) The directors may invite one or more people to attend directors' meetings from time to time to provide advice to assist the directors with their deliberations. People invited to attend meetings of directors are not entitled to vote.

## 8.4 Qualifications and requirements of directors

- (a) To be eligible for election as a Member Elected Director under rule 8.2(a), a person must:
  - (i) be a member of the company;
  - (ii) not have been an employee of the company for at least 12 months;
  - (iii) be nominated for election in the way determined by the directors from time to time by two members (one of whom may be the person seeking to be elected);
  - (iv) have knowledge about, have expertise relevant to and be committed to the purpose and activities of the company; and

- (v) meet any other criteria relating to the composition of the board and skills and qualifications of directors as may be determined by the directors from time to time.
- (b) To be eligible to be appointed by the directors to fill a Casual Appointment under rule 8.2(c), the person must comply with all the requirements of rule 8.4(a), other than the requirement to be nominated for election by members.
- (c) To be eligible to fill a Board Appointed Director position under rule 8.2(b), the person must comply with all the requirements of rule 8.4(a) other than the requirement to be a member of the company and to be nominated for election by members.

### **8.5 Director's time in office**

- (a) Each director is to remain as a director until the term of that persons office expires or until that person resigns, retires or is otherwise removed as a director of the company in accordance with the law and this constitution. However, subject to the law and rules 8.5(b) and 8.3, a person is eligible for re-election.
- (b) A person must not hold the office of director for any more than four continuous years unless otherwise resolved by a Special Resolution of members.
- (c) A person having held office as a director for four or more continuous years is eligible for re-election or re-appointment once a period of one year has expired since that person last held office as a director.

### **8.6 Vacation of office**

- (a) In addition to the circumstances prescribed by law, the office of any director becomes vacant if the director dies or, unless the directors otherwise resolve to confirm the director's position, if the director:
  - (i) becomes bankrupt;
  - (ii) is convicted of an indictable offence; or
  - (iii) fails to attend more than three directors' meetings in any six month period without leave of absence approved by the directors.
- (b) Nothing in rule 8.6(a) prevents a director from vacating office if that director resigns by notice in writing to the company.

### **8.7 Payments to directors**

- (a) Subject to rule 8.7(c), directors are entitled to be paid all reasonable authorised travelling and other expenses properly incurred by them in

connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees but will not otherwise receive any payment for acting as a director.

- (b) Nothing in this rule 8.7 restricts the remuneration to which a director may be entitled in a capacity other than director.
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by the directors or such other person or persons to whom the directors may have delegated such authority consistent with rule 8.18.

## **8.8 Interested directors**

- (a) No contract or other arrangement made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (c) Subject to rule 8.8(d), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest:
  - (i) be counted in determining whether a quorum is present at any meeting of directors considering that arrangement;
  - (ii) sign or countersign any document relating to that arrangement; and
  - (iii) vote in respect of the arrangement or any matter arising out of it.
- (d) Rule 8.8(c) does not apply to the extent that it would be contrary to law.

## **8.9 Powers and duties of directors**

The directors are responsible for managing the business of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the company in a general meeting of members.

## **8.10 Directors' meetings**

The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

## **8.11 Convening of meetings of directors**

A meeting of directors may be convened by the president or any two of the directors.

## **8.12 Notice of directors' meetings**

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
  - (i) be given in a way permitted by rule 13;
  - (ii) specify the time and place of and, if relevant, the form of technology for the meeting;
  - (iii) state the nature of the business to be transacted at the meeting; and
  - (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a directors' meeting is not invalid just because a director did not receive notice of the meeting provided that:
  - (i) the notice was not received because of accident or error;
  - (ii) before or after the meeting, the director notifies the company of that director's agreement to the resolution; or
  - (iii) the director attended the meeting.

