

Australasian Promotional Products Association

CONSTITUTION

SEPTEMBER 2022



**AUSTRALASIAN PROMOTIONAL
PRODUCTS ASSOCIATION**

Australian Company Number (ACN) 053 647 420

Australian Business Number (ABN) 37 053 647 420

A public company limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is Australasian Promotional Products Association.

2. Type of company

The **company** is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members

The liability of **members** is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each **member** must contribute an amount of not more than \$100 (the guarantee) to the property of the **company** if the **company** is wound up while the **member** is a **member**, or within twelve (12) months after they stop being a **member**, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company**;
- (b) costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories among **members**.

5. Definitions

In this constitution, words and phrases have the meaning set out in clause 74.

Charitable purposes and powers

6. Object

The **company's** object is to pursue the following charitable purpose(s):

- (a) Advancement of the knowledge and understanding of ethical and responsible promotional product marketing by facilitating the public dissemination and interchange of ideas and information concerning the practice of promotional product marketing in general and, more particularly, the ethical and sustainable sourcing of products that are safe and meet community standards;
- (b) To develop and conduct recognised and accredited public education courses, both independently and in collaboration with other educational institutions, in the practice of ethical and responsible promotional product marketing at undergraduate and other appropriate levels;
- (c) Promotion of the public discussion of developments in the ethical and sustainable sourcing of products that are safe and meet community standards and the application thereof to matters of common interest in the promotional products industry;
- (d) The provision of public educational information through its website, communications and other public and **member** based activities through the conduct of seminars, conferences and other meetings and to provide for continuing professional education of those in and interested in the **industry**;

- (e) To place before appropriate authorities or bodies the views of the **company** on any matter and to represent **members** before any appropriate fora;
- (f) To liaise, associate, affiliate and share knowledge with other professional bodies interested in advancing the knowledge and understanding of ethical and responsible promotional product marketing, both in Australia and overseas;
- (g) To promote and encourage the conduct of commerce in the section of the advertising industry concerned with the **industry** in accordance with business practices and ethics which meet the highest industry and community standards;
- (h) To protect the community at large as well as persons directly involved in or dealing with members of the **industry** from exploitation by **members** of the **industry** who carry on business or conduct themselves contrary to the standards referred to in (g) above; and
- (i) To engage in any and all lawful activities incidental to the foregoing purposes or which the **company** may consider expedient to further the objects or interests of the **company** or its **members**.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

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

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its **members**, except as provided in clauses 8.2 and 72.
- 8.2 Clause 8.1 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** charitable purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2, the **members** may amend this constitution by passing a **special resolution**.
- 9.2 The **members** must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

10. Register of members

- 10.1 The **company** must establish and maintain a register of **members**. The register of **members** must be kept by the **company secretary** and must contain:
- (a) for each current **member**:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the **member** for the service of notices;
 - iv. **membership** category; and
 - v. date the **member** was entered on to the register.
 - (b) for each person who stopped being a **member** in the last seven (7) years:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the **member** for the service of notices; and
 - iv. dates the **membership** started and ended.
- 10.2 The **company** must give current **members** access to the register of **members**.
- 10.3 Information that is accessed from the register of **members** must only be used in a manner that is consistent with the **Corporations Act**.

11. Who can be a member

An individual or a body corporate is entitled to become a **member** if it:

- (a) supports the objects and purposes of the **company**;
- (b) satisfies the relevant category of **membership** in accordance with clause 12 as well as any criteria set out by the **board** in the membership form from time to time;
- (c) agrees to comply with this **constitution**, the **code of conduct** and any other by-laws created by the **board** from time to time; and
- (d) lodges a **membership** application pursuant to clause 13.

12. Categories of membership

- 12.1. There shall be the following categories of **membership**:
- (a) Distributor **member**;
 - (b) Supplier **member**;
 - (c) Decorator **member**; and
 - (d) Dual **member**.
- 12.2. A distributor **member** shall be a corporation, firm or sole trader that purchases promotional products and/or product decorating services from other suppliers and sells them to end users.
- 12.3. A supplier **member** shall be an agent, importer or manufacturer that sells promotional products and/or product decorating services to end users and/or distributors.
- 12.4. A decorator **member** shall practise in the sole trade of the decoration of promotional products that are supplied to them.
- 12.5. A dual **member** shall satisfy the criteria for more than one of the other **membership** classes.

13. How to apply to become a member

- 13.1 An application for membership of the company must:
- (a) be accompanied by any entrance and membership fees pursuant to clause 15;
 - (b) be made in writing in the form issued by the **board** from time to time;
 - (c) indicate the category of **membership** being applied for by the applicant;
 - (d) include a signature, or equivalent acknowledgement by the applicant acknowledging that the applicant agrees to be bound by the constitution; and
 - (e) be lodged with the **company secretary**.
- 13.2 Notwithstanding any other provision in this constitution, each category of **members** shall have those rights and obligations as determined by the **board** from time to time.

