

**CORPORATIONS ACT 2001
PUBLIC COMPANY LIMITED BY GUARANTEE**



**CONSTITUTION OF FITNESS
AUSTRALIA LIMITED**

UPDATED: SEPTEMBER 2021

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GOVERNANCE & CAPACITY

1. Name

The name of the Company is Fitness Australia Limited.

2. Liability of Members

The liability of Members is limited.

3. Constitution

3.1. This is the Company's Constitution and describes the way in which the Company is to be internally managed.

3.2. The Company may modify or repeal this Constitution or any provision of it by Special Resolution from time to time and such modification, repeal or adoption takes effect on the date on which the resolution is passed or, if the resolution specifies a date which is later than the date on which the resolution is passed, on that date.

3.3. The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a not for profit.

4. Public Company

The Company is a public company limited by guarantee.

5. Guarantee of Members

Every Member undertakes to contribute a maximum of ten dollars (\$10.00) to the Company for payment of the debts and liabilities of the Company, the costs, charges and expenses of any winding up and the adjustment of the rights of Members amongst themselves, in the event the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member. The liability of each member is limited to making such contribution and no more.

6. Not for profit

The Company shall operate for the pursuit of the objects as set out in clause 9 and not for the pursuit of profit. .

7. Income, Property and Payments

7.1. The income and property of the Company shall be applied solely towards the promotion of the purpose of the Company as described in clause 9 and shall not be applied in any manner which is prohibited by this Constitution.

7.2. Nothing in clause 6, this clause 7 or in any other provision of this Constitution prevents the Company from paying for:

- (a) services actually rendered by a Member, Officer or employee to the Company;

- (b) goods supplied to the Company by a Member, Officer or employee of the Company in the ordinary and usual course of business;
 - (c) interest (at a rate not exceeding the lowest current overdraft rate of interest of the Company's bankers) on moneys borrowed from any Member; or
 - (d) reasonable and proper rent for premises demised or let to the Company by any Member.
- 7.3. Subject to Chapter 2E of the Act, the Directors may be paid the remuneration that the Company determines by resolution from time to time.
- 7.4. The Company may pay a Director for:
- (a) out of pocket expenses reasonably incurred by the Director in the performance of any duty as Director where the amount payable does not exceed an amount approved by the Board; and
 - (b) any service rendered by him or her to the Company in a professional or technical capacity where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service.

8. Replaceable Rules

The Replaceable Rules do not apply to this Constitution.

PURPOSE

9. Objects

The purpose of the Company is to encourage Australians to be more active, more often in a safe and effective way. We will:

- (a) Set and promote international best practice standards for businesses delivering fitness, exercise and physical activity programs, and staff employed in them;
- (b) Advocate to government on the alignment of fitness, exercise and physical activity programs with health promotion, in particular mental health
- (c) Advocate to government, media and stakeholders on the importance of exercise as an essential activity and raise the profile and credibility of the sector.
- (d) Provide contemporary and relevant information, education and research to existing and potential members, government, media and stakeholders

- (e) In collaboration with key stakeholders, encourage Australians to be more active, more often, in a safe and effective way.

10. Limitation

The Company may only exercise the powers in section 124(1) of the Act to:

- (a) act in furtherance of the purpose described in clause 9; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 10(a).

MEMBERS

11. Members

- 11.1. There must be at least one Member.
- 11.2. Subject to clause 14 an individual or a body corporate may be a Member.
- 11.3. Subject to the terms of this Constitution, a person who supports the purposes of the Company is eligible to apply to be a Member of the Company.
- 11.4. The rights and privileges of every Member are personal to that Member, may not be transferable by any act of that Member or by operation of law and shall cease immediately upon the removal of the Member's name from the Register of Members.

12. Admission to Membership

- 12.1. The Board may admit any person as a Member on terms and conditions in this Constitution and as prescribed by the Board in the Regulations.
- 12.2. The Board may prescribe from time to time the forms of application, certificates of membership, and administrative procedures for admission and transfer to specific classes or sub-classes of membership, without having to set out these requirements in the Regulations.
- 12.3. An application for membership must be made in writing in the form prescribed by the Board from time to time, signed by the applicant, and accompanied by the relevant Subscription fee and such documents and evidence for the relevant class or sub-class of membership as is required by the Board from time to time.
- 12.4. The Board will consider an application for membership after its receipt and determine, in its discretion, the admission or rejection of the applicant. The Board need give no reason for the rejection of an application. The Secretary must notify the applicant of rejection of the application within thirty days, and return the Subscription to the applicant.
- 12.5. Upon admission to membership of the Company each Member agrees to be bound by and comply with:

- (a) this Constitution and the Regulations;
 - (b) any determination or resolution which may be made or passed by the Board or the Company; and
 - (c) any codes, rules, policies, procedures and standards which may from time to time be adopted by the Board.
- 12.6. Each person that is admitted as a Member shall have his or her or its name and other particulars determined by the Board entered in the Register of Members.

