



S A G E

SCIENCE IN AUSTRALIA
GENDER EQUITY

Constitution

SCIENCE IN AUSTRALIA GENDER EQUITY LTD
(ACN 637 720 873)
A company limited by guarantee

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Science in Australia Gender Equity Ltd (ACN 637 720 873)

Constitution

Part 1 – Preliminary

1. Name of the Company

The name of the Company is Science in Australia Gender Equity Ltd (the **Company**).

2. Type of Company

The Company is a not-for-profit public company limited by guarantee.

3. Members

Members of the Company are referred to as “Members” in this constitution.

4. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in clause 5.

5. The guarantee

Each Member must contribute an amount not more than \$10 (the **guarantee**) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the Member stopped being a member of the Company; or
- (b) costs of winding up.

Part 2 – Definitions and interpretation

6. Definitions

In this constitution:

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

Board means the directors of the Company.

Board Charter means the charter of the Board, as amended by the Board from time to time, setting out, amongst other matters, the composition, diversity, roles, responsibilities, performance and conduct of the Board.

CEO means the person appointed as Chief Executive Officer of the Company;

Company means the Company referred to in clause 1;

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

Chairperson means a person independent of the Founding Members and appointed by the Founding Members as a director of the Company;

Deputy Chairperson means a director of the Company appointed to that position by the Board.

Founding Member means a person who is named in the application for registration of the Company, with their consent, as a member of the Company and listed in Schedule 1;

General Meeting means a meeting of Members;

Ordinary Member has the meaning given to that term in clause 18.1;

Member includes both Founding Members and Ordinary Members.

Special Resolution means a resolution:

- (a) of which notice has been given under clause 25.6(c); and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution;

Surplus Assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

7. Reading this constitution with the Corporations Act

7.1 The replaceable rules set out in the Corporations Act do not apply to the Company.

7.2 While the Company is a body registered with the ACNC, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.

7.3 If the Company is not registered with the ACNC, the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.

7.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

8. Interpretation

8.1 In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

Part 3 – Purposes and powers

9. Purpose

9.1 The Company is established as a not-for-profit, public company limited by guarantee whose purpose is to:

- (a) accredit and grant awards to:
 - (1) higher education, tertiary education and research institutions; and
 - (2) industry bodies providing or supporting continuing education and development,

for gender equity, diversity and inclusion programs including accrediting and granting awards under the Athena Swan Charter; and
- (b) raise awareness of, and build capacity to improve gender equity, diversity and inclusion in Australian higher education, tertiary education and research institutions, and other industry bodies providing or supporting continuing education and development, and more broadly within the community; and
- (c) collaborate with like-minded organisations to promote and support initiatives aimed at advancing gender equity, diversity and inclusion and addressing systemic barriers to equity.

Note: In carrying out its purpose, the Company shall have regard to those areas of priority as may be determined by the Board from time to time as set out in the Board Charter.

9.2 The Company must apply its income and capital in accordance with its purposes.

10. Powers

Subject to clause 11, the Company has the following powers, which may only be used to carry out its purpose(s) set out in clause 9:

- (a) the powers of an individual; and
- (b) all the powers of a Company limited by guarantee under the Corporations Act.

11. Not-for-profit

- 11.1 The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 11.2 and 68.
- 11.2 Clause 11.1 does not stop the Company from doing the following things, provided they are done in good faith:
- (a) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
 - (b) making a payment to a Member in carrying out the Company's purpose(s) set out in clause 9.

12. Amending the constitution

- 12.1 Subject to clause 12.2, the Members may amend this constitution by passing a Special Resolution.
- 12.2 The Members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be able to carry out the purpose(s) set out in clause 9.