14. Directors decide whether to approve membership

- 14.1 The **directors** must consider an application for **membership** within a reasonable time after the **company secretary** receives the application.
- 14.2 The **directors** may delegate the power to approve or reject an application to the **company secretary**.
- 14.3 If the **directors** approve an application, the **company secretary** must as soon as possible:
- (a) enter the new **member** on the register of **members**; and
 - (b) write to the applicant to tell them that their application was approved, and the date that their **membership** started.
- 14.4 If the **directors** reject an application, the **company secretary** must write to the applicant as soon as possible, providing a refund of any entrance fee or **membership** fee paid pursuant to clause 15 and to tell them that their application has been rejected, but does not have to give reasons.
- 14.5 For the avoidance of doubt, the **directors** may approve an application even if the application does not state the matters listed in clause 13.1. In that case, by applying to be a **member**, the applicant agrees to those four (4) matters.

15. Directors determine entrance fees, membership fees and levies

- 15.1 The **directors** determine the entrance fee and annual **membership** fee payable by categories of **members**.
- 15.2 The **directors** of the **company** may raise additional funds from **members** or categories of **members** by way of a levy from time to time as may be necessary for the purpose of delivering the object(s) of the **company**.
- 15.3 The **directors** of the **company** may in their discretion:
- (a) resolve that no entrance fee or **membership** fee is payable by a **member** or category of **member** in a given year; or
 - (b) extend the time for payment of the entrance fee or **membership** fee for any **member**.

16. When an individual or body corporate becomes a member

An applicant will become a **member** when the individual or body corporate is entered on the register of **members**.

17. When an individual or body corporate stops being a member

An individual or body corporate immediately stops being a **member** if it:

- (a) in the case of a body corporate, is wound up or otherwise dissolved or deregistered;
- (b) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the member's joint or separate estate generally;
- (c) in the case of an individual member, dies;
- (d) ceases to meet the relevant **membership** criteria under clause 12, unless transferred to another category;
- (e) resigns, by writing to the **company secretary**;
- (f) is expelled under clause 19; or
- (g) fails to pay their **membership** fee within a set period of it falling due, as determined by the **directors** from time to time pursuant to clause 15.

Dispute resolution and disciplinary procedures

18. Dispute resolution

18.1. The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a **member** or **director** and:

- (a) one or more **members**;
- (b) one or more **directors**; or
- (c) the **company**.

18.2. A **member** must not start a dispute resolution procedure under the **code of conduct** in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure, including any appeals is completed.

18.3. Those involved in the dispute must try to resolve it between themselves within fourteen (14) days of knowing about it.

18.4. Subject to clause 18.2, if those involved in the dispute do not resolve it under clause 18.3, either party may take action as outlined in the dispute resolution procedure of the **code of conduct**.

19. Disciplining members

19.1. In accordance with this clause 19, the **directors** may resolve to censure, warn, suspend or expel a **member** from the **company** if the **directors** consider that:

- (a) the **member** has breached this constitution;
- (b) the **member** has breached the **code of conduct**; or
- (c) the **member's** behaviour is causing, has caused, or is likely to cause harm to the **company** or is inconsistent with the **company's** objectives.

19.2. At least seven (7) days before the **directors'** meeting at which a resolution under clause 19.1 will be considered, the **company secretary** must notify the **member** in writing:

- (a) that the **directors** are considering a resolution to warn, suspend, expel or censure the **member**;
- (b) that this resolution will be considered at a **directors'** meeting and the date and location of that meeting;
- (c) what the **member** is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the **member** may provide an explanation to the **directors**, and details of how to do so.

- 19.3. Before the **directors** pass any resolution under clause 19.1, the **member** must be given a chance to explain or defend themselves by:
- (a) sending the **directors** a written explanation before that **directors'** meeting; and/or
 - (b) speaking at the meeting.
- 19.4. After considering any explanation under clause 19.3, the **directors** may:
- (a) take no further action;
 - (b) warn the **member**;
 - (c) censure the **member**;
 - (d) suspend the **member's** rights as a **member** for a period of no more than 12 months;
 - (e) expel the **member**; or
 - (f) require the matter to be determined at a **general meeting**.
- 19.5. The **directors** cannot fine a **member**.
- 19.6. The **company secretary** must give written notice to the **member** of the decision under clause 19.4 as soon as possible.
- 19.7. Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8. There will be no liability for any loss or injury suffered by the **member** as a result of any decision made in good faith under this clause 19.
- 19.9. Natural justice will be applied during any disciplinary process under this clause 19, requiring the **directors** to act fairly, in good faith and without bias or conflict of interest when making its decision.