13. Classes of Members

- 13.1. The classes of membership of the Company are:
- (a) Business Members as defined in clause 14.1;
 - (b) REP Members as defined in clause 14.3;
 - (c) Associate Members as defined in clause 14.8; and
 - (d) Any other class as determined or resolved by the Board from time to time, or as otherwise set out in the Regulations.
- 13.2. The Board may determine other classes, sub-classes, or criteria for membership from time to time.
- 13.3. Membership of the Company shall be within a class or a sub-class of membership in accordance with this clause 13, clause 14, and the Regulations. A person admitted to a class or a sub-class of membership of the Company shall be entitled to exercise all the rights and privileges and shall be required to meet all liabilities and requirements attaching to that class or sub-class of membership by reason of this Constitution and the Regulations.
- 13.4. The Board may transfer a Member from one class of membership to another, or from one sub-class of membership to another within the same class, if the Member qualifies for membership of the new class or sub-class and consents to the transfer.

14. Qualifications and rights of membership

- 14.1. The Board may, at its discretion, admit as a Business Member, a body corporate, sole trader, independent contractor, partnership, trust or other entity or organisation, who:
- (a) either:
 - (i) conducts, operates, provides or administers a business directly involved in delivering services to the public that supports and/or promotes the vision of the Company ; or

- (ii) operates as a franchisor, by way of license or otherwise to multiple businesses providing fitness, exercise or physical activity services to the public under the same or a substantially similar trading name and/or trade mark or service mark;
 - (b) has an Australian Business Number; and
 - (c) who meets the requirements for Business Membership as specified in the Regulations from time to time.
- 14.2. Each Business Member is entitled to:
- (a) receive notices of, attend and speak at a general meeting of the Company;
 - (b) such voting rights at a general meeting of the Company as apply to the Business Member's class of Business Membership as are determined from time to time by the Board to apply to that class of Business Members;
 - (c) receive such membership benefits as apply to the Business Member's class of Business Membership as are determined from time to time by the Board to apply to that class of Business Member.
- 14.3. The Board may, at its discretion, admit as a REP Member, a natural person who is registered as an exercise professional on the Company's Australian Register of Exercise Professionals, and meets any other requirements for REP Membership as specified by the Company from time to time.
- 14.4. Each REP Member is entitled to:
- (a) receive notices of, attend and speak at a general meeting of the Company;
 - (b) such voting rights at a general meeting of the Company as apply to the REP Member's class of REP Membership as determined from time to time by the Board to apply to that class of REP Membership;
 - (c) receive such membership benefits as apply to the REP Member's class of REP Membership as are determined from time to time by the Board to apply to that class of REP Member.
- 14.5. For the purposes of clauses 14.2 and 14.4, and subject to clause 14.6, each Business Member and REP Member has one vote on each resolution put to the vote at a general meeting, unless the relevant Member is in a class of membership in respect of which the Board has made a determination as to voting rights, in which case the Member has that number of votes provided for in the determination.
- 14.6. In elections for, or resolutions for the removal of:
- (a) Business Member Directors; only Business Members may vote; and
 - (b) REP Member Directors; only REP Members may vote.

- 14.7. The Board may, at its discretion, admit as an Associate Member, a natural person, body corporate, sole trader, independent contractor, partnership, trust, or other entity or organisation that supports and/or promotes the vision of the Company, and who meets the requirements for Associate Membership as specified in the Regulations from time to time.
- 14.8. Associate Members are:
- (a) not entitled to speak at or vote at a general meeting of the Company;
 - (b) not entitled to be nominated for or to nominate a person to be a Director in accordance with clause 38; and
 - (c) entitled to receive such benefits as apply to the Associate Member's class of Associate Membership as are determined from time to time by the Board to apply to that class of Associate Member.
- 14.9. The qualifications required of Members and the criteria to be met for the classes and sub-classes of membership shall be determined by the Board and set out in the Regulations.

15. Subscription of Members

- 15.1. Members must pay such Subscriptions as determined by the Board from time to time in respect of each class and sub-class of membership.
- 15.2. Subject to clause 15.3, the amount of any Subscription shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time.
- 15.3. The Board may in its discretion:
- (a) determine that no Subscription, or a discounted Subscription, is payable by a Member or Members for any given year.
 - (b) extend the time for payment of Subscriptions by any Member or class of Members, including determining any payment arrangement (which may include an administration fee) for the payment of Subscriptions by any Member or class of Members.
- 15.4. If the Subscription or any part of it remains unpaid by a Member for two months after its due date for payment, the Member ceases to be entitled to any of the rights and privileges of membership, but these may be reinstated on payment of all arrears as the Board sees fit and on terms determined by the Board.
- 15.5. No part of any Subscription shall be refunded to a Member who ceases to be a Member in accordance with clause 18.