Part 4 – Directors

13. Number of directors

- 13.1 Subject to clause 13.2, the Company must have at least three and no more than seven directors (excluding the CEO).
- 13.2 In appointing any directors to the Board, regard must be had to the diversity balance of the Board (including, but not limited to gender, culture and age) and, to the extent reasonably possible, the requirements and/or principles set out in the Board Charter from time to time.
- 13.3 In the event that the Board contains the maximum number of directors specified in clause 13.1 and a Founding Member has not appointed the director it is entitled to under clause 14.4, the maximum number of directors may be increased to allow that Founding Member to appoint a director to which it is entitled to under clause 14.4. For the avoidance of doubt, such increase to the maximum number of directors shall only continue for as long as a director or directors (as the case may be) not appointed by a Founding Member in accordance with clause 14.4, remain a director of the Company.

14. Appointment of directors

- 14.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company.
- 14.2 Each director of the Company (excluding the CEO) shall serve as a non-executive director.

- 14.3 Except for the initial directors and directors appointed by resolution of Members in a General Meeting, the appointment or confirmation of appointment (as the case may be) of each new director shall be by endorsement through a resolution of the Board in accordance with either clause 54 or 55 of this constitution taking into account the requirements under clause 14.14.
- 14.4 Each Founding Member is entitled to appoint one director and have at least one of their directors on the Board of the Company at any time.
- Note 1:** Each Founding Member may nominate any person otherwise eligible under this Constitution as their nominee for its director appointment. A Founding Member is not restricted to only nominating persons who are fellows, Council members or executives of that Founding Member.
- Note 2:** Ordinary Members do not have an entitlement to appoint directors but may nominate individuals for consideration by the Board for appointment to the Board in accordance with this Constitution.
- 14.5 The Chairperson is a director of the Company. The Chairperson must be independent of the Founding Members.
- 14.6 The Board may appoint a director, other than the Chairperson or the CEO, to the position of Deputy Chairperson. For the avoidance of doubt, the Deputy Chairperson need not be independent of the Founding Members.
- 14.7 Upon the Chairperson ceasing to be a director, the Founding Members shall, in consultation with the Board having regard, at that time, to the skills and expertise relevantly required by the Board, appoint another person, independent of both of them, to be the Chairperson.
- 14.8 If the Company approves the Chairperson taking a leave of absence (**Absence**) the Deputy Chairperson shall occupy the position of Chairperson for the period of the Absence (**Acting Chairperson**). Where the Deputy Chairperson is unable to or refuses be the Acting Chairperson, the Chairperson may nominate another director of the Company (excluding the CEO), such person to be approved by the Board, to be the Acting Chairperson for the period of the Absence. For the avoidance of doubt, the Acting Chairperson need not be independent of the Founding Members.
- 14.9 The initial Chairperson shall be appointed by the Founding Members as soon as practicable following the registration of the Company with ASIC.
- 14.10 The CEO is an ex officio director of the Company.
- 14.11 Subject to the maximum number of directors in clause 13, the Members may nominate a director with particular expertise required by the Company from time to time for consideration by the Board for appointment to the Board in accordance with this Constitution.
- 14.12 Upon a person, other than the Chairperson, appointed in accordance with clause 14.4, ceasing to be a director in accordance with clause 15, the Founding Member may appoint another person as director.

- 14.13 The Board shall appoint a director from the nominated persons(s) under clause 14.11 by endorsement in accordance with clause 14.3.
- 14.14 A person is eligible for appointment as a director (other than the Chairperson) of the Company if they:
- (a) to the extent reasonably possible, having regard to the diversity balance of Board (including, but not limited to gender, culture and age), meet the requirements and/or principles set out in the Board Charter from time to time;
 - (b) are a nominee of a Founding Member of the Company pursuant to clause 14.4 or a director nominated by the Members in accordance with clause 14.11;
 - (c) not disqualified due to the operation of clause 39.2;
 - (d) have relevant skills and expertise required to act as a director of the Company;
 - (e) give the Company their signed consent to act as a director of the Company; and
 - (f) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 14.15 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.
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15. When a director stops being a director

