

## Constitution

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## CONSTITUTION

### REFERENCE NOTES

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|-----------------------------|--|
| <b>1. TITLE</b>             | The Diabetic Association of South Australia Incorporated Constitution  |
| <b>2. ISSUE NUMBER</b>      | Issue Number Four (Refer Special Notes section).   |
| <b>3. APPLICATION</b>       | Application within The Diabetic Association of South Australia Incorporated only.  |
| <b>4. SUMMARY</b>           | The Constitution of The Diabetic Association of South Australia Incorporated outlines the framework for governance of the organisation, its purpose and objectives including the responsibilities and obligations of the Board to The Association membership |
| <b>5. AUTHORITY</b>         | The Board on behalf of the Association Membership.   |
| <b>6. APPROVAL</b>          | 70th Annual General Meeting, Thursday, 26 October 2023<br>Resolution Number A1/20-7  |
| <b>7. CONTACT</b>           | Chief Executive Officer  |
| <b>8. DATE OF OPERATION</b> | 26 October 2023  |
| <b>9. SUNSET DATE</b>       | On-going until nominated review date is determined by the Board.   |
| <b>10. REVIEW DATE</b>      | On-going until nominated review date is determined by the Board.   |
| <b>11. SPECIAL NOTES</b>    | Due to the loss over time of historical records, changes to the Constitution can only be confirmed on the dates listed overleaf.   |

General Meeting	30 March 1965
General Meeting	5 March 1970
36th Annual General Meeting	8 September 1990
Annual General Meeting	28 October 1998

The Constitution adopted at the 45th Annual General Meeting of the Association held on 28 October 1998 has therefore been numbered as Issue Number One to reinstate an orderly management and review process.

45<sup>th</sup> Annual General Meeting – 28 October 1998  
Amendment to the Constitution as per Resolution Number 125:

“That the amendments to the DA-SA Constitution as presented to the 45th Annual General Meeting by the Committee of Management be adopted.”

49<sup>th</sup> Annual General Meeting – 28 October 2002  
Amendment to the Constitution (Issue Number Two) as per Resolution Number A1/02-49-4:

“That the Diabetic Association of South Australia Incorporated amends its Constitution to reflect a change in title for the committee responsible for managing the Association’s affairs, currently referred to as the ‘Management Committee’, to that of ‘Board of Management’. Furthermore, the term ‘Management Committee’ be deleted wherever it appears in the constitution and replaced with the term ‘Board of Management’ with such change effected immediately following this 49th Annual General Meeting of the Association.”

67<sup>th</sup> Annual General Meeting – 27 October 2020  
Amendment to the Constitution (Issue Number Three) as per resolution Number A1/20-6:

“That the Constitution of The Diabetic Association of SA Incorporated (The Association) in the form presented to the Annual General Meeting be adopted as the Constitution for The Association in substitution for and to the exclusion of The Association’s existing Constitution.”

70<sup>th</sup> Annual General Meeting – 26 October 2023

“That the Constitution of The Diabetic Association of SA Incorporated (The Association) in the form presented to the Annual General Meeting be adopted as the Constitution for The Association in substitution for and to the exclusion of The Association’s existing Constitution.”

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## CONSTITUTION

### Definitions

1. In this Constitution:
  - 1.1. 'ACNC Act' means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
  - 1.2. 'Annual General Meeting' means a meeting convened in accordance with Rule 37;
  - 1.3. 'Associations Act' means the *Associations Incorporation Act 1985* (SA) and the Associations Incorporation Regulations 2008 (SA);
  - 1.4. 'The Association' means the incorporated association named in Rule 4;
  - 1.5. 'Board' means the committee of management of The Association;
  - 1.6. 'Board Member' means a person elected or appointed to the Board in accordance with this Constitution;
  - 1.7. 'Business Day' means a day that is not a Saturday, Sunday or public holiday in Adelaide, South Australia;
  - 1.8. 'By-Law' means a by-law of The Association under this Constitution;
  - 1.9. 'Commission' has the meaning given to that term in the Associations Act;
  - 1.10. 'Contributions' has the meaning given to that term in Division 30 of the *Income Tax Assessment Act 1997* (Cth);
  - 1.11. 'Corporate Member' has the meaning given to that term in Rule 23;
  - 1.12. 'Duties of the Officer' include, in any particular case where the Board Members consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer by The Association, or, where applicable, a subsidiary of The Association;
  - 1.13. 'Financial Year' has the meaning given to that term in Rule 95.
  - 1.14. 'Fund-Raising Event' has the meaning given to that term in Division 30 of the *Income Tax Assessment Act 1997* (Cth);