16. Register of Members

- 16.1. The Company must keep a Register of Members in accordance with the Act, which must contain in respect of each Member:

- (a) the name and address of the Member (and where the Member is a body corporate, partnership or other business entity, the name, address and contact details of the representative of the Member);
- (b) the class and sub-class of the Member's membership;
- (c) the date of admission to and cessation of the Member's membership; and
- (d) such other particulars as the Board from time to time may determine.

16.2. Each Member must notify the Secretary of the details of an address in Australia where the Company can send notices, and keep the Secretary notified of any change in the Member's name, address or contact details from time to time.

17. Certificate of Membership

- 17.1. The Board may at its discretion issue a certificate of membership to Members in such form and upon payment of such fees as it may prescribe from time to time.
- 17.2. Certificates of membership remain the property of the Company and must be promptly returned to the Company if requested by the Board or if the holder of the certificate ceases to be a Member.

18. End & Suspension of Membership

- 18.1. A Member may resign from membership by giving written notice to the Secretary. The resignation takes effect on the date the notice is received by the Secretary or such later date as is stipulated in the notice.
- 18.2. A Member ceases to be a Member if the Member:
 - (a) resigns under clause 18.1;
 - (b) dies;
 - (c) no longer meets the criteria for membership of the Company or class of membership of the Company (unless transferred to another class of membership in accordance with clause 13.4); or
 - (d) has an Expulsion Event occur in respect of the Member and the Directors resolve to then expel the Member.
- 18.3. Before the passing of any resolution under clause 18.2(d), a Member is entitled to give the Directors, either orally or in writing, any explanation or defence of the Expulsion Event the Member may think fit. A Member whose membership has been cancelled under this clause 18.3 may re-apply for membership in accordance with this Constitution and the Regulations.
- 18.4. Any Member whose membership has been suspended or cancelled continues to remain liable for:

- (a) all money owing by the Member to the Company as at the date of suspension or cancellation including any Subscription; and
 - (b) the Guarantee.
- 18.5. The Board may reinstate a Member whose membership has been suspended or cancelled on the satisfaction of such terms and conditions as set out in the Regulations or as the Board otherwise thinks fit, including the payment of all money owing by the Member to the Company as at the date their membership was cancelled.
- 18.6. If a Member's membership is suspended or cancelled in accordance with this Constitution:
- (a) the Board must notify the Member in writing of, and provide reasons for, the suspension or cancellation; and
 - (b) the Member may, within 30 days' after receiving the notification, lodge a written appeal to the Company seeking a reinstatement of the Member's membership. Such appeal must be heard in accordance with procedures established by the Regulations.

GENERAL MEETINGS

19. Calling of meetings of Members

- 19.1. Subject to clause 19.2, the Board may in its discretion call a meeting of Members from time to time.
- 19.2. The Board must call and arrange to hold a general meeting upon receipt of a request from the Members made in accordance with the Act.
- 19.3. A general meeting may only be convened by a Member or Members when the Act permits.

20. Annual general meetings

- 20.1. The Company must hold an annual general meeting at least once in each calendar year and within five months after the end of its Financial Year (at a place and time determined by the Board) to:
- (a) receive the financial reports, statements and accounts of the Company and reports of the Board and the Auditor for the that Financial Year;
 - (b) elect Directors as required;
 - (c) appoint or confirm the appointment of the Auditor;
 - (d) consider any matter which may be submitted by a Member to the meeting in accordance with the Act or this Constitution; and
 - (e) transact any other business which:

- (i) under this Constitution ought to be transacted at an annual general meeting of the Company; or
- (ii) which the Board considers appropriate.

20.2. An annual general meeting shall be held in accordance with the provisions of the Act. Any other general meetings shall be extraordinary general meetings.

21. Amount of notice of meetings

Subject to the Act, at least 21 calendar days' notice must be given of a meeting of Members.

22. Notice of meetings

- 22.1. Written notice of a meeting of Members must be given individually to each Member entitled to vote at the meeting, to each Director, and to any other person entitled to receive notices of meetings of Members.
- 22.2. The Company shall give notice of a meeting of Members in accordance with the requirements of the Act.
- 22.3. A notice of meeting of Members must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) state the general nature of the meeting's business;
 - (c) if a Special Resolution is to be proposed at the meeting, set out the intention to propose the Special Resolution and state the resolution;
 - (d) if a Member is entitled to appoint a proxy, contain a statement that:
 - (i) the Member has the right to appoint a proxy; and
 - (ii) the proxy of a Member does not need to be a Member; and
 - (e) set out or include any additional information or documents specified by the Act.
- 22.4. The accidental omission to give notice of any general meeting to, or the non-receipt of the notice by, any persons entitled to receive notice of a general meeting shall not invalidate the proceedings of or any resolution passed at the meeting.

23. Cancellation or Postponement of General Meeting

- 23.1. Subject to the provisions of the Act and this Constitution, the Board may cancel or postpone a general meeting of the Company:
- (a) convened by the Board; or
 - (b) which has been convened by a Member or Members pursuant to the Act

upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.