- 15.1 A director stops being a director if:
- (a) they complete their term as a director in accordance with clause 15.2;
 - (b) they give written notice of resignation as a director to the Company;
 - (c) they die;
 - (d) they are removed as a director by a resolution of the Members;
 - (e) the Founding Member which appointed the director stops being a Member;
 - (f) the Founding Member which appointed the director notifies the Company that person is to no longer be a director of the Company; or
 - (g) they become ineligible to be a director of the Company under the Corporations Act or the ACNC Act.
- 15.2 The term for each director shall be as follows:
- (a) each director (other than the CEO) shall serve as a director for the Company for an initial term of three (3) years and, subject to clause 15.2(d), one further renewal term

of up to two (2) years. The total term of a director (other than the CEO) shall not exceed (five) 5 years in total;

- (b) the CEO shall serve as an ex officio director of the Company for the period whilst holding office as CEO;
- (c) prior to the expiration of their initial term, the director by written notice to the Board, may seek to serve a renewal term;
- (d) upon receipt of the written notice under clause 15.2(c), the director shall serve one further renewal term for a period as determined by the Board, subject to approval and endorsement by a resolution of the Board in accordance with either clause 54 or 55 of this constitution;
- (e) other than the CEO, a person is entitled to be reappointed as a director of the Company having already been a director of the Company if, prior to their reappointment as director, a period of not less than three (3) years has passed since that person ceased to be a director of the Company.

16. Chief Executive Officer

- 16.1 The CEO shall be appointed by the Board from time to time in accordance with this constitution.
- 16.2 The initial CEO is Dr Wafa El-Adhami.
- 16.3 The CEO will report to, and be subject to any lawful direction or delegation by, the Board of the Company.
- 16.4 The CEO will perform duties as the Board may from time to time lawfully direct or delegate including:
 - (a) managing the business of the Company in accordance with the Company's purposes;
 - (b) managing the finances of the Company in a responsible manner;
 - (c) managing the selection and appointment of employees of the Company as necessary for the proper conduct of the business of the Company;
 - (d) providing the Board of the Company with regular reports relating to the activities of the Company;
 - (e) engaging with stakeholders of the Company; and
 - (f) implementation of the strategy of the Company as determined by the Board of the Company.
- 16.5 The CEO shall be a non-voting director of the Company. The CEO may attend and participate in Board meetings but is not entitled to vote on any resolution at such meetings.

Part 5 – Members

17. Register of Members

- 17.1 The members of the Company are the Members and consist of:
- (a) the Founding Members; and
 - (b) any Ordinary Members.
- 17.2 The Company must establish and maintain a register of Members. The register of Members must be kept by the secretary and must contain the name, address, any alternative address nominated by the Member for the service of notices and the date the Member was entered on to the register for each current Member and any person who stopped being a Member in the previous 7 years.
- 17.3 The Company must give current Members access to the register of Members.
- 17.4 Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members.
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18. Who can be an Ordinary Member

- 18.1 A person that supports the purposes of the Company under clause 9, being either a peak body or representative body that, in the opinion of the Board, represents a sector of education, industry or community or, alternatively, a person that participates or operates in a sector of education, industry or community, and that is invited by the Board to so apply, may apply to be a Member of the Company under clause 19 (**Ordinary Member**).
- 18.2 In this clause, **person** means an incorporated body.
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19. How to apply to become a Member

- 19.1 An incorporated body who is invited by the Board to so apply, may apply to become a Member of the Company by completing and returning to the secretary an application, in such form as may be determined by the Board from time to time, stating that they:
- (a) want to become a Member;
 - (b) support the purpose(s) of the Company; and
 - (c) agree to comply with the Company's constitution, including paying the guarantee under clause 5 if required and making a financial contribution to the Company as determined by the Board from time to time.
- 19.2 Upon receipt of an application to be become a Member by an incorporated body under clause 19.1, the secretary shall enter that incorporated body on the register of Members.
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20. When a person becomes a Member

Other than Founding Members, an applicant will become a Member when they are entered on the register of Members.