20. Right of Appeal

- 20.1 The **board** will establish a committee pursuant to clause 48.1 for the purpose of determining disputes regarding disciplinary proceedings against a **member**.
- 20.2 The **disciplinary committee** will be composed of an independent panel of non-**directors**, who are experts on the type of alleged misconduct, all chosen by the **board**. The **disciplinary committee** may seek advice from any relevant source.
- 20.3 A **member** may appeal to the **disciplinary committee** against a resolution of the **board** which is made under clause 19.4. Written notice of such an appeal must be lodged with the **company secretary** within seven (7) days of service of the notice required under clause 19.6.
- 20.4 Within twenty (20) **business days** of lodgment of a notice of appeal under clause 20.3, the **disciplinary committee** must convene a meeting.
- 20.5 At the meeting convened pursuant to clause 20.4:
- (a) the **member** must be given the opportunity to state his or her case verbally or in writing, or both using any technology (reasonably available to the **board**) that gives the **member** a reasonable opportunity to do so; and
 - (b) the **disciplinary committee** must vote by ballot on the question of whether the **board's** decision made pursuant to clause 19.4 will be confirmed or withdrawn.
- 20.6 The **disciplinary committee's** decision made pursuant to clause 20.5(b) is final. Both the **member** party to these disciplinary procedures and the **board** are bound by the **disciplinary committee's** decision pursuant to clause 20.5(b), and the decision cannot be appealed.

- 20.7 The **member** the subject of these disciplinary procedures is entitled to, subject to clause 20.8, bring a support person to any meeting which is held pursuant to clause 19 and/or this clause 20.
- 20.8 If the support person brought pursuant to clause 20.7 is legally qualified, the **member** must notify the **board** at least five (5) **business days** before the meeting that the support person attending the meeting will be legally qualified.
- 20.9 Natural justice will be applied during any disciplinary process under this clause 20, requiring the **disciplinary committee** to act fairly, in good faith and without bias or conflict of interest when making its decision.

General meetings of members

21. General meetings called by directors

- 21.1 A minimum of three (3) **directors** may, whenever those **directors** think fit, call a **general meeting**.
- 21.2 Notwithstanding section 111L of the **Corporations Act**, if **members** with at least five per cent (5%) of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the **directors** must:
- (a) within twenty-one (21) days of the **members'** request, give all **members** notice of a **general meeting**; and
 - (b) hold the **general meeting** within two (2) months of the **members'** request.
- 21.3 The percentage of votes that **members** have for the purposes of clause 21.2 is to be worked out as at midnight before the **members** request the meeting.
- 21.4 The **members** who make the 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**.
- 21.5 Separate copies of a document setting out the request may be signed by **members** if the wording of the request is the same in each copy.

22. General meetings called by members

- 22.1 Notwithstanding section 111L of the **Corporations Act**, if the **directors** do not call the meeting within twenty-one (21) days of being requested under clause 21.2, fifty per cent (50%) or more of the **members** who made the request may call and arrange to hold a **general meeting**.
- 22.2 To call and hold a meeting under clause 22.1 the **members** 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 (3) months after the request was given to the **company**.
- 22.3 The **company** must pay the **members** who request the **general meeting** any reasonable expenses they incur because the **directors** did not call and hold the meeting.

23. Annual general meeting

- 23.1 Notwithstanding section 111L of the **Corporations Act**:
- (a) in the event that the **board** wishes to do so, it may convene an annual **general meeting**; and
 - (b) any annual **general meeting** that is convened must be done so in accordance with the requirements of the **Corporations Act**.
- 23.2 Either:
- (a) a **general meeting**, called the annual **general meeting**; or
 - (b) an annual meeting of the **members**, if no annual **general meeting** is to be held, must be held at least once in every calendar year.
- 23.3 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting**, or similar annual meeting of **members**, may include:
- (a) a review of the **company's** activities;
 - (b) a review of the **company's** finances;
 - (c) any auditor's report;
 - (d) the election of **directors**; and
 - (e) the appointment of auditors, if any.
- 23.4 Before or at the annual **general meeting**, or similar annual meeting of **members**, the **directors** must give information to the **members** on the **company's** activities and finances during the period since the last annual **general meeting**, or similar annual meeting of **members**.
- 23.5 The chairperson of the annual **general meeting**, or a similar annual meeting, must give **members** as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

24. Notice of general meetings

- 24.1 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).
- 24.2 Notice of a **general meeting** must be provided in writing at least twenty-one (21) days before the meeting.
- 24.3 Subject to clause 24.4, notice of a meeting may be provided fewer than twenty-one (21) days before the meeting if:
- (a) for an annual **general meeting**, all the **members** entitled to attend and vote at the annual **general meeting** agree in writing beforehand; or
 - (b) for any other **general meeting** or similar annual meeting, **members** with at least ninety-five per cent (95%) of the votes that may be cast at the meeting agree in writing beforehand.
- 24.4 Notice of a meeting cannot be provided fewer than twenty-one (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.
- 24.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two (2) or more places pursuant to clause 29, the technology that will be used to facilitate this);

- (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:
 - i. the proxy does not need to be a **member** of the **company**;
 - ii. 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
 - iii. the proxy form must be delivered to the **company** at least forty-eight (48) hours before the meeting.