- 23.2. Subject to the provisions of the Act and this Constitution, the Board may postpone the holding of any general meeting, or change the venue at which it is to be held, whenever it sees fit (other than a meeting requisitioned by Members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 23.3. Whenever any meeting is cancelled or postponed or the venue for a general meeting is changed:
- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution, and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (b) any failure to notify in writing any persons entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponing of the meeting.

24. Auditor entitled to notice and other communication

The Company must give the Auditor:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the general meeting that a Member is entitled to receive.

25. Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of the Act. Notice of such proposal must be given to the Secretary in accordance with the Act.

26. Time and place for meetings of Members

A meeting of Members must be held at a reasonable time and place.

27. Members' Meetings - Technology

The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

28. Quorum

- 28.1. The quorum for a meeting of Members is five (5) Members entitled to vote at the meeting, and the quorum must be present at all times during the meeting.

28.2. In determining whether a quorum is present:

- (a) individuals who attend as proxies or body corporate representatives are to be counted;
- (b) if a Member has appointed more than one proxy or representative, only one of them is to be counted; and
- (c) if an individual is attending both as a Member and as a proxy or representative, they are to be counted only once.

28.3. Subject to clause 28.5 a meeting of the Members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date (not being more than fourteen days after such meeting), time and place the chair of the meeting (or in default of the chair a majority of Members) specifies. If the chair of the meeting (or in default of the chair a majority of Members) does not specify one or more of those requirements, the meeting is adjourned to:

- (a) if the date is not specified, the same day in the next week;
- (b) if the time is not specified, the same time; or
- (c) if the place is not specified, the same place shall be a quorum.

28.4. Subject to clause 28.5, if no quorum is present at the resumed meeting of the Members within 30 minutes after the time for the meeting, the Members present shall be the quorum.

28.5. If a meeting of the Members called pursuant to clause 19 does not have a quorum present within 30 minutes after the time set for the meeting, the meeting shall be dissolved.

29. Chairing meetings of Members

The Chair shall chair meetings of Members. If the Chair is not present within fifteen minutes after the time appointed for the holding of the meeting, is not able to chair the meeting or declines to act as chair of the meeting, the Directors present must elect, by simple majority, a chair from the Directors present at the meeting.

30. Adjourned meetings

30.1. The Chair may, if the Members present with a majority of votes at the meeting agree, and must if so directed by the Members present with a majority of votes, adjourn the meeting from time to time and from place to place.

30.2. No business may be transacted at an adjourned meeting other than the business left unfinished from the earlier meeting from which the adjournment took place.

30.3. If a meeting is adjourned for more than 21 days, new notice of the adjourned meeting must be given.

31. Auditor's right to be heard at meetings of Members

The Auditor is entitled to attend and be heard at any general meeting of Members.

32. Proxies and body corporate representatives

- 32.1. A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- 32.2. Any proxy or representative appointed under clause 32.1 must be appointed in accordance with the Act and shall have the rights as set out in the Act.
- 32.3. A document appointing a proxy must be in writing in any form permitted by the Act and signed by or on behalf of the Member making the appointment.
- 32.4. A person appointed as a proxy need not be a Member.
- 32.5. For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Secretary at least 24 hours before the meeting:
- (a) the proxy's appointment; and
 - (b) if the appointment is signed by the appointor's attorney, the power of attorney or other authority under which the appointment was signed, or a certified copy of the power of attorney or authority.
- 32.6. If a meeting of the Members has been adjourned, an appointment and any authority received by the Secretary at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 32.7. The Secretary receives an appointment or any authority when it is received at any of the following:
- (a) the Registered Office; or
 - (b) a place, facsimile or electronic mail address specified for the purpose in the notice of meeting.
- 32.8. If a Member appoints a proxy to attend and vote for the Member at a meeting and the Member is present at the meeting for which the proxy was appointed, the proxy's authority to speak and vote for the Member at the meeting is suspended while the Member is present at the meeting.

33. Voting at meetings of Members

- 33.1. Each Member has that number of votes (if any) that apply to that Member's class of membership, both on a show of hands and a poll.
- 33.2. The Chair of a meeting has a casting vote and if the Chair is also a Member, such casting vote shall be in addition to any vote the Chair has in his or her capacity as a

Member. The Chair has a discretion both as to the use of the casting vote and as to the way in which it is used.

- 33.3. A Member who is otherwise entitled to vote at a meeting of Members is not entitled to vote at the meeting, either personally, by proxy or as proxy for another Member, or be reckoned in a quorum, if the Subscription of the Member is in arrears at the date of the meeting or the postponed or adjourned meeting.

34. Objections to right to vote

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the Chair whose decision is final.

35. How voting is carried out

- 35.1. A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded by the Chair or by at least five (5) Members present in person or by proxy and entitled to vote.
- 35.2. On a show of hands, a declaration by the Chair is conclusive evidence of the result.