- 1.15. 'General Meeting' means a meeting of Members convened in accordance with Rule 40;
- 1.16. 'General Member' has the meaning given to that term in Rule 13;
- 1.17. 'Gift Funds' means: (a) gifts of money or property for the Purpose; (b) Contributions made in relation to a Fund-Raising Event held for the Purpose; and (c) money received by The Association because of such gifts and Contributions;
- 1.18. 'Health Professional Member' has the meaning given to that term in Rule 21;
- 1.19. 'Honorary Member' has the meaning given to that term in Rule 18;
- 1.20. 'Liability' means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind, including legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal government authority or other body;
- 1.21. 'Life Member' has the meaning given to that term in Rule 15;
- 1.22. 'Member' means a person who has joined The Association (whether before or after the adoption of this Constitution) or otherwise been granted membership of The Association in accordance with this Constitution;
- 1.23. 'Office Holder' has the meaning given to that term in Rule 67;
- 1.24. 'Officer' means a Board Member or any other person who is an officer of The Association in accordance with the Associations Act;
- 1.25. 'Public Officer' means the public officer of The Association appointed to that position in accordance with Rule 113;
- 1.26. 'Purpose' means the purpose and objects of The Association specified in Rule 6;
- 1.27. 'Register of Members' means the register of The Association's Members established pursuant to Rule 113;
- 1.28. 'Special Meeting' means a meeting of Members convened in accordance with Rule 41;
- 1.29. 'Special Resolution': (a) of Members, has the meaning given to that term in the Associations Act; and (b) of the Board, means a three-quarters majority of Board Members present and eligible to vote (or in the case of an out of session resolution

in writing, a three-quarters majority of Board Members eligible to vote) having received no less than 21 days' notice of the proposed Special Resolution; and

- 1.30. 'Surplus Assets' has the meaning given to that term in the Associations Act.
- 1.31. 'Term' means the fixed period of time a Board Member holds a position on the Board either as a Board Member or as an Office Holder, as the context requires.
- 1.32. 'Tenure' means the total time a Board Member has been appointed to the Board (which may include several terms).

2. In this Constitution, unless a contrary intention is expressed:

- 2.1. headings and italicised, highlighted or bold type do not affect the interpretation of this Constitution;
- 2.2. the singular includes the plural and the plural includes the singular;
- 2.3. a gender includes all other genders;
- 2.4. other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- 2.5. a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate (whether or not having a separate legal personality);
- 2.6. a reference to a body (including an institute, association or authority) whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- 2.7. a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- 2.8. the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Constitution do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;

- 2.9. a reference to a document (including this Constitution) includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing and includes all amendments or supplements to, or replacements of, this document;
  - 2.10. a reference to a rule, party, annexure, exhibit or schedule is a reference to a rule of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any rule, annexure exhibit and schedule;
  - 2.11. a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
  - 2.12. a reference to a month is to a calendar month; and
  - 2.13. a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.
3. Despite any other provision in this Constitution, if:
- 3.1. the Associations Act or the ACNC Act prohibits a thing being done, the thing may not be done;
  - 3.2. the Associations Act or the ACNC Act requires something to be done, authority is given for that thing; and
  - 3.3. a provision of this Constitution is or becomes inconsistent with the Associations Act or the ACNC Act, that provision must be read down or, failing that, severed from this Constitution to the extent of any inconsistency.

## **Name of Association**

4. The name of The Association is The Diabetic Association of South Australia Incorporated.
5. The Association trades under the name of Diabetes SA or such other names as The Association may from time to time determine.

## Purpose and Objects

6. The Association has the purpose and objects of providing better outcomes for those who are at risk of or living with diabetes and their carers, and advancing the interest, awareness and knowledge of the general community and health professionals on matters related to prevention, detection and management of diabetes through education, advocacy, support, making available resources and products and advancing research.

## Powers

7. Subject to Rule 97 and the Associations Act, The Association has, in addition and without prejudice to the powers conferred by section 25 of the Associations Act, power to do all lawful things as may be necessary or desirable to carry out the Purpose.

## Patron

8. The Board may invite any person or persons to be a patron of The Association for such period of time as shall be considered appropriate. Such person or persons will not become a Member solely by their appointment as a patron.

## MEMBERS

### Membership

9. All persons who are at risk of or living with diabetes or are interested in the furtherance of the Purpose may join The Association by making written application for membership on such a form as the Board shall from time to time prescribe and paying the prescribed subscription, if any.

10. Where a Member is a natural person under the age of 18 years or otherwise lacking capacity to act on their own behalf, one parent or guardian of that person may represent that Member, including in exercising any voting rights or, subject to the parent or guardian being eligible under the Associations Act, any right to be appointed as a Board Member held by that Member.

## Membership Classes

11. There are five classes of membership of The Association and they are:
  - 11.1. General Member;
  - 11.2. Life Member;
  - 11.3. Honorary Member;
  - 11.4. Health Professional Member; and
  - 11.5. Corporate Member.
12. The Board shall have the power to create new classes of membership or remove classes of membership. Where a class of membership is removed, Members of that class will become General Members unless otherwise determined by the Board by notice to the relevant Members.