21. When a person stops being a Member

A person immediately stops being a Member if they:

- (a) are wound up or otherwise dissolved or deregistered (being an incorporated body);
- (b) resign, by writing to the secretary;
- (c) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a Member; or
- (d) the Board expels the Member in accordance with clause 22.

22. Expulsion

22.1 If the Board considers that an Ordinary Member has not complied with this constitution, or the Ordinary Member has acted (or omitted to act) in a manner which is inconsistent with the purposes of the Company or prejudicial to the interests of the Company, the Board may:

- (a) expel the Ordinary Member; or
- (b) suspend the Ordinary Member for a specified period.

22.2 The Board may only undertake the actions under clause 22.1 if:

- (a) at least 14 days before a Board meeting, the Company gives the Ordinary Member:
 - (1) written particulars of the non-compliance with the constitution or the relevant act or omission by the Ordinary Member;
 - (2) notice of the date, place and time of the Board meeting; and
 - (3) notice that the Ordinary Member may attend, and be heard, at the Board meeting or, alternatively, make written submissions to the Board; and
- (b) if the Ordinary Member attends the Board meeting, the Board hears the Ordinary Member or, if the Ordinary Member makes written submissions, consider the Ordinary Member's written submissions at the Board meeting.

22.3 The secretary must record the expulsion or suspension in the register of Members.

Part 6 – General meetings of Members

23. General meetings called by Board

- 23.1 The Board may call a General Meeting.
- 23.2 If a Member makes a written request to the Company for a General Meeting to be held, the Board must:
- (a) within 21 days of the Member's request, give all Members notice of a General Meeting; and
 - (b) hold the General Meeting within 2 months of the Member's request.
- 23.3 A Member who makes a request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the Company.
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24. General meetings called by a Member

- 24.1 If the Board does not call the meeting within 21 days of being requested under clause 23.2, the Member who made the request may call and arrange to hold a General Meeting.
- 24.2 To call and hold a meeting under clause 24.1 the Member must:
- (a) as far as possible, follow the procedures for General Meetings set out in this constitution;
 - (b) call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Members making the request at no cost; and
 - (c) hold the General Meeting within three months after the request was given to the Company.
- 24.3 The Company must pay the Member who requests the General Meeting any reasonable expenses they incur because the Board did not call and hold the meeting.
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25. Notice of General Meetings

- 25.1 Notice of a General Meeting must be given to:
- (a) each Member entitled to vote at the meeting;
 - (b) each director; and
 - (c) the auditor (if any).
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- 25.2 Notice of a General Meeting may also be given to any relevant stakeholders as determined by the Board.
- 25.3 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 25.4 Subject to clause 25.5, notice of a General Meeting may be provided less than 21 days before the meeting if the Members agree beforehand.
- 25.5 Notice of a General Meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 25.6 Notice of a General Meeting must include:
- (a) the place (which may be a physical or electronic location), date and time for the meeting (and the technology that will be used to facilitate the meeting, if any);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - (d) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - (1) the proxy does not need to be a Member of the Company;
 - (2) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - (3) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 25.7 If a General Meeting is adjourned for one month or more, the Members must be given new notice of the resumed meeting.

26. Quorum at General Meetings

- 26.1 For a General Meeting to be held, all of the Founding Members (a **quorum**) must be present (in person, by proxy or by representative) for the whole meeting. No business may be conducted at a General Meeting if a quorum is not present.
- 26.2 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place (which may be

a physical or electronic location) that the Chairperson specifies. If the Chairperson does not specify one or more of those things, 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; and
- (c) if the place is not specified – the same place (which may be physical or electronic location).

26.3 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

27. Auditor's right to attend meetings

27.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

27.2 The Company must give the auditor (if any) any communications relating to the General Meeting that a Member of the Company is entitled to receive.