36. Matters on which a poll may be demanded

- 36.1. A poll may be demanded:
- (a) on any resolution including resolutions concerning the election of the Chair of the meeting or the adjournment of the meeting; and
 - (b) in accordance with the Act.
- 36.2. A demand for a poll may be withdrawn.

37. When and how polls must be taken

If a poll is duly demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

BOARD OF DIRECTORS

38. Directors

- 38.1. The minimum number of Directors is five (5). The maximum number of Directors is to be fixed by the Directors. The Directors must not determine a maximum which is less than the number of Directors in office at the time the determination takes effect.
- 38.2. The Board will be comprised of Directors who are elected by Members in accordance with clause 40 (each an **Elected Director**) and Directors who are appointed by the

Board in accordance with clause 40 (each an **External Director**). The Board must be of the following composition:

- (a) at least 50% of the Board must comprise Elected Directors; and
- (b) there must be at least two (2) External Directors.

38.3. To be a Business Member Director, a person must:

- (a) not be an employee of the Company; and
- (b) be a Business Member who is a natural person, or a person who:
 - (i) is a director or officer of a Business Member that is a company, or is a partner in a partnership that is a Business Member; and
 - (ii) is appointed by the Business Member, and is recorded in the Register of Members, as the Business Member's representative.

38.4. To be a REP Member Director, a person must:

- (a) not be an employee of the Company; and
- (b) be a REP Member.

38.5. To be an External Director a person must not:

- (a) be an employee of the Company; or
- (b) have any business or other relationship that could materially interfere with, or could reasonably be perceived to interfere with, the independent exercise of his or her judgment in relation to the Company.

38.6. At least two (2) Directors must ordinarily reside in Australia.

39. Auditor not Eligible

The Auditor is not eligible to be elected or appointed as a Director.

40. Appointment & Term

40.1. Subject to clause 40.7:

- (a) a Business Member Director is elected for a term of three years at the end of which he or she shall retire;
- (b) a REP Member Director is elected for a term of three years at the end of which he or she shall retire;
- (c) an External Director is appointed by the Directors for a term not exceeding two years at the end of which he or she shall retire.

- 40.2. Unless otherwise resolved by the Company in general meeting, a retiring Elected Director is eligible to serve as a Director for a maximum of three (3) full terms, plus an option for an additional year for continuity/succession purposes, to a maximum of ten (10) years.
- 40.3. Unless otherwise resolved by the Company in general meeting, a retiring External Director is eligible to serve as a Director for a maximum of three (3) full terms, plus an option for an additional year for continuity/success purposes, to a maximum of seven (7) years.
- 40.4. A Director who has served three consecutive terms may be either re-elected or reappointed as a Director after a period of three years (if elected) or two years (in the case of an External Director) has elapsed since the end of his or her previous term as a Director.
- 40.5. The Company may call for nominations for positions of Elected Directors in such manner as the Board determines from time to time.
- 40.6. Subject to the provisions of this Constitution, any person:
- (a) who is eligible to be a Business Member Director by virtue of clause 38.3; and
 - (b) who:
 - (i) is a Business Member who is a natural person; or
 - (ii) a representative of a Business Member that is a company or partnership; and
 - (c) who is compliant with all aspects of the National Fitness Industry Code of Practice; and
 - (d) the Subscription and other moneys payable by whom are not in arrears,
- is eligible to be a candidate or to nominate a person to be candidate for election to the office of Business Member Director.
- 40.7. Subject to the provisions of this Constitution, any person:
- (a) who is eligible to be a REP Member Director by virtue of clause 38.4; and
 - (b) who is not in arrears in the payment of Subscription or other moneys;
 - (c) who is compliant with all relevant CEC requirements; and
 - (d) who is compliant with the Code of Ethical Conduct,
- is eligible to be a candidate for election to the office of REP Member Director.
- 40.8. A person is eligible for election to the office of Elected Director at a general meeting only if:

- (a) the person is eligible to be nominated in accordance with either clauses 40.6 or 40.7 (as the case requires); and
- (b) the person is nominated for election at the meeting by a person who is eligible to make the nomination, or by the Directors.

40.9. Subject to the minimum number of Directors not being less than five (5), the Company may from time to time in general meeting resolve not to replace retiring Directors or Directors who have vacated office.

41. Removal & Vacation of Office

41.1. A Director may at any time resign from the Board by giving written notice of resignation to the Secretary at the Registered Office.

41.2. The office of Director shall be vacated if he or she:

- (a) resigns from office pursuant to clause 41.1;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) ceases to be a director by virtue of the Act or becomes prohibited from being a director by reason of any order made under the Act or the ACNC Act;
- (e) is absent from three consecutive meetings of the Board without permission of the Board;
- (f) is convicted of felony or is declared by any Court of competent jurisdiction to have committed any fraud; or
- (g) being an Elected Director, ceases to meet any of the eligibility requirements for the Elected Director specified in clauses 40.6 or 40.7 (as the case requires), or being an External Director, ceases to meet any of the eligibility requirements specified in clause 38.5.