## **8.13 Quorum for directors' meetings**

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of 50% of current directors. If 50% of current directors is not a whole number then the number is to be rounded up.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by any technological means.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those

present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

#### **8.14 President and vice-president(s)**

- (a) To be eligible to be elected as President, the person must comply with all the requirements of rule 8.4(a) except that the person must be nominated for election by three members, one of whom may be the person seeking election as President.
- (b) Subject to the rules relating to term of office of directors generally found at rule 8.5:
  - (i) the directors may appoint up to two directors to the office of vice-president, with each appointment for a term of up to two years; and
  - (ii) a person may serve as vice-president more than once.
- (c) A person cannot fill the role of president and vice-president at the same time.
- (d) The president must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act.
- (e) If the president is unable to attend a directors' meeting or unwilling to act, then a vice-president, if one has been appointed, must preside as chair of that meeting.
- (f) If the president and vice-president(s) are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from among their numbers to be the chair for that meeting.
- (g) If the president resigns as a director or from the position of president, then the directors must appoint a Member Elected Director to fill the role of president on an interim basis (**Interim President**) until the next annual general meeting, at which point that person must retire as president.
- (h) Subject to this constitution, a person retiring as Interim President may nominate for election as president of the company.
- (i) A person elected to the office of president in accordance with rule 8.14(a) may fill the position for a full two year term even if that person has been an Interim President in the past.

### **8.15 Decisions of directors**

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting and any other matter to be determined by the directors under this constitution are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may cast a second vote.

### **8.16 Decisions without meetings**

Directors may pass resolutions and otherwise make decisions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

### **8.17 Committees**

- (a) The directors may resolve to:
  - (i) establish one or more committees consisting of such persons as they determine;
  - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
  - (iii) revoke any or all of the powers delegated to any committee and vary the nature and scope of the powers delegated; and
  - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.
- (c) The directors may continue to exercise all of their powers despite any delegation made under this rule.



## **8.18 Delegation to individuals**

- (a) The directors may resolve to delegate any of their powers:
  - (i) to one or more directors;
  - (ii) to one or more members; or
  - (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

## **8.19 Validity of acts**

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalid just because:

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

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

## **8.20 Transition provisions for directors**

- (a) Subject to rule 8.20(b), each person filling a full voting position on the Association's governing board prior to Conversion will continue in office as a director of the company for the remainder of the person's then current term of office, after which the person must retire.
- (b) If, at the time of Conversion, there are more than 11 members of the Association's governing board, then the 11 people to be named as directors in the application to convert from an incorporated association to a public company limited by guarantee, and which of them will become Elected Directors and which will become Board

Appointed Directors, is to be determined amongst the members of the governing board at the time the application is made or, failing agreement, will be determined by lot.

- (c) When assessing a person's term in office for the purpose of rule 8.5, any time served as a member of the Association's governing board prior to its conversion to a company limited by guarantee must be counted.
- (d) Each person filling a non-voting position on the Association's governing board prior to its conversion to a company limited by guarantee must retire as at the date of the conversion but, subject to rules 8.2 to 8.5, is eligible for election or appointment as the case may be.

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## 9 Secretaries

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in their capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to:
  - (i) ensuring that the necessary registers required by the law are established and properly maintained;
  - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
  - (iii) ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a secretary is not invalidated just because:
  - (i) of a defect in the person's appointment as a secretary; or
  - (ii) the person is disqualified from being a secretary,

if that circumstance was not known by the person when the act was done.

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## Part F – Winding up

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### 10 Winding up and loss of endorsement

#### 10.1 Winding up

- (a) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be paid to, or distributed amongst members, but must be given or transferred to an organisation or organisations that:
  - (i) has objects or purposes similar to those of the company;
  - (ii) by its constituent rules, prohibits the distribution of its income and property amongst its members to an extent at least as great as is imposed upon the company; and
  - (iii) if the company is endorsed to receive tax deductible gifts in accordance with any commonwealth tax laws, is likewise endorsed as a deductible gift recipient.
- (b) The decision as to which organisation is, or which organisations are, to be the recipient of the Surplus Assets distributed in accordance with rule 10.1(a):
  - (i) is to be determined by the directors at or before the winding up or dissolution of the company; or
  - (ii) if required, by the Court.
- (c) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

#### 10.2 Loss of endorsement

If the endorsement of the company as a deductible gift recipient is revoked, the following assets remaining after the payment of the company's liabilities must be transferred to a charitable fund, authority or institution in Australia to which income tax deductible gifts can be made:

- (a) deductible gifts of money or property received for the principal purpose of the company;

- (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the principal purpose of the company; and
- (c) money received by the company because of such deductible gifts and contributions.

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## **Part G – Administrative matters**

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### **11 Minutes and records**

#### **11.1 Minutes**

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of directors; and
- (c) meetings and resolutions of committees.

#### **11.2 Inspection of records**

- (a) Subject to the law and rule 11.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to inspection.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep all financial and other records required by law.