## General Members

13. A 'General Member' is a Member who is not a Life Member, Honorary Member, Health Professional Member or Corporate Member.
14. At the discretion of the Board from time to time, volunteers and remunerated employees of The Association may be granted membership in conjunction with their role with The Association, and in respect of such membership will be classed as General Members, subject to Rule 30.2. Such memberships cease on the termination or expiry of the volunteer or employee's role with The Association.

## Life Members

15. A 'Life Member' is a Member who:
  - 15.1. has life membership bestowed in an honorary capacity by the Board for exceptional services rendered to The Association; or
  - 15.2. has, prior to 28 October 1990, paid the sum of ten times the prescribed subscription in any one year.
16. Life Members are exempt from the payment of subscriptions.
17. Subject to Rule 35 (Termination of Membership), all persons holding Life Membership:
  - 17.1. at the time of the adoption of this Constitution shall be entitled to retain that membership after adoption of this Constitution; and
  - 17.2. are entitled to retain their membership of The Association for the term of their natural life.

## Honorary Members

18. An 'Honorary Member' is a Member who:
  - 18.1. has rendered outstanding service to The Association; or
  - 18.2. is considered to be beneficial to The Association, and has been granted honorary membership by the Board.
19. Honorary Members are exempt from the payment of subscriptions.
20. The membership of each Honorary Member continues for the term determined by the Board and is at the discretion of, and shall be reviewed annually by, the Board. If the Board determines that an Honorary Member will no longer be granted honorary membership, the

Board will notify the Honorary Member no less than 30 days prior to the date on which the honorary membership will end.

## Health Professional Members

21. A 'Health Professional Member' is a Member who:
  - 21.1. nominates to become a Health Professional Member on joining The Association;  
and
  - 21.2. is a health professional interested in the welfare of people at risk of or living with diabetes.
  
22. Health Professional Members may be offered specific benefits appropriate to their professional interests from time to time at the discretion of the Board.

## Corporate Members

23. A 'Corporate Member' is a Member which is an organisation, company, corporation or institution interested in diabetes or the welfare of people at risk of or living with diabetes.
  
24. Corporate Members may be offered specific benefits appropriate to their corporate nature from time to time at the discretion of the Board.

## Subscriptions

25. The Board shall prescribe the annual subscriptions for all classes of membership each year.
  
26. Subscriptions shall become due on a Member's anniversary of joining and shall be paid within 60 days of the date on which they become due for the ensuing 12 months.

27. Each Member's membership shall continue for as long as the Member continues to pay the subscriptions in accordance with Rule 26, subject to any reductions or exemptions that may apply in respect of the Member.
28. A Member who does not pay their subscription within 60 days of the date on which it becomes due shall, in the absence of a decision of the Board to waive payment on the basis of special reasons or circumstances, cease to be a Member of The Association. Any such person may re-apply for membership in accordance with this Constitution, subject to payment of the applicable subscription.
29. The Board shall have the authority to reduce a Member's prescribed subscription in special circumstances.

## Member Benefits

30. Subject to this Constitution, all Members shall be entitled to enjoy all the benefits and privileges of membership of The Association on and from the entry of their name on the Register of Members, except that:
  - 30.1. only General Members, Life Members and Honorary Members have the right to vote at Annual General Meetings, General Meetings and Special Meetings and to be elected to the Board; and
  - 30.2. volunteers and remunerated employees of The Association are not entitled to be elected to the Board while receiving membership in conjunction with their volunteering role with or employment by The Association.
31. A Member may not transfer their membership to another person.

## Members Bound by Constitution

32. Every Member shall be bound by this Constitution and all By-Laws and in the case of Members of a specific class by the provisions or By-Laws expressly or by implication directed at Members of that class and where any Member commits a breach of the Rules of this Constitution or of the By-Laws then such Member may be dealt with in accordance with Rule 36.

## Register of Members

33. The Association will keep an up to date Register of Members documenting:
  - 33.1. the name and contact details (address, email address and telephone number) of each Member;
  - 33.2. the date on which the Member joined or resigned from The Association;
  - 33.3. the class of the Member and whether they have received membership as a volunteer or a remunerated employee of The Association; and
  - 33.4. if applicable, the date of and reasons for termination of membership.

## Access to Information

34. The Association will make available on request during The Association's business hours copies of the following documents for inspection by Members:
  - 34.1. the Constitution and any By-Laws;
  - 34.2. minutes of Annual General Meetings and General Meetings;
  - 34.3. documents presented to any Annual General Meeting or General Meeting; and
  - 34.4. any other documents, information or material as are required to be made available under the Associations Act.