42. Casual Vacancies & Additional Directors

42.1. The Board may from time to time appoint:

- (a) a person who meets the eligibility requirements for an Elected Director specified in clauses 40.6 or 40.7 (as the case requires), to fill a casual vacancy in the office of Elected Director, and that person will hold office until the next annual general meeting; and
- (b) a person who meets the eligibility requirements for an External Director specified in clause 38.5 to fill a casual vacancy in the office of External Director,

and that person will hold office for the term of their appointment in accordance with clause 40.1(c).

- 42.2. If the number of Directors becomes less than five as a result of vacancies on the Board, the Board must not act (except for the purposes of filling vacancies, convening a general meeting or in emergencies) while there are less than five Directors.

43. Material personal interest

- 43.1. A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of the interest in accordance with the Act.
- 43.2. Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting or vote on the matter.

44. Standing notice about an interest

A Director with an interest in a matter may give the Board standing notice of the nature and extent of this interest in accordance with the Act.

45. Powers & Role

- 45.1. The Board shall control and supervise the business and affairs of the Company, and may exercise all of the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.

46. Board meetings

- 46.1. The Board shall meet at least four times a year.

- 46.2. A Board meeting may be called at any time by:

- (a) any three Directors; or
- (b) the Chair,

and the Secretary must call a meeting of the Board on the requisition of any three Directors or the Chair.

- 46.3. At least 7 days' notice of every Board meeting must be given to each Director, other than a Director who the Chair has given special leave of absence or is absent from Australia and has not left a facsimile number, email address or phone number at which he or she may be given notice. Any notice of a Board meeting:
- (a) may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication approved by the Board; and
 - (b) must specify the place, date and time of the meeting and the business to be conducted at the meeting.

46.4. The Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.

47. Use of Technology for Board meetings

A Board meeting may be held using any technology which allows all of the Directors participating in the meeting to hear each other at the same time.

48. Chairing Board meetings

48.1. Subject to clause 41.2, the Chair shall hold office for a two-year term, and is eligible to be re-elected by the Board for a maximum three (3) full terms, plus an option for an additional year for continuity/succession purposes

48.2. The Chair shall be entitled to preside as Chair at every Board meeting. If there is no Chair present within 15 minutes after the time appointed for holding a Board meeting or if the Chair is unable or unwilling to Chair the meeting, the Directors present shall elect one of their number to be Chair of the meeting.

49. Quorum at Board meetings

49.1. The quorum for a Board meeting shall be at least one half of total eligible Directors or such greater number determined by the Board. The quorum must be present at all times during the meeting, and no business may be transacted at a meeting of the Board unless a quorum is present.

49.2. If a quorum is not present within thirty minutes after the time appointed for holding a Board meeting, the meeting must be adjourned.

50. Passing of Board resolutions

50.1. A Board resolution must be passed by a majority of votes of the Directors present and voting at the meeting. Each Director shall have one vote.

50.2. In case of an equality of votes at a meeting of the Board, the Chair has a casting vote if necessary, in addition to any vote he or she has as a Director. The Chair has a discretion both as to whether or not to use the casting vote, and as to the way in which it is used.

51. Circulating resolutions of Board

51.1. The Board may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution sign (physical or electronic approval) a document containing a statement that they are in favour of the resolution set out in the document.

51.2. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

51.3. The resolution is passed when the last Director signs (physically or electronically) the document.

51.4. The requirement for a signature or for signing a document is taken to have been met in relation to an electronic communication if:

- (a) a method is used to identify the person and to indicate the person's approval of the information communicated; and
- (b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated.

52. Delegation

- 52.1. The Board may delegate any of its powers to any Committee, any Director or Directors (whether on a joint or a joint and several basis), employee of the Company or any other person.
- 52.2. The delegate must exercise the delegated powers in accordance with any directions of the Board.
- 52.3. The effect of the delegate exercising a delegated power is the same as if the Board exercised it.
- 52.4. The Board may withdraw any delegated power at any time.

53. Committees

- 53.1. The Board may from time to time establish Committees, consisting of such Directors and other persons as it thinks fit, to advise it on matters affecting the operations of the Company. Terms of reference of all Committees shall be determined by the Board. The Board may review, amend and vary the terms of reference from time to time.
- 53.2. The meetings and proceedings of any Committee consisting of two or more Directors are governed by the provisions of this Constitution regulating the meetings and proceedings of the Board.

54. Delegation to Individual Directors

- 54.1. The Board may resolve to delegate any of their powers to one Director.
- 54.2. A Director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.

55. Company's attorney

- 55.1. The Board may appoint a company, firm, person or body of persons to be the Company's attorney under a power of attorney for:
 - (a) any period; and
 - (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

56. General Meeting and Directors' Meeting

Nothing in this Constitution prevents a general meeting of members and Directors' meeting being held at the same time and in the same place provided that resolutions of members and resolutions of Directors are voted on separately and separate minutes are recorded.