24.6 If a **general meeting** is adjourned (put off) for one month or more, the **members** must be given new notice of the resumed meeting.

25. Quorum at general meetings

- 25.1 For a **general meeting** to be held, at least eight (8) **members** who are entitled to vote (a quorum) must be present in person, which may include via technology (or by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one **member**).
- 25.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 25.3 If there is no quorum present within thirty (30) minutes after the starting time stated in the notice of **general meeting**:
- (a) the meeting, if convened upon the requisition of **members**, shall be dissolved; and
 - (b) in any other case, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
 - i. if the date is not specified – the same day in the next week;
 - ii. if the time is not specified – the same time; and
 - iii. if the place is not specified – the same place.
- 25.4 If no quorum is present at the resumed meeting within thirty (30) minutes after the starting time set for the adjourned meeting, the meeting is cancelled.

26. Auditor's right to attend meetings

- 26.1 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.
- 26.2 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.

27. Cancellation or postponement of general meeting

- 27.1 Subject to the provisions of the **Corporations Act** and this constitution, the **directors** may cancel a **general meeting** of the **company**:
- (a) convened by the **directors**; or
 - (b) which has been convened by the **members** pursuant to clause 21.2 upon

receipt by the **company** of a written notice withdrawing the requisition signed by that **member** or those **members**.

- 27.2 The **directors** may postpone a **general meeting** or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the **members** relating to the original meeting.
- 27.3 Where any general meeting is cancelled or postponed or the venue is changed pursuant to this clause 27:
- (a) the **directors** shall endeavor 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 person 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 postponement of the meeting.

28. Representatives of members

- 28.1 A body corporate **member** may appoint as a representative:
- (a) one individual to represent the **member** at meetings and to sign circular resolutions under clause 35; and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a **director**.
- 28.2 The appointment of a representative by a body corporate **member** must:
- (a) be in writing;
 - (b) include the name of the representative;
 - (c) be signed on behalf of the **member**; and
 - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 28.3 A representative has all the rights of a **member** relevant to the purposes of the appointment as a representative.
- 28.4 The appointment may be standing (ongoing).

29. Using technology to hold meetings

- 29.1 The **company** may hold a **general meeting** at two (2) or more venues using any technology that gives the **members** as a whole a reasonable opportunity to participate, including to hear and be heard.
- 29.2 Anyone using this technology is taken to be present in person at the meeting.

30. Chairperson for general meetings

- 30.1 The **president** is entitled to chair **general meetings**.
- 30.2 If:
- (a) there is no **president**; or
 - (b) the **president** is not present within thirty (30) minutes after the starting time set for the meeting; or
 - (c) the **president** is present but says they do not wish to act as chairperson of the meeting,

then the following person will be the chairperson in lieu of the **president** in the order of availability set out below:

- (d) the **vice-president**; and
- (e) a **director** or **member** chosen by the **members present** and entitled to vote at a **general 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 does not have a casting vote in addition to a deliberative vote.

32. Adjournment of meetings

- 32.1. If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 32.2. Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

33. Members' resolutions and statements

- 33.1. **Members** with at least five per cent (5%) of the votes that may be cast on a resolution may give:
 - (a) written notice to the **company** of a resolution they propose to move at a **general meeting**; 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**.
- 33.2. A notice of a **members' resolution** must set out the wording of the proposed resolution and be signed by the **members** proposing the resolution.
- 33.3. A request to distribute a **members' statement** must set out the statement to be distributed and be signed by the **members** making the request.
- 33.4. Separate copies of a document setting out the notice or request may be signed by **members** if the wording is the same in each copy.
- 33.5. The percentage of votes that members have (as described in clause 33.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 33.6. If the **company** has been given notice of a **members' resolution** under clause 33.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 33.7. This clause does not limit any other right that a **member** has to propose a resolution at a **general meeting**.

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

- 34.1. If the **company** has been given a notice or request under clause 33:
- (a) in time to send the notice of the proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, it must do so at the **company's** cost; or
 - (b) too late to send the notice of the proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, then **members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving **members** notice of the proposed **members' resolution** or a copy of the **members' statement**. However, at a **general meeting**, the **members** may pass a resolution that the **company** will pay these expenses.
- 34.2. The **company** does not need to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** if:
- (a) it is more than one thousand (1,000) words long;
 - (b) the **directors** consider it may be defamatory;
 - (c) clause 34.1(b) applies, and the **members** who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed **members' resolution** or a copy of the **members' statement** to **members**; or
 - (d) in the case of a proposed **members' resolution**, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **members**.

35. Circular resolutions of members

- 35.1. Subject to clause 35.3, the **directors** may put a resolution to the **members** to pass a resolution without a **general meeting** being held (a circular resolution).
- 35.2. The **directors** 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.
- 35.3. 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.
- 35.4. 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 35.5(a) or 35.5(b).
- 35.5. **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.
- 35.6. 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.