## Termination of Membership

35. A Member's membership terminates, and the Member ceases to be a member of The Association, on:
- 35.1. the Member's death;
  - 35.2. the Member's whereabouts becoming unknown;
  - 35.3. the Member providing written notice of resignation to The Association;
  - 35.4. if the Member is an Honorary Member, the expiry of the term of the honorary membership or the date on which the Board determines the honorary membership will cease;
  - 35.5. the cessation of the Member's membership under Rule 28; or
  - 35.6. the expulsion of the Member pursuant to Rule 36.
36. Any Member who acts in a manner:
- 36.1. considered by the Board to be detrimental or prejudicial to the interests of The Association; or
  - 36.2. contrary to the Constitution or By-Laws,
- may be suspended or expelled in accordance with the procedure specified for suspension or expulsion of Members in the By-Laws. A Member who is suspended is not entitled to the benefits and privileges of membership of The Association or to exercise of their rights as a Member, including eligibility to serve as a Board Member, during the period of such suspension. In considering whether any Member should be suspended or expelled, the Board must ensure the rules of natural justice are observed.

## MEETINGS

### Annual General Meetings

37. The Annual General Meeting shall be convened within five months after the end of each Financial Year.
38. The following business will be attended to at each Annual General Meeting:
  - 38.1. confirmation of the minutes of the previous Annual General Meeting and any General Meeting or Special Meeting held since that Annual General Meeting;
  - 38.2. presentation of annual reports, audited balance sheets and financial statements for the preceding Financial Year, and the auditor's report on the accounts;
  - 38.3. appointment of the auditor(s);
  - 38.4. election of Board Members to fill any vacancy on the Board; and
  - 38.5. any other business requiring consideration at an Annual General Meeting.
39. Any matter proposed to be submitted for consideration and vote at the Annual General Meeting must be submitted in writing to the President or a Vice-President at least 28 days before the Annual General Meeting.

### General Meetings

40. The Board may convene a General Meeting of Members at its discretion.

### Special Meetings

41. A Special Meeting of Members may be called by written request to the President or a Vice-President, signed by at least 20 Members eligible to vote. Such request shall specify the

business to be discussed and voted upon at the Special Meeting and provide written notice of any draft resolutions to be proposed.

42. A Special Meeting shall be convened no later than 28 days after the President or Vice-President receives a request for a Special Meeting.
43. Only the business for which the relevant Special Meeting is called shall be discussed at a Special Meeting.

## Notices of Meetings

44. The President, a Vice-President or a person nominated by either shall give at least 21 clear days' notice to Members of the intention to convene an Annual General Meeting, General Meeting or Special Meeting.
45. The notice shall specify the time, date and place of the meeting, the business to be transacted at the meeting and a written notice of any draft Special Resolutions to be proposed.
46. Notice of a meeting will be deemed sufficient if:
  - 46.1. it appears in a newspaper circulating within Australia; or
  - 46.2. it is sent by ordinary pre-paid post or email to a Member at the postal or email address of the Member in the Register of Members.

## Quorum

47. Twenty Members eligible to vote form a quorum at an Annual General Meeting, General Meeting or Special Meeting.
48. If a quorum is not present within 30 minutes after the time appointed for:

- 48.1. a Special Meeting, the meeting will be dissolved;
  - 48.2. a General Meeting or an Annual General Meeting, the meeting shall stand adjourned to the same day of the following week at the same time and place, and if such an adjourned meeting a quorum is not present within 30 minutes of the time appointed for the adjourned meeting, the Members present shall constitute a quorum.
49. Members may attend and vote at meetings of The Association using any technology, such as video or teleconferencing, in the manner and in accordance with procedures as determined by the Board from time to time.

## Voting

50. Subject to this Constitution, all questions and matters put to a vote at any meeting of The Association shall be decided by a simple majority of Members present and eligible to vote.
51. Each Member present and eligible to vote shall be entitled to a deliberative vote and where there is no majority of votes, the matter will be decided in the negative.
52. A Member shall be entitled to appoint in writing a natural person who is also a Member of The Association to be their proxy and attend and vote at any Annual General Meeting, General Meeting or Special Meeting.
53. If a poll is demanded:
- 53.1. in respect of a question by at least five Members eligible to vote, a poll must be conducted in the manner determined by the Chairperson; or
  - 53.2. for the election of a Chairperson or on a question of adjournment, a poll must be conducted immediately in relation to that election or question,
- and the result of the poll constitutes the resolution of the meeting on that question or election.

## THE BOARD

54. The affairs of the Association shall be managed and controlled by the Board which, except for those matters required to be determined by Members under this Constitution or the Associations Act, may exercise all such powers and do all such things as are within the Purpose.
55. The Board has the management and control of the funds and other property of The Association.
56. The Board shall have authority to interpret the meaning of this Constitution and, subject to the Associations Act, any other matter relating to the affairs of The Association on which this Constitution is silent.
57. All actions at any meeting of the Board or by any person acting as a Board Member are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Board Members or the person acting as a Board Member, valid as if every person had been properly appointed and was qualified and continued to be a Board Member.