28. Representatives of Members

28.1 Each Member may appoint, as a representative, one individual (which, in the case of a Founding Member, may be their appointed director) to represent the Member at meetings and to sign circular resolutions under clause 36.

28.2 The representative referred to in clause 28.1 shall have all the rights of a Member relevant to the purposes of representing the Member.

28.3 The appointment referred to in clause 28.1 may be standing (that is, ongoing).

29. Using technology to hold meetings

29.1 The Company may hold a General Meeting at a physical location and a separate location(s) that is linked to the physical location using any technology that gives Members, at one or more separate locations, a reasonable opportunity to participate, including to hear and be heard.

29.2 The Company may hold a General Meeting at an electronic location using any technology that gives Members a reasonable opportunity to participate, including to hear and be heard.

29.3 Anyone using the technology referred to in clause 29.1 or 29.2 is taken to be present in person at the meeting.

30. Chairperson for General Meetings

30.1 The Chairperson is entitled to chair General Meetings.

- 30.2 The Members present and entitled to vote at a General Meeting may choose a director or Member to be the chairperson for that meeting if:
- (a) there is no Chairperson; or
 - (b) the Chairperson is not present within 30 minutes after the starting time set for the meeting; or
 - (c) the Chairperson is present but says they do not wish to act as chairperson of the meeting.
-

31. Role of the Chairperson

- 31.1 The Chairperson is responsible for the conduct of the General Meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 31.2 The Chairperson has a casting vote in the event of an equality of votes by Members at a General Meeting.
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32. Adjournment of meetings

- 32.1 If a quorum is present, a General Meeting must be adjourned if the Members present direct the Chairperson to adjourn it.
- 32.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.
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33. Annual Report

Note: ACNC Governance Standard 2 requires that the Company take reasonable steps to be accountable to members of the Company and provide them with adequate opportunity to raise concerns about how the Company is governed. The intent of this clause 33 is to provide (taking into account the number, composition and rights of members of the Company) an appropriate means of accountability by way of an annual report to members of the Company each year and an appropriate means for concerns to be raised as to how the Company is governed. This is intended instead of an Annual General Meeting.

- 33.1 The Board must provide an annual report (**Annual Report**) to the Members of the Company each year.
- 33.2 A copy of the Annual Report must be given to a Member in accordance with clause 25:
- (a) within 18 months after registration of the Company; and
 - (b) at least once in every financial year thereafter.
- 33.3 The Annual Report may:
- (a) include information about and review of the Company's activities and finances for that year;
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- (b) include a copy of the Company's audit report for that year (if any);
- (c) outline the procedure for Members to follow should they wish to raise any questions or concerns about the Company's activities, governance and finances, including providing the relevant contact details of the Company's auditor who prepared the audit report.

Part 7 – Member's resolutions and statements

34. Member's resolutions and statements

34.1 A Member may give:

- (a) written notice to the Company of a resolution they propose to move at a General Meeting (Member's resolution); and/or
- (b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (Member's statement).

34.2 A notice of a Member's resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

34.3 If the Company has been given notice of a Member's resolution under clause 34.1(a), the resolution must be considered at the next General Meeting held more than two months after the notice is given.

34.4 This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.

34.5 Where only one person remains a Member of the Company, that Member may pass a resolution without a General Meeting.

35. Company must give notice of proposed resolution or distribute statement

35.1 If the Company has been given a notice or request under clause 34, it must give notice of the proposed Member's resolution or a copy of the Member's statement to Members with a notice of meeting.

36. Circular resolutions of Members

36.1 Subject to clause 36.3, the Board may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).

36.2 The Board must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.

- 36.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director;
 - (b) for passing a Special Resolution; or
 - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 36.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 36.5 or clause 36.6.
- 36.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 36.6 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Part 8 – Voting at General Meetings

37. How many votes a Member has

Each Member has one vote.