CHIEF EXECUTIVE OFFICER

57. Chief Executive Officer

- 57.1. The Board may from time to time appoint a Chief Executive Officer for such periods and on such terms as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.
- 57.2. The Chief Executive Officer shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration as the Board may determine.

SECRETARY

58. Appointment of Secretary

- 58.1. The Company must have a Secretary.
- 58.2. The Secretary shall be appointed by the Board on such terms and conditions (including as to remuneration) as the Board thinks fit and may be the Chief Executive Officer.

RULES & REGULATIONS

59. Rules & Regulations

- 59.1. Without limiting the Board's powers under this Constitution, the Board may from time to time pass resolutions to make regulations and rules relating to:
- (a) the determination of new classes, sub-classes, or criteria for membership;
 - (b) the delegation by the Board of its powers to Committees;
 - (c) the powers, role and function of any committee members, executive or Directors (including the terms of appointment of any executive director);
 - (d) any other matter not being inconsistent with this Constitution which relates to the operations or conduct of the Company.
- 59.2. All Regulations must be consistent with this Constitution and the Act, and in the event of any inconsistency between this Constitution and any Regulation, this Constitution prevails.

MINUTES

60. Minutes

- 60.1. The Company must keep minute books in which it records within one month:
- (a) proceedings and resolutions of Members' meetings;
 - (b) proceedings and resolutions of Board meetings, including meetings of Committees;
 - (c) resolutions passed by the Members without a meeting; and
 - (d) resolutions passed by the Board without a meeting.
- 60.2. The Company must ensure that minutes of a meeting are signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- 60.3. The Company must ensure that resolutions passed without a meeting are signed by each Director within a reasonable time after the resolution is passed.

61. Members' access to minutes

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Act.

FINANCIAL RECORDS

62. Obligation to Keep Financial Records

The Company must keep the financial records required by the Act, and such other accounts and financial statements in the form specified in a resolution (if any) passed at a general meeting of the Company.

63. Location of Financial Records

The financial records of the Company shall be kept at the Registered Office or at such other place as the Board thinks fit.

64. Access

- 64.1. The financial records of the Company shall at all reasonable times be open to inspection by a Director.
- 64.2. The Board shall determine at what times and places and under what conditions and regulations the financial records of the Company may be open to inspection by Members. A Member other than a Director does not have the right to inspect any financial records or other documents of the Company except as provided by the Act or authorised by the Directors or by the Company in general meeting.

AUDIT

65. Appointment

65.1. Where required by the Act, a properly qualified auditor or auditors shall be appointed by the Board.

65.2. The Auditor will:

- (a) be appointed and may be removed as provided in the Act; and
- (b) perform the duties and have the rights and powers as may be provided in the Act.

WINDING UP

66. Distribution of Property

Upon the winding up or dissolution of the Company, any assets remaining after satisfaction of all of the Company's debts and liabilities, will not be paid to or distributed among the Members, but will be transferred to some other organisation determined by the Board at or before the time of winding up or dissolution of the Company and, in default of any determination, by the Supreme Court of Queensland, Australia:

- (a) which has charitable objectives similar to the objectives of the Company;
- (b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 9; and
- (c) which, if the Company is a public benevolent institution for the purposes of any Commonwealth taxation law, is a public benevolent institution for the purposes of any Commonwealth taxation law.

67. Prohibition

The Members have no right to participate in any distribution or payment of the assets or property of the Company in the event of the winding up or dissolution of the Company.

INDEMNITY & INSURANCE

68. Indemnity of Directors

To the extent permitted by law, every person who is or has been a Director or Secretary shall be indemnified by the Company against a liability incurred by that person as a Director or Secretary other than:

- (a) a liability owed to the Company or a related body corporate; or

- (b) a liability that is owed to a person other than the Company or a related body corporate arising out of conduct involving a lack of good faith.

69. Indemnity of Officers

To the extent permitted by law, every person who is or has been an Officer of the Company may by resolution of the Board be indemnified by the Company against a liability incurred by that person as an Officer of the Company other than:

- (a) a liability owed to the Company or a related body corporate; or
- (b) a liability that is owed to a person other than the Company or a related body corporate arising out of conduct involving a lack of good faith.

70. Indemnity for legal costs

Every Director, Secretary and other Officer of the Company may by resolution of the Board be indemnified out of the assets of the Company against a liability for legal costs incurred by that person as a Director, Secretary or other Officer of the Company in defending an action for liability incurred in that capacity unless the costs arise:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clauses 68 or 69;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.

For the purposes of this clause 70, "proceedings" includes the outcome of the proceedings and any appeal in relation to the proceedings.