## Duties of Board Members

58. Board Members must comply with their duties at law (including under the Associations Act and at common law), and with the duties described in Governance Standard 5 of the regulations made under the ACNC Act, including:
  - 58.1. 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 Board Member;
  - 58.2. to act in good faith in the best interests of The Association and to further the Purpose;
  - 58.3. not to misuse their position as a Board Member;

- 58.4. not to misuse information they gain in their role as a Board Member;
- 58.5. to disclose any perceived or actual material conflicts of interest in the manner set out in Rule 93;
- 58.6. to ensure that the financial affairs of The Association are managed responsibly; and
- 58.7. not to allow The Association to operate while it is insolvent.

## Composition

- 59. The Board shall be comprised of no less than five and no more than nine elected Board Members, each of whom must be:
  - 59.1. a Member;
  - 59.2. a natural person who has consented to become a member of the Board of The Association; and
  - 59.3. eligible to be elected to the Board pursuant to Rule 30, the Associations Act and the ACNC Act.
- 60. Any Member eligible to be a Board Member in accordance with Rule 59 may nominate for election as a Board Member by written notice to the Board no less than 28 days prior to the Annual General Meeting at which Board Members are due for election or otherwise in the manner and by the closing date for nominations prescribed by the Board.
- 61. The Board must review each nomination and include in the notice of Annual General Meeting details of all eligible nominees for election or re-election as Board Members.
- 62. Except as provided by Rules 63, 80 and 81, Board Members shall be elected at an Annual General Meeting for a Term of three years, as follows:
  - 62.1. if the number of eligible nominees is equal to or less than the number of vacancies to be filled, the Chairperson must declare such nominees to be duly elected as Board Members; and

- 62.2. if the number of eligible nominees is greater than the number of vacancies to be filled, ballots must be conducted in a manner determined from time to time by the Chairperson, and the Chairperson must declare such nominees chosen by ballot to be duly elected as Board Members.
63. Each Board Member elected at an Annual General Meeting must retire at the closure of the third Annual General Meeting following their election (whether the election was prior to or after the adoption of the Constitution). Any Board Member who retires pursuant to this Rule 63 is eligible to nominate for re-election in accordance with Rule 60 and may serve a total of three Terms with a maximum Tenure of nine years. After a Board Member's maximum Tenure has been reached a period of three years must pass following that Board Member's retirement from the Board before that former Board Member is eligible to nominate for re-election to the Board.
64. Where circumstances require the continued expertise or continuity of a Board Member or where there are specific circumstances or events occurring, the Board may grant a one-year extension by Special Resolution of the Board (in respect of which the Board Member subject to the vote is not eligible to vote), up to a maximum of two one-year extensions.
65. A Board Member may be removed from office by a Special Resolution of Members.
66. A Board Member ceases to hold office if the Board Member:
- 66.1. has reached their maximum Tenure of nine years or their Term has expired;
  - 66.2. is removed from office under Rule 65;
  - 66.3. ceases to be eligible to be a Board Member in accordance with Rule 59;
  - 66.4. becomes incapable of performing the duties of office by mental or physical ill health;
  - 66.5. is absent from Board Meetings without just cause and apology for more than: (a) three consecutive Board Meetings; or (b) five Board Meetings in any Financial Year, subject to the Board first giving the Board Member notice after the Board Member is absent for two consecutive Board Meetings, or four Board Meetings in the relevant Financial Year, respectively;

- 66.6. retires at an Annual General Meeting; or
- 66.7. resigns by giving written notice to the Board.

## Office Holders

67. The Board must appoint from its number:

- 67.1. a President;
- 67.2. two Vice Presidents; and
- 67.3. a Treasurer,

each an 'Office Holder' for a Term of two years. A Board Member may hold two Office Holder positions concurrently, however where this occurs the Board Member shall be entitled to exercise one vote only. A Board Member appointed to an Office Holder position is eligible to nominate for further Terms pursuant to Rule 63 and in accordance with Rule 60 provided the Board Member's Tenure has not been exceeded.

68. The President or, in their absence, a Vice-President, will preside as Chairperson at all meetings of the Board or The Association. In the absence of the President and Vice-Presidents at:

- 68.1. a meeting of the Board, the Board Members; or
- 68.2. a meeting of The Association, the Members,

shall elect a Board Member to preside as Chairperson. A President or Vice-President is deemed absent from a particular meeting for the purposes of this Rules 68 if they are not present within five minutes after the time appointed for the meeting.

69. The Board may, by resolution, at any time remove an Office Holder.

70. The position of an Office Holder will become vacant if:

- 70.1. the Office Holder's Term expires;

- 70.2. the Office Holder resigns from their position as an Office Holder by written notice to the Board; or
  - 70.3. the Office Holder ceases to be a Board Member for any reason.
71. In the event of a vacancy of any Office Holder position for any reason, the Board must appoint a replacement President, and may appoint replacement Vice President(s) and Treasurer, from its number. Such roles will be appointed under a casual vacancy until the next Annual General Meeting.
72. No Board Member may be remunerated for serving on the Board.