38. Challenge to Member's right to vote

- 38.1 A Member or the Chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 38.2 If a challenge is made under clause 38.1, the Chairperson must decide whether or not the person may vote. The Chairperson's decision is final.
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39. How voting is carried out

- 39.1 Voting must be conducted and decided by a majority of Members present and entitled to vote at the General Meeting (except in respect of a Special Resolution) by:
- (a) a show of hands;
 - (b) a vote in writing; or
 - (c) another method chosen by the Chairperson that is fair and reasonable in the circumstances.
- 39.2 Before a vote is taken, the Chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
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- 39.3 On a show of hands, the Chairperson's decision is conclusive evidence of the result of the vote.
- 39.4 The Chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
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40. Appointment of proxy

- 40.1 A Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 40.2 A proxy does not need to be a Member.
- 40.3 A proxy appointed to attend and vote for a Member has the same rights as the Member to:
- (a) speak at the meeting; and
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment).
- 40.4 An appointment of proxy (**proxy form**) must be signed by the Member appointing the proxy and must contain:
- (a) the Member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 40.5 A proxy appointment may be standing (that is, ongoing).
- 40.6 Proxy forms must be received by the Company at the address stated in the notice under clause 25.6(d) or at the Company's registered address at least 48 hours before a meeting.
- 40.7 A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- 40.8 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- (a) is wound up or otherwise dissolved or deregistered (being an incorporated body);
 - (b) revokes the proxy's appointment; or
 - (c) revokes the authority of a representative or agent who appointed the proxy.
- 40.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

41. Voting by proxy

- 41.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).
- 41.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

Part 9 – Powers of directors

42. Powers of directors

- 42.1 The directors are responsible for managing and directing the activities of the Company to achieve the purpose(s) set out in clause 9.
- 42.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by Members.
- 42.3 The directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under clause 43; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 42.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a Member’s resolution at a General Meeting.

43. Delegation of directors’ powers

- 43.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as the CEO) or any other person, as they consider appropriate.
- 43.2 The delegation must be recorded in the Company’s minute book.

44. Audit and risk committee

- 44.1 Without limiting clause 43, the directors must establish and maintain at all times an audit and risk committee to assist the Board in the effective discharge of its responsibilities in the

areas of statutory reporting, internal control systems, risk management systems, insurance and legal proceedings and the internal and external audit functions (**Audit and Risk Committee**). Such committee shall meet on at least a quarterly basis.

- 44.2 The Audit and Risk Committee shall comprise at least one member of the Board (not being the CEO or Chairperson) and include such other members based on the criteria and requirements as set out in the Board Charter from time to time.

45. Payments to directors

- 45.1 The Company may only:
- (a) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done;
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company; and
 - (c) in respect of each director (other than the CEO), pay to the director an amount set by the Board each year as the directors' fees.
- 45.2 Prior to the delivery of the Annual Report and subject to clause 45.3, the Board will determine the directors' fees for the following year having regard to all of the circumstances of the Company including the purposes of the Company under clause 9 and any policies adopted by the Board relating to the director fees.
- 45.3 The directors' fees under clause 45.2 must not exceed the level of remuneration as set out in the applicable Remuneration Tribunal Determinations or Guidelines (as current from time to time) for comparable organisations to the Company.
- 45.4 The directors' fees determined by the Board shall be set out in each Annual Report together with a statement that the directors' fees have been determined having regard to all the circumstances of the Company including the purposes of the Company under clause 9 and any policies adopted by the Board relating to the director fees.
- 45.5 All reasonable payments made under clause 45.1 may be approved by the CEO, all other payments must be approved by the Board.
- 45.6 The Company may pay premiums for insurance indemnifying directors or insurance covering directors and officers liability, as allowed for by law (including the Corporations Act) and this constitution.
- 45.7 Nothing in this clause 45 affects the right or obligation of the Company to pay the CEO in accordance with the terms and conditions of employment between the Company and the CEO.

46. Execution of documents

The Company may execute a document if the document is signed by:

- (a) two directors of the Company; or

- (b) a director and the secretary; or
- (c) a person authorised to so sign under a delegated authority or power of attorney, which has not been revoked.