Voting at general meetings

36. How many votes a member has

Each **member** who is financial at the time of the general meeting, has one vote.

37. Challenge to member's right to vote

- 37.1 A **member** or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 37.2 If a challenge is made under clause 37.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

38. How voting is carried out

- 38.1 Voting must be conducted and decided by:
- (a) a show of hands;
 - (b) a vote in writing (which satisfies the requirements of a poll for the purposes of the **Corporations Act**); or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 38.2 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.
- 38.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 38.4 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.

39. When and how a vote in writing must be held

- 39.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **members present**; or
 - (b) the chairperson.
- 39.2 A vote in writing must be taken when and how the chairperson directs, unless clause 39.3 applies.
- 39.3 A vote in writing must be held immediately if it is demanded under clause 39.1:
- (a) for the election of a chairperson under clause 30.2; or
 - (b) to decide whether to adjourn the meeting.
- 39.4 A demand for a vote in writing may be withdrawn.

40. Appointment of proxy

- 40.1 A **member** or representative of 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** or representative of a **member** has the same rights as the **member** or representative of a **member** to:
- (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 39.1.

- 40.4 An appointment of proxy (proxy form) must be signed by the **member** or representative of the **member** appointing the proxy and must contain:
- (a) the **member** or representative of 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 Proxy forms must be received by the **company** at the address stated in the notice under clause 24.5(d) or at the **company's** registered address at least forty-eight (48) hours before a meeting.
- 40.6 A proxy does not have the authority to speak and vote for a **member** or representative of a **member** at a meeting while the **member** or representative of the **member** is at the meeting.
- 40.7 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** or representative of the **member**:
- (a) revokes the proxy's appointment; or
 - (b) revokes the authority of a representative or agent who appointed the proxy.
- 40.8 A proxy appointment may specify the way the proxy must vote on a particular resolution.

41. Voting by proxy

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.

Directors

42. Number of directors

42.1

- (a) The **board** must have at least five (5) and no more than nine (9) **member directors**.
- (b) Subject to section 201P of the **Corporations Act**, the **board** may by resolution vary the number of **directors** holding office from that referred to in clause 42.1(a).
- (c) Subject to clauses 43.5 and ~~43.10~~43.10, the composition of the **board** shall be made up as follows:
- i. ~~of~~ at least two (2) **distributor members** or representatives of **distributor members** (collectively referred to as **distributor member directors**); and
 - ii. at least two (2) **supplier members** or representatives of **supplier members** (collectively referred to as **supplier member directors**);; and
 - iii. if the **board** is a size of between:
 - A. five (5) **member directors** and seven (7) **member directors**, then:
 - 1. the number of **distributor member directors** must not exceed the number of **supplier member directors** by

more than one (1); and

2. the number of **supplier member directors** must not exceed the number of **distributor member directors** by more than one (1); or

B. eight (8) **member directors** and nine (9) **member directors**, then:

1. the number of **distributor member directors** must not exceed the number of **supplier member directors** by more than two (2); and
2. the number of **supplier member directors** must not exceed the number of **distributor member directors** by more than two (2).

42.2 The **directors** of the **company** may appoint up to two (2) additional directors who are non-**members**, who will be known as **board appointed directors**.

42.3 Subject to clauses 42.1(a) and 42.1(c), the **board** shall determine from time to time how many **directors** shall be **member directors** and how many **directors** shall be **board appointed directors**.

42.4 Notwithstanding anything else contained in this constitution, it is preferable for the **board** to have at least one (1) **member director** who:

- (a) resides or works in New Zealand; or
- (b) is a representative of a body corporate **member** that has its headquarters in New Zealand or has operations in New Zealand.

43. Election and appointment of directors

43.1 A person is eligible for election as a **member director** of the **company** if they:

- (a) are a **member** or a representative of a **member** of the **company** (appointed under clause 28);
- (b) are nominated by two (2) other **members** or representatives of **members** entitled to vote (unless the person was previously elected as a **member director** at a **general meeting** and has been a **director** since that meeting);
- (c) give the **company** their signed consent to act as a **director** of the **company**; and
- (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

43.2 If insufficient nominations are received to fill all **member director** positions which are to be filled at the election, the candidate or candidates nominated shall be deemed to be elected and further nominations shall be received at the meeting at which the election is to take place.

43.3 If insufficient further nominations are received, any unfilled **member director** positions remaining on the **board** shall be deemed to be casual vacancies.

43.4 If the number of nominations received for **member directors** is equal to the number of positions to be filled, the persons nominated shall be taken to be elected.