## Delegation

73. The Board may delegate any of its powers and functions to a committee established by the Board, a Board Member, an Officer, an employee of The Association, a branch or auxiliary approved by the Board or any other person, as it considers appropriate.
74. Without limiting the Board's powers under this Constitution, the Board may approve at its discretion the creation of branches or auxiliaries to further the Purpose, subject to By-Laws made by the Board in respect of branches and/or auxiliaries. Any branch or auxiliary in existence as at the date of adoption of this Constitution will continue in existence subject to any relevant By-Laws made by the Board.
75. The delegation must be recorded in The Association's minute book.

## Authority to Make, Alter and Rescind By-Laws

76. The Board shall have the authority to make, alter and rescind By-Laws to fulfil the Purpose. Such authority shall include but shall not be limited to making, altering or rescinding By-Laws in relation to each of the following matters:

- 76.1. the regulation and conduct of Board Meetings, General Meetings, Annual General Meetings and Special Meetings;
  - 76.2. the establishing or constituting of committees constituted of Board Members and/or other Members;
  - 76.3. the review or revocation of any action or decision of any committee or Officer;
  - 76.4. defining the respective authorities and duties of any committee or Member of The Association; or
  - 76.5. the governance of The Association and any branches and auxiliaries.
77. All By-Laws which were in force and effect as By-Laws of The Association immediately prior to the adoption or amendment of this Constitution shall remain in full force and effect unless altered or rescinded by the Board.
78. This Constitution takes precedence over any By-Laws to the extent of any inconsistency.

## Casual Vacancies

79. In the event of a casual vacancy on the Board for any reason, the remaining Board Members may act, but if the number of remaining Board Members is not sufficient to constitute a quorum for a Board Meeting, they may act only for the purpose of increasing the number of Board Members to a number sufficient to constitute a quorum or to convene a Board Meeting.
80. The Board may appoint any person eligible under Rule 59 to be a Board Member, or under Rule 67 to be an Office Holder, to fill a casual vacancy. A Board Member or Office Holder so appointed will hold office for the Term remaining in respect of the vacant position and may nominate for election in accordance with Rule 60. Time served in a casual vacancy does not count toward the Term of a Board Member or Office Holder.

## Appointments

81. The Board may appoint up to three persons eligible under Rules 59.2 and 59.3 to be a Board Member in addition to the elected Board Members. A Board Member so appointed will hold office for the term determined by the Board and will be eligible for re-appointment at the expiry of such term.
82. The Board shall appoint a person to record the minutes of each Annual General Meeting, General Meeting, Special Meeting and Board Meeting.
83. The Board shall:
  - 83.1. appoint a Chief Executive Officer of The Association for such term, and on such conditions, as the Board thinks fit, to be responsible to the Board for the performance of the functions of that office; and
  - 83.2. have the authority to employ such other persons as it considers necessary.
84. The Chief Executive Officer and the employees of The Association must act in accordance with the policies and procedures of The Association and any directions of the Board.

## Board Meetings

85. The Board shall meet no less than five times per year and otherwise as often as necessary in order to conduct the business of The Association.
86. Unless otherwise determined by the Board, Board Meetings shall be held at such times and places and in such format as the Board may from time to time determine (including by using any technology, such as video or teleconferencing, to hold meetings of the Board).
87. Subject to this Constitution, a Board Meeting may be convened in addition to regular Board Meetings by at least half of Board Members holding office at the relevant time, on giving no

less than 48 hours' notice to every other Board Member unless this requirement is waived by all Board Members.

88. A notice of Board Meeting signed or otherwise authorised by the President, or a person nominated by them must be sent to all Board Members that sets out:

88.1. the date, time and place of the meeting; and

88.2. particulars of the nature and order of the business to be transacted at the meeting.

Notice of a Board Meeting at which a Special Resolution is proposed must be given at least 21 days prior to the date of the Board Meeting.

89. Board Members each have one vote.

90. Unless otherwise provided in this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes of Board Members present and entitled to vote.

Where there is no majority:

90.1. the matter must be reconsidered at the next Board Meeting; and

90.2. if there is still no majority at the next Board Meeting, the matter must be referred to a General Meeting for decision.

91. An out of session resolution in writing:

91.1. when signed or otherwise agreed to by the majority (or in the case of a Special Resolution, a three-quarters majority) of Board Members eligible to vote and otherwise passed in accordance with this Rule 91, will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held;

91.2. may consist of several counterparts, each signed by one or more of the Board Members;

91.3. may be sent by email to the Board Members and the Board Members may agree to the resolution by sending a reply email or through electronic voting to that effect; and

- 91.4. is passed when the majority (or in the case of a Special Resolution, a three-quarters majority) of Board Member signs or otherwise agrees to the resolution in accordance with this Rule 91.
92. Unless otherwise determined by the Board Members, half the Board Members holding office at the relevant time, of which two must be the President, a Vice-President and/or the Treasurer, form a quorum at a meeting of the Board.
93. A Board Member having a direct or indirect pecuniary interest in a contract or proposed contract with The Association ('Interest') must disclose the nature and extent of the Interest to the Board as soon as they become aware of their Interest and at the next Annual General Meeting in accordance with the Associations Act. The Board Member shall not vote with respect to the contract or proposed contract to which their Interest relates, and the Board Member's Interest will be recorded in the minutes of the relevant Board Meeting.