Part 10 – Duties of directors

47. Duties of directors

- 47.1 If the provisions of the Corporations Act with regard to directors' duties do not apply to the Company, the following provisions apply (but only as between the directors and the Company).

Note: Concurrent with the adoption of the ACNC Law, the Corporations Act was amended so that the statutory duties of directors, and the business judgment rule, no longer apply (see s 111L of the Corporations Act). ACNC Governance Standard 5 requires, amongst other things, that the Company take reasonable steps to ensure that the directors are subject to, and comply with, duties corresponding to those under the Corporations Act. The intent of this clause 47 is to maintain the status quo as to the statutory duties of directors, and the business judgement rule, as each stood prior to the passing of s 111L.

- 47.2 Each director of the Company must:

- (a) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 9;
- (c) not misuse their position as a director;
- (d) not misuse information they gain in their role as a director;
- (e) disclose any perceived or actual material conflicts of interest in the manner set out in clause 48;
- (f) ensure that the financial affairs of the Company are managed responsibly; and
- (g) not allow the Company to operate while it is insolvent.

- 47.3 A director who makes a business judgment is taken to meet the requirements of clause 47.2(a), and their equivalent duties at common law and in equity, in respect of the judgment if they:

- (a) make the judgment in good faith for a proper purpose; and
- (b) do not have a material personal interest in the subject matter of the judgment; and

- (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (d) rationally believe that the judgment is in the best interests of the Company.

A director's belief that the judgment is in the best interests of the Company is a rational one unless the belief is one that no reasonable person in their position would hold.

For the purposes of this clause 47.3, business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the Company.

47.4 In the exercise of the director's duties under this clause or at common law or in equity, the director may reasonably rely on information, including professional or expert advice, in good faith and after the director has made an independent assessment of the information, if that information has been given by:

- (a) an employee of the Company that the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
- (b) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the individual's professional or expert competence; or
- (c) another director in relation to matters within their authority or area of responsibility or
- (d) an authorised committee of directors that does not include the director.

In determining whether the director has made an independent assessment of the information or advice, regard must be had to the director's knowledge of the Company and the complexity of the structure and operations of the Company.

48. Conflicts of interest

48.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors; or
- (b) if all of the directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

48.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

48.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 48.4:

- (a) be present at the meeting while the matter is being discussed; or

- (b) vote on the matter.

48.4 A director may still be present and vote if:

- (a) their interest arises due to them being a representative of a Member of the Company, and the other directors, as representatives of other Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 65);
- (c) their interest relates to a payment by the Company under clause 64 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (1) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company; and
 - (2) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Part 11 – Board meetings

49. When the Board meets

The Board may decide how often, where and when they meet but must meet at least 4 times each calendar year.

50. Calling Board meetings

- 50.1 A director may call a Board meeting by giving reasonable notice to all of the other directors.
 - 50.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.
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51. Chairperson for Board meetings

- 51.1 The Chairperson is entitled to chair Board meetings.
 - 51.2 The directors at a Board meeting may choose a director to chair that meeting if the Chairperson is:
 - (a) not present within 30 minutes after the starting time set for the meeting; or
-

- (b) present but does not want to act as chairperson of the meeting.
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52. Quorum at Board meetings

- 52.1 The quorum for a Board meeting is equal to the lowest number of directors which constitutes more than fifty per cent (50%) of the total number of the then number of directors of the Company provided that in the event that there are less than three (3) directors, a quorum for a Board meeting shall consist of that number of directors remaining of the Company but solely for the purposes of, in that Board meeting, appointing at least one (1) director such that the number of directors of the Company shall be three (3) or more.
- 52.2 A quorum must be present for the whole Board meeting.
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53. Using technology to hold Board meetings

- 53.1 The Board may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 53.2 The directors' agreement may be a standing (ongoing) one.
- 53.3 A director may only withdraw their consent within a reasonable period before the meeting.
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54. Passing Board resolutions