43.5 If:

- (a) fewer than two (2) nominations are received from **distributor members** or representatives of **distributor members**; or
 - (b) fewer than two (2) nominations are received from **supplier members** or representatives of **supplier members**,
- but at least five (5) **member director** nominations are received, then the nominated **member directors** shall be automatically elected, and the requirements ~~set out in clauses 42.1(c) for there to be at least two (2) **distributor members** or representatives of **distributor members** and two (2) **supplier members** or~~

~~representatives of supplier members on the board~~ will be waived.

- 43.6 If the number of nominations received for **member directors** exceeds the number of positions to be filled, a ballot shall be held.
- 43.7 The **directors** may appoint a person as a **board appointed director** if that person:
- (a) holds special knowledge and/or skills that will assist the **company** to achieve its objects;
 - (b) gives the **company** their signed consent to act as a **director** of the **company**; and
 - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 43.8 If the number of **directors** is reduced to fewer than five (5), the continuing **directors** may act for the purpose of increasing the number of **directors** to five (5) (or higher if required for a quorum) calling a **general meeting**, or in an emergency, but for no other purpose.
- 43.9 In the event of a casual vacancy occurring on the **board**, the **board** may:
- (a) in relation to a **member director** vacancy, appoint a representative or nominee of a **member** (in the same membership category as the vacating member director) to fill the vacancy, and hold office for the remainder of the term of the vacating **director**; or
 - (b) in relation to a **board appointed director**, appoint any person in accordance with clause 42.2 to serve a full new term.
- 43.10 ~~For the sake of clarity, if a casual vacancy occurs in the position of a member director who is either a distributor member or representative of a distributor member director or a supplier member or representative of a supplier member director, the replacement does not need~~s to be in or be a representative of the same **membership** category.

44. Election of chairperson

- 44.1 The **directors** must elect, from the **member directors**:
- (a) a **president**; and
 - (b) a **vice-president**.
- 44.2 The **president** and the **vice-president** shall each hold office for a term of one (1) year, but shall each be eligible for reappointment for further terms of one (1) year each, provided that neither the **president** nor the **vice-president** shall hold office beyond their retirement or removal from the **board** as a **director**.

45. Term of office

- 45.1 At each annual **general meeting** or other annual meeting:
- (a) any **director** appointed by the **directors** since the previous annual **general meeting** or other annual meeting to fill a casual vacancy under clause 43.9; and
 - (b) any **director** whose term has expired, must retire.
- 45.2 Other than a **director** appointed to fill a casual vacancy under clause 43.9, a **member director's** term of office starts at the end of the annual **general meeting** or other annual meeting at which he or she is elected and ends at the end of the annual **general meeting** or other annual meeting at which he or she retires.
- 45.3
- (a) Subject to clauses 45.3(b) and 45.4, each **member director** shall serve a term of three (3) years, but may be re-elected, subject to clause 45.5.

- (b) In the event that a **member director** is nominating for re-election but could not serve a further term of three (3) years because a term of three (3) years would cause that **member director** to be in breach of clause 45.5, that **member director** shall be permitted to nominate for re-election for a term of less than three (3) years (shorter term), the length of the shorter term being equal to the number of years left according to clause 45.5.
- 45.4 A director who retires under clause 45.1 may nominate for re-election, subject to clause 45.5.
- 45.5 A **member director** shall not hold office for a continuous period of longer than nine (9) years, in accordance with clause 45.7.
- 45.6 A **board appointed director** shall hold office for a term of one (1) year, but shall be eligible for reappointment for further terms of (1) year each, for a maximum continuous period of three (3) years, in accordance with clause 45.7.
- 45.7 Once a **director** has served the maximum continuous period set out by clause 45.5 or 45.6, he or she may only be re-elected or re-appointed after then being off the **board** for a period of at least two (2) years.
- 45.8 For the avoidance of doubt, time served to fill a casual vacancy, pursuant to clause 43.9, does not count towards the maximum continuous periods set out in clauses 45.6 and 45.7.

46. When a director stops being a director

- 46.1. A **member director** stops being a **director** if he or she:
 - (a) gives written notice of resignation as a **director** to the **company**,
 - (b) dies;
 - (c) is removed as a **director** by a resolution of the **members**;
 - (d) is a representative of a **member**, and that **member** stops being a **member**;
 - (e) is a representative of a **member**, and the **member** notifies the **company** that the representative is no longer a representative;
 - (f) is **absent** for three (3) **directors'** meetings in a given calendar year without approval from **the board**, and the **board** resolves that this constitutes resignation; or
 - (g) **becomes** ineligible to be a **director** of the **company** under the **Corporations Act** or the **ACNC Act**.
- 46.2. A **board appointed director** stops being a **director** if he or she
 - (a) gives written notice of resignation as a **director** to the **company**;
 - (b) dies;
 - (c) is removed as a **director** by a resolution of the **members**;
 - (d) is absent for three (3) **directors'** meetings in a given calendar year without approval from the **directors**, and the **board** resolves that this constitutes resignation; or
 - (e) becomes ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

47. Powers of directors

- 47.1. The **directors** are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 47.2. 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**.