## FINANCES

### Treasurer

94. The Treasurer shall be responsible for monitoring the financial records of The Association, presenting statements of income and expenditure at Board Meetings and audited statements of account at each Annual General Meeting.

### Financial Year

95. The Association's financial year shall be a period of 12 months commencing on 1 July of each year and concluding on 30 June of the following year ('Financial Year').

## Funds

96. Without limiting Rule 7, The Association shall have the power:
- 96.1. to open and operate such bank account or accounts in the name of The Association as the Board shall think fit, to be operated on each occasion by any two persons designated by the Board as being persons who are authorised signatories of The Association for that purpose;
  - 96.2. to invest its funds in the name of The Association or of a Trustee or Trustees on behalf of The Association in or upon such shares, securities or investments as may be approved by the Board and in particular, but without limiting the generality of the foregoing in debentures, debenture stock, guaranteed preference, ordinary or deferred stock issued or guaranteed by any company (other than a company, the main object of which is to carry on mining operations) incorporated under Royal Charter or by any special Act or under any general Act or Acts of the Commonwealth of Australia or any State or Territory of Australia and whether bearing any liability for uncalled capital or not to vary or transpose such investments into or for others of any nature hereby authorised or authorised under the Associations Act for the time being in force; and
  - 96.3. to borrow money upon such terms and in such manner and upon such security (if any) as may be approved by the Board for any purpose which, in the opinion of the Board, will assist or enable The Association to carry out, directly or indirectly, the Purpose.
97. The income and property of The Association whensoever derived shall be applied solely towards the promotion of the Purpose and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise however by way of profit to the Members or to relatives of Members provided that nothing herein shall prevent the payment in good faith of remuneration to or reimbursement of expenses reasonably incurred by any officer or servant of The Association or to any Member in return for any service actually rendered to The Association or reasonable and proper rent for premises let by any Members.

## Auditors and Accounts

98. The auditor(s) of The Association shall be appointed at the Annual General Meeting, or if no such appointment is made, by the Board ('Auditor(s)'). The Auditor(s) shall:
- 98.1. hold office until the next Annual General Meeting and be eligible for re-appointment; and
  - 98.2. receive a fee for their services as agreed with the Board.
99. The Board will provide notice of each General Meeting and Annual General Meeting to the Auditor(s), who:
- 99.1. will be entitled to attend and be heard at any General Meeting or Annual General Meeting of Members; and
  - 99.2. must provide written reports to the Annual General Meeting and as otherwise required by the Board.
100. The Association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of The Association and otherwise as required by the Associations Act.
101. The Association will lodge periodic returns with the Commission as required by the Associations Act.
102. The Auditor(s) shall examine accounts, vouchers, receipts and relevant books and shall furnish a report thereon at the Annual General Meeting in accordance with accepted auditing practices.

## OTHER MATTERS

### Notices

103. Any notice, demand, approval, consent or other communication under this Constitution ('Notice') must be in writing and must be served by The Association on a Member by any of the following methods:
- 103.1. personally;
  - 103.2. by prepaid registered post addressed to the Member at the Member's address on the Register of Members; or
  - 103.3. by email to the Member's email address recorded on the Register of Members.
104. A Notice given in accordance with Rule 103 takes effect when received (or such later time as specified in it), and is taken to be received:
- 104.1. if hand delivered, on delivery;
  - 104.2. if sent by prepaid post, six Business Days after the date of posting (or ten Business Days after the date of posting if posted to or from outside Australia); or
  - 104.3. if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient,
- but if the delivery, receipt, publication or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt, publication or transmission.

## Grievances, Complaints and Disputes

105. A Member may raise a grievance or complaint about a Board Member, the Board or another Member of The Association by written notice to The Association.
106. A grievance or complaint raised under Rule 105 and any other dispute between:
  - 106.1. a Member and a Board Member, the Board, The Association or another Member; or
  - 106.2. a Board Member and the Board, another Member or The Association,(**Dispute**) will be dealt with in accordance with Rules 107 to 109 (inclusive).
107. The parties to the Dispute must meet and discuss the matter in dispute in good faith and, if possible, resolve the Dispute within 14 days after the Dispute comes to the attention of all the parties to it.
108. If the parties to the Dispute are unable to resolve the Dispute at the meeting, the parties to the Dispute may choose to meet and discuss the Dispute in good faith before an independent third person agreed to by the parties or, failing agreement, by the President or their nominee.
109. If the Dispute remains unresolved after following the procedure in Rules 107 and 108, the parties may seek to resolve the Dispute in accordance with the Associations Act and otherwise take any action available at law.