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## 12 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) This indemnity:
  - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule); and
  - (ii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs.

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## 13 Notices

### 13.1 Giving of notice

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determine by the directors from time to time.

### 13.2 Timing of service

- (a) A notice served personally is taken to be served when delivered.
- (b) A notice properly addressed and posted is taken to be served on the day after the date it is posted.
- (c) A notice sent by an electronic communication is taken to be served at the time it is sent.
- (d) A notice given to a member by other means relating to the giving of notices and electronic means of accessing them is taken to be served on the day after the date on which the member is notified that the notice is available.

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## 14 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

### 1 Dictionary

In this constitution:

**Association means** People With Disability Australia Incorporated (with incorporation number NSW Y0015028).

**Board Appointed Director** has the meaning at rule 8.2(b).

**Body Corporate** means an incorporated entity with its own legal personality and includes, for example, a company, an incorporated association, a cooperative and an Aboriginal and Torres Strait Islander Corporation.

**Casual Appointment** has the meaning given at rule 8.2(c).

**Conversion** has the meaning given in rule 4.1(a).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Delegate** means an individual appointed as a representative of an Organisational Member to exercise all or any of the powers the Organisational Member may exercise as permitted by section 250D of the Corporations Act regardless of whether that member is in fact bound by the Corporations Act.

**Expulsion Notice** has the meaning given at rule 5.4(e).

**Individual Member** means a member that has been admitted into membership of the company as an individual member in accordance with rule 4.2 and having the rights and obligations associated with this class of membership described in the table at Schedule 2.

**Interim President** has the meaning given at rule 8.14(g).

**Member Disciplinary Resolution** has the meaning at rule 5.4(b).

**Member Elected Director** has the meaning given at rule 8.2(a).

**Membership Renewal Notice** has the meaning given at rule 4.8.

**Organisational Member** means a member that is a Body Corporate and has been admitted into membership of the company as an organisational member in accordance with rule 4.2 and having the rights and obligations associated with this class of membership described in the table at Schedule 2.

**Show of Preference** has the meaning given in rule 6.6(c).

**Special Resolution** has the meaning given to that term in section 9 of the Corporations Act.

**Surplus Assets** has the meaning given in rule 10.1(a).

**Virtual Meeting Technology** has the meaning given to that term in section 9 of the Corporations Act.

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## 2 Interpretation

### 2.1 General

- (a) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (b) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing a gender include every other gender;
  - (iii) words used to denote persons generally include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
  - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) A requirement in this constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other manner that is approved by the directors.



## **2.2 Replaceable rules not to apply**

The replaceable rules contained in the *Corporations Act 2001* (Cth) from time to time do not apply to the company.

## Schedule 2 Membership requirements, rights and fees

Membership class	Qualifications	On-going requirements	Rights	Joining fee	Annual Fee
Individual Member	<p>Must be a person who:</p> <ul style="list-style-type: none"> <li>identifies as having a disability;</li> <li>is 18 years of age or older; and</li> <li>is a resident of Australia.</li> </ul>	<p>Must continue to comply with the requirements set out at rule 4.2 and the eligibility criteria for membership as an Individual Member set out in this table.</p>	<ul style="list-style-type: none"> <li>To receive notices of and attend any general meeting of the company.</li> <li>To exercise one vote at any general meeting of the company on a Show of Preference and on a poll.</li> <li>To be eligible for election or appointment as a director in accordance with rule 8.</li> <li>To nominate (or second or endorse) eligible candidates for election as a director.</li> <li>To receive information about the company's activities including in electronic format.</li> </ul>	\$0	\$0
Organisational Member	<p>Must:</p> <ul style="list-style-type: none"> <li>be a legally incorporated Body Corporate under the laws of Australia or other country approved by the directors from time to time; and</li> <li>have a governing body and membership, at least 75% of which must be persons with disability.</li> </ul>	<p>Must continue to comply with the requirements set out at rules 4.2 and 4.9 and the eligibility criteria for membership as an Organisational Member set out in this table.</p>	<ul style="list-style-type: none"> <li>To receive notices of and to attend (through its Delegate) any general meeting of the company.</li> <li>At a general meeting of the company, through its Delegate, to exercise 1 vote on a Show of Preference and 2 votes on a poll.</li> <li>To nominate (or second or endorse) an eligible individual for election as a director.</li> <li>To receive information about the company's activities, including in electronic formats.</li> </ul>	\$0	\$0