71. Payment of insurance premiums

The Company may by resolution of the Board pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Secretary or other Officer of the Company against:

- (a) a liability for legal costs; and
- (b) any other liability except a liability incurred by the person as such a Director, Secretary or other Officer and arising out of conduct involving:

- (i) a wilful breach of duty in relation to the Company; or
- (ii) a contravention of section 182 or section 183 of the Act.

NOTICES

72. Notices

- 72.1. Any notice required to be given under this Constitution or any Regulation of the Company must be:
- (a) in writing; and
 - (b) given to the recipient:
 - (i) personally;
 - (ii) (if a Member) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member, and otherwise to the recipient's last known place of residence or business; or
 - (iii) by sending it to an electronic address (if any) nominated by the recipient.
- 72.2. The non-receipt of a notice of meeting of Members shall not invalidate any meeting of Members held pursuant to such notice.
- 72.3. Members who have no place of address in Australia registered with the Company shall notify the Company of an alternative address in Australia for the purposes of this clause 72.
- 72.4. Any notice sent by:
- (a) post is taken to be given three (3) business days after it is posted (if to an address within Australia) or seven business days after it is posted (if to an address outside Australia); and
 - (b) electronic message is taken to be given on the same day if it is transmitted on a business day by 5:00pm AEST and otherwise on the next business day.
- 72.5. Unless it is otherwise provided, a given number of days' notice or notice extending over any period includes the day of service but does not include the day on which such notice is to expire. Where at least or not less than a given period is prescribed, then both the day of service and the day on which the period expires are excluded.
- 72.6. Subject to the Act, the signature to any notice given by the Company may be written, printed or typed.

DEFINITIONS & INTERPRETATION

73. Definitions

In this Constitution, unless the context otherwise requires:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Act means the Corporations Act 2001 and where any provision of the Act is referred to the reference is to such provision as amended, modified or re-enacted from time to time;

AEST means Australian Eastern Standard Time;

ASIC means the Australian Securities and Investments Commission;

Associate Members are Members as defined in clause 14.7;

Auditor means the Auditor for the time being of the Company;

Australian Business Number is the number assigned by the Australian Business Register;

AusREP means the Australian Register of Exercise Professionals

Board means the Board of Directors of the Company;

Business Members are Members as defined in clause 14.1;

Business Member Director is a Director who is nominated for and elected to office in accordance with this Constitution as a Business Member Director;

Chair means the chairwoman or chairman of the Board elected in accordance with clause 49.1;

Chief Executive Officer means the person (not being a Director) who is appointed by the Board as the chief executive officer of the Company from time to time;

Committee means the any committee established by the Board in accordance with clause 53 from time to time;

Company means the company named in clause 1;

Constitution means this Constitution as amended from time to time;

Director means a member of the Board;

Elected Director is a Director who is nominated for and elected to office as a Director in accordance with this Constitution;

Expulsion Event means, in respect of a Member:

- (a) the Member has wilfully refused or neglected to comply with the provisions of this Constitution or any Regulations;
- (b) the conduct of the Member, in the opinion of the Directors, is unbecoming of the Member or prejudicial to the interests or reputation of the Company; or
- (c) the Member is, or any step is taken for the Member to become, an externally administered body corporate;

External Director is a Director who is appointed by the Board as a Director in accordance with clause 40;

Financial Year means the period of twelve months commencing from 1 July and ending on 30 June of that year;

Guarantee means the maximum amount each Member agrees to pay to the Company in accordance with clause 5;

Member means a person admitted as a member of the Company in accordance with this Constitution;

Month means calendar month;

Officer has the meaning given to it in section 9 of the Act;

Register of Members means the Register of Members to be kept as required under section 169 of the Act;

Registered Office means the registered office for the time being of the Company;

Regulations means the Company's rules and regulations as prescribed and amended from time to time in accordance with clause 59;

Replaceable Rules means the Replaceable Rules contained in the Act;

REP Members are Members as defined in clause 14.3;

REP Member Director is a Director who is nominated for and elected to office in accordance with this Constitution as a REP Member Director;

Secretary means any person appointed in accordance with this Constitution and the Act as a Secretary of the Company and includes an Honorary, assistant or acting Secretary or any substitute for the time being for the Secretary;

Special Resolution means a resolution of which notice as set out in section 249L of the Act has been given and has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution;

Subscription means the membership application fees, annual subscriptions and other membership levies payable by a Member, a class of Members or the Members as a whole as determined by the Board from time to time pursuant to clause 15;

Tax Act means the Income Tax Assessment Act 1997 (Cth) and the Income Tax Assessment Act 1936 (Cth).

74. Interpretation

- (a) Words and phrases which are given a special meaning by the Act have the same meaning in this Constitution, unless the contrary intention appears.
- (b) Words in the singular include the plural and vice versa and words importing a gender include all other genders.
- (c) Unless the context otherwise requires, persons and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration;
- (d) A reference to the Act or any other statute or regulation is to be read as though the words "as modified or substituted or re-enacted from time to time" were added to the reference.
- (e) If there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of such inconsistency.