## Minutes of proceedings

110. Proper minutes of all proceedings of meetings of the Board and The Association shall be entered within one month after the relevant meeting in minute books kept for that purpose.
111. The minutes kept pursuant to Rule 110:

- 111.1. must be confirmed by the Board Members or The Association, as applicable, at a subsequent meeting; and
  - 111.2. shall be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting at which the minutes are confirmed.
112. Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

## Public Officer

113. The Board shall appoint a Public Officer and must not be without a Public Officer for a period longer than one month, or as otherwise prescribed by the Associations Act.
114. The Board may at any time remove and replace the Public Officer.
115. Any Board Member who is eligible to be a public officer under the Associations Act is eligible to be appointed by the Board as Public Officer.
116. Notice of appointment and any change in the identity or address of the Public Officer must be lodged within one month after the change in the appropriate form to the Commission or as otherwise prescribed by the Associations Act.

## Execution of Documents and Seal

117. The Association may execute a document if the document is signed by:
- 117.1. two Board Members; or

- 117.2. any person duly authorised to sign on behalf of The Association, whether express or implied.
118. The President, Vice-Presidents and Treasurer shall be the seal holders.
119. The seal of The Association shall only be affixed to an instrument, by the authority of a resolution of the Board, in the presence of two seal holders and every document to which the seal is affixed in their presence shall be signed by those two seal holders.
120. A person nominated by the Board will record every use of the seal and ensure that the seal is kept in safe custody at all times.

## Indemnity of Officers, Insurance and Access

121. The Association is to indemnify each Officer out of the assets of The Association against any Liability incurred by the Officer in, or arising out of, the conduct of the business of The Association or in, or arising out of, the discharge of the Duties of the Officer for the period ending seven years after the date the Officer ceases to be an Officer of The Association, except for negligence, fraud and wilful misconduct or any Liability arising out of conduct involving lack of good faith. Where the Board Members consider it appropriate, The Association may execute an indemnity document in any form in favour of any Officer of The Association or a subsidiary.
122. Where the Board Members consider it appropriate, The Association may:
- 122.1. make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer of the Association or a subsidiary against any Liability incurred by the Officer in, or arising out of, the conduct of the business of the Association or in, or arising out of, the discharge of the Duties of the Officer; and
- 122.2. bind itself in any contract or deed with any Officer of The Association to make the payments.

123. The indemnity under Rule 121 and payments under Rule 122 may only be offered:
- 123.1. to the extent The Association is not precluded by law from doing so;
  - 123.2. to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including a subsidiary or an insurer under any insurance policy); and
  - 123.3. where the Liability is incurred in or arising out of the conduct of the business of another entity or in the discharge of the Duties of the Officer in relation to another entity, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that entity.
124. Where the Board Members consider it appropriate, The Association may:
- 124.1. give a former Board Member access to certain papers, including documents provided or available to the Board Members and other papers referred to in those documents; and
  - 124.2. bind itself in any contract with a Board Member or former Board Member to give the access.

## Other Entities

125. No decision, resolution or direction of a board, committee or governing body of any corporation, organisation, association or other entity, shall be binding on The Association or implemented by The Association unless the Board expressly resolves that any such decision, resolution or direction shall be binding on or shall be implemented by The Association.

## Constitutional Amendments

126. The name of The Association and this Constitution may only be altered by Special Resolution at an Annual General Meeting, General Meeting or Special Meeting.

127. Subject to an express intention otherwise, a Special Resolution to amend this Constitution is invalid if it results in The Association losing its status as a charity or a public benevolent institution for the purposes of the ACNC Act.
128. Any alteration to the Constitution shall be registered with the Commission in accordance with the requirements of the Associations Act.

## Winding Up and Dissolution

129. The Association may be wound up or dissolved in the manner provided for in the Associations Act.
130. Upon winding up or dissolution, any Surplus Assets must not be distributed to a current or former Member.
131. Subject to the Associations Act, ACNC Act and any other applicable legislation, and any court order, any Surplus Assets (including Gift Funds) that remain after The Association is wound up or dissolved must be distributed to one or more charities:
  - 131.1. with charitable purpose(s) similar to, or inclusive of, the Purpose;
  - 131.2. which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as The Association; and
  - 131.3. that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
132. The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of Members at or before the time of winding up. If Members do not make this decision, The Association may apply to the Supreme Court to make this decision.
133. If The Association's deductible gift recipient endorsement is revoked (whether or not The Association is to be wound up), any surplus Gift Funds must be transferred to one or more

charities that meet the requirements of Rules 131.1 to 131.3 (inclusive), as decided in accordance with Rule 132.