- 47.3. The **directors** must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 48; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 47.4. The **directors** cannot remove a **director** or auditor. **Directors** and auditors may only be removed by a **members'** resolution at a **general meeting**.

48. Delegation of directors' powers

- 48.1 The **directors** may delegate any of their powers and functions to a committee, a **director**, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 48.2 The delegation must be recorded in the **company's** minute book.
- 48.3 Any committee, **director** or employee to whom the **directors'** powers are delegated must conform to any directions or restrictions imposed on them by the **directors**.

49. Payments to directors

- 49.1 The **company** must not pay fees to a **director** for acting as a director.
- 49.2 The **company** may:
- (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; or
 - (b) reimburse a **director** for expenses properly incurred by the **director** in connection with the affairs of the **company**.
- 49.3 Any payment made under clause 49.2 must be approved by the **directors**.
- 49.4 The **company** may pay premiums for insurance indemnifying **directors** and officers, as allowed for by law (including the **Corporations Act**) and this constitution.

50. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two (2) **directors** of the **company**;
- (b) a **director** and the **company secretary**; or
- (c) an officer of the **company** as outlined in the delegated authority from time to time.

Duties of directors

51. Duties of directors

The **directors** must comply with their duties as **directors** under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a **director** of the **company**;
- (b) to act in good faith in the best interests of the **company** and to further the purpose(s) of the **company** set out in clause 6;
- (c) not to misuse their position as a **director**;

- (d) not to misuse information they gain in their role as a **director**;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 52;
- (f) to ensure that the financial affairs of the **company** are managed responsibly; and
- (g) not to allow the **company** to operate while it is insolvent.

52. Conflicts of interest

- 52.1 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.
- 52.2 The disclosure of an actual or perceived material conflict of interest by a **director** must be recorded in the minutes of the meeting.
- 52.3 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 clause 52.5:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 52.4 A **director** who attends a meeting, but is not present while a matter in which he or she has a material personal interest pursuant to clause 52.3, may still be counted in whether there is a quorum at all times of the meeting.
- 52.5 A director may still be present and vote if:
- (a) their interest arises because they are a **member** of the **company**, and the 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 70);
 - (c) their interest relates to a payment by the **company** under clause 69 (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:
 - i. 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
 - ii. says that those **directors** are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

53. When the directors meet

The **directors** may decide how often, where and when they meet, so long as they do not have fewer than four (4) meetings in a calendar year.

54. Calling directors' meetings

- 54.1. A **director** may call a **directors'** meeting by giving at least twenty-four (24) hours' notice to all of the other **directors**.
- 54.2. 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**.

55. Chairperson for directors' meetings

- 55.1 The **president** is entitled to chair **directors'** meetings.
- 55.2 If the **president** 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,then the following person will be the chairperson in lieu of the **president** in the order of availability set out below:
 - (c) the **vice-president**; and
 - (d) a **director** chosen by the **directors** present.

56. Quorum at directors' meetings

- 56.1 Unless the **directors** determine otherwise, the quorum for a **directors'** meeting is **directors** being personally present (or in conference pursuant to clause 57) who represent a majority of the total number of **directors**.
- 56.2 A quorum must be present for the whole **directors'** meeting.

57. Using technology to hold directors' meetings

- 57.1 The **directors** may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the **directors**.
- 57.2 The **directors'** agreement may be a standing (ongoing) one.
- 57.3 A **director** may only withdraw their consent within a reasonable period before the meeting.

58. Passing directors' resolutions

A **directors'** resolution must be passed by a majority (more than fifty per cent (50%)) of the votes cast by **directors** present who vote on the resolution. In the case of a tied vote, the chairperson has a second and deciding vote.

59. Circular resolutions of directors

- 59.1 The **directors** may pass a circular resolution without a **directors'** meeting being held.
- 59.2 A circular resolution is passed if seventy-five per cent (75%) of the **directors** entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 59.3 or clause 59.4.
- 59.3 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.
- 59.4 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.

- 59.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 59.3 or clause 59.4.

Company Secretary

60. Appointment and role of company secretary

- 60.1. The **company** must have at least one (1) **company secretary**, who may also be a **director** or executive officer.
- 60.2. A **company secretary** must be appointed by the **directors** (after giving the **company** their signed consent to act as **company secretary** of the **company**) and may be removed by the **directors**.
- 60.3. The **directors** must decide the terms and conditions under which the **company secretary** is appointed, including any remuneration.
- 60.4. The role of the **company 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), **directors' meetings** and circular resolutions.