- 54.1 A Board resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
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55. Circular resolutions of the Board

- 55.1 The Board may pass a circular resolution without a Board meeting being held.
- 55.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.
- 55.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The Company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 55.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.
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Part 12– Secretary

56. Appointment and role of secretary

- 56.1 The Company must have at least one secretary, who may also be a director.
- 56.2 A secretary must be appointed by the Board (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the Board.
- 56.3 The Board must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 56.4 The role of the secretary includes:
- (a) maintaining a register of the Company’s Members; and
 - (b) maintaining the minutes and other records of General Meetings (including notices of meetings), Board meetings and circular resolutions.

Part 13 – Minutes and records

57. Minutes and records

- 57.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of General Meetings;
 - (b) minutes of circular resolutions of Members;
 - (c) a copy of a notice of each General Meeting; and
 - (d) a copy of a Member’s statement distributed to Members under clause 35.
- 57.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any committees); and
 - (b) minutes of circular resolutions of the Board.
- 57.3 To allow Members to inspect the Company’s records:
- (a) the Company must give a Member access to the records set out in clause 57.1; and
 - (b) the Board may authorise a Member to inspect other records of the Company, including records referred to in clause 57.2 and clause 58.1.

- 57.4 The Board must ensure that minutes of a General Meeting or a Board meeting are signed, or otherwise approved in such other manner as determined by the Board from time to time, within a reasonable time after the meeting by:
- (a) the chair of the meeting; or
 - (b) the chair of the next meeting.
- 57.5 The Board must ensure that minutes of the passing of a circular resolution (of Members or the Board) are signed by the Chairperson or another director within a reasonable time after the resolution is passed.

58. Financial and related records

- 58.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 58.2 The Company must also keep written records that correctly record its operations.
- 58.3 The Company must retain its records for at least seven years.
- 58.4 The Board must take reasonable steps to ensure that the Company's records are kept safe.

Part 14 – Notice

59. What is notice

- 59.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 60 to 62, unless specified otherwise.
- 59.2 Clauses 60 to 62 do not apply to a notice of proxy under clause 40.6.

60. Notice to the Company

Written notice or any communication under this constitution may be given to the Company, the Board or the secretary by:

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address; or

- (d) sending it to the fax number notified by the Company to the Members as the Company's fax number.

61. Notice to Members

61.1 Written notice or any communication under this constitution may be given to a Member:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the Member for service of notices;
- (c) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
- (d) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any); or
- (e) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

61.2 If the Company does not have an address for the Member, the Company is not required to give notice in person.

62. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 61.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Part 15 – Financial year

63. Company's financial year

The Company's financial year is from 1 July to 30 June, unless the Board passes a resolution to change the financial year.

Part 16 – Indemnity, insurance and access

64. Indemnity

- 64.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 64.2 In this clause, **officer** means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 64.3 In this clause, **to the relevant extent** means:
- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 64.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.
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65. Insurance

To the extent permitted by law (including the Corporations Act), and if the Board consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

66. Directors' access to documents

- 66.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 66.2 If the Board agrees, the Company must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors; and
 - (b) any other documents referred to in those documents.
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Part 17 – Winding up

67. Surplus assets not to be distributed to Members

If the Company is wound up, any Surplus Assets must not be distributed to Member or a former Member of the Company, unless that Member or former Member is an entity described in clause 68.1.

68. Distribution of Surplus Assets

68.1 Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more entities:

- (a) with purpose(s) similar to, or inclusive of, the purpose(s) in clause 9; and
- (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company.

68.2 The decision as to the entity or entities to be given the Surplus Assets must be made by a Special Resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court of the Australian Capital Territory to make this decision.

Schedule 1 – Founding Members

Australian Academy of Science (ABN 90 700 613 342)

Australian Academy Of Technological Sciences And Engineering Limited (ACN 008 520 394)