Minutes and records

61. Minutes and records

- 61.1 The **company** must make and keep the following records within the following timeframes:
- (a) minutes of proceedings and resolutions of **general meetings** within one (1) month of the **general meeting** occurring;
 - (b) minutes of minutes of circular resolutions of **members** within one (1) month of the circular resolution being passed.
- 61.2 The **company** must make and keep the following records within the following timeframes:
- (a) minutes of proceedings and resolutions of **directors' meetings** (including meetings of any committees) within one (1) month of the meeting occurring; and
 - (b) minutes of circular resolutions of **directors** within one (1) month of the resolution being passed.
- 61.3 To allow **members** to inspect the **company's** records, the **company** must give a **member** access to the records set out in clause 61.1.
- 61.4 The **directors** must ensure that minutes of a **general meeting** or a **directors' meeting** are signed within a reasonable time after the meeting by the chairperson of the meeting.
- 61.5 The **directors** must ensure that minutes of the passing of a circular resolution (of **members** or **directors**) are signed by a **director** within a reasonable time after the resolution is passed.

62. Financial and related records

- 62.1. 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.
- 62.2. The company must also keep written records that correctly record its operations.
- 62.3. The **company** must retain its records for at least seven (7) years.
- 62.4. The **directors** must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

63. By-laws

- 63.1 The **directors** may make by-laws, including the **code of conduct**, to give effect to this constitution, and may amend and repeal those by-laws from time to time.
- 63.2 **Members** and **directors** must comply with by-laws as if they were part of this constitution.

Notice

64. What is notice

- 64.1 Anything to be written to or from the **company** under any clause in this constitution is to occur pursuant to clauses 65 to 67, unless specified otherwise.
- 64.2 Clauses 65 to 67 do not apply to a notice of proxy under clause 40.5.

65. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the **directors** or the **company 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; or
- (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.

66. Notice to members

66.1 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); or
- (d) 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).

- 66.2 If the **company** does not have an address for the **member**, the **company** is not required to give notice in person.

67. 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 **business 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 66.1(d) is taken to be given on the **business day** after the notification that the notice is available is sent.

Financial year

68. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the **directors** pass a resolution to change the financial year.

Indemnity, insurance and access

69. Indemnity

- 69.1 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**.
- 69.2 In this clause, 'officer' means a **director**, **company secretary** or executive officer and includes a **director**, **company secretary** or executive officer after they have ceased to hold that office.
- 69.3 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).
- 69.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

70. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the **directors** 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**.

71. Directors' access to documents

The **directors**, acting together, have the right of access to the financial records of the **company** at all reasonable times. If the **directors** agree, the **company** must give a **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.

Winding up

72. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a **member** or a former **member** of the **company**, unless that **member** or former **member** is a charity as described in clause 73.1.

73. Distribution of surplus assets

- 73.1 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 another institution(s) or corporation(s):
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6;
 - (b) with a constitution which requires its income and property to be applied in promoting its purpose; and
 - (c) with a constitution which also prohibits it from paying or distributing its income or property among its **members** to at least the same extent as the **company**.
- 73.2 The decision as to the identity of the institution(s) or corporation(s) 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 to make this decision.

Definitions and interpretation

74. Definitions

In this constitution:

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

board means the board of **directors** of the **company**.

board appointed director means a person appointed as a **director** pursuant to clause 43.7.

business day means a day that is not a Saturday, Sunday or public holiday in Tasmania.

company means the company referred to in clause 1.

code of conduct means the code of conduct for **members** as approved by the **directors** of the **company** from time to time.

company secretary means the secretary of the **company** for the purposes of the **Corporations Act**, appointed pursuant to clause 60.

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

director means any person holding the position of a director on the **board** of the **company**, and includes both **member directors** and **board appointed directors**, and **directors** means the directors for the time being of the **company** or, as the context permits, such number of them as has authority to act for the **company**.

disciplinary committee means the committee established pursuant to clause 20.1.

general meeting means a meeting of **members** and includes any annual **general meeting** held under clause 23.1.

industry means the promotional products industry.

member means a member of the **company** pursuant to clause 10 and **membership** has the corresponding meaning.

member director means an individual **member** or a representative of a body corporate **member** who is elected as a **director** of the **company** pursuant to clause 43.1.

member present means, in connection with a general meeting, a member present by representative or by proxy at the venue or venues for the meeting.

members' resolution means a resolution proposed pursuant to clause 33.1(a).

members' statement means a statement that is the subject of a request made pursuant to clause 33.1(b).

president means a person elected by the **directors** to be the **company's** president under clause 44.1.

registered charity means a charity that is registered under the **ACNC Act**.

special resolution means a resolution:

- (a) of which notice has been given under clause 24.5(c), and
- (b) that has been passed by at least seventy five per cent (75%) of the votes cast by **members present** and entitled to vote on the resolution, and

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.

vice-president means a person elected by the **directors** to be the **company's** vice-chairperson under clause 44.1.

75. Reading this constitution with the Corporations Act

- 75.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 75.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 75.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 75.4 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.

76. Interpretation

In this constitution, unless the context suggests otherwise:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (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);

- (c) words in bold, outside of headings, refer to the corresponding defined term in clause 74; and
- (d) headings are for convenience only and do not affect the interpretation of this constitution.