

# Constitution of National Allergy Council Limited

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## Contents

<b>Preliminary</b> .....	<b>1</b>
1.    Definitions .....	1
2.    Interpretation .....	2
3.    Application of Corporations Act .....	3
4.    Enforcement .....	3
<b>Objects and Powers</b> .....	<b>4</b>
5.    Objects of the Company .....	4
6.    Powers of the Company .....	4
<b>Income and property</b> .....	<b>4</b>
7.    Application of income and property .....	4
<b>Liability of Members</b> .....	<b>5</b>
8.    Limited liability of Members .....	5
9.    Extent of liability .....	5
<b>Membership</b> .....	<b>6</b>
10.   Number of Members .....	6
11.   Members of the Company .....	6
12.   Applications .....	6
13.   No transfers .....	6
14.   Class rights .....	6
<b>Cessation of membership</b> .....	<b>7</b>
15.   Resignation of a Member .....	7
16.   Expulsion of a Member .....	7
17.   Other cessation events .....	7
18.   Effect of cessation .....	8
<b>Fees and other payments</b> .....	<b>8</b>
19.   Setting of Fees .....	8
20.   Notice of Fees .....	8
21.   Payment of Fees .....	8
22.   Interest payable .....	9
<b>Proceedings of Members</b> .....	<b>9</b>
23.   Written resolutions of Members .....	9
24.   Annual General Meetings .....	9
25.   Calling meetings of Members .....	9
26.   Notice of meetings of Members .....	10
27.   Business of meetings .....	10
28.   Quorum .....	10
29.   Co-Chairs of meetings of Members .....	11
30.   Conduct of meetings of Members .....	12
31.   Attendance at meeting of Members .....	13
32.   Authority of Representative .....	13
33.   Multiple appointments .....	13
34.   Voting at meeting of Members .....	14
35.   Voting by representatives .....	15
36.   Restrictions on voting rights .....	15
37.   Polls .....	15
38.   Proxies .....	16
39.   Receipt of appointments .....	16
40.   Adjournments .....	16
41.   Cancellations and postponements .....	17
42.   Meetings of a class of Members .....	17
<b>Directors</b> .....	<b>17</b>
43.   Composition of the Board .....	17

44.	Appointment of A&AA Directors .....	18
45.	Appointment of ASCIA NAC Directors .....	19
46.	Appointment of Independent Directors .....	19
47.	Term of Office .....	19
48.	Retirement of Directors .....	20
49.	Termination of office .....	20
50.	Casual Vacancies .....	21
51.	Alternate directors.....	21
52.	Interests of Directors .....	22
<b>Officers .....</b>		<b>23</b>
53.	Secretary .....	23
54.	Indemnity and insurance .....	23
<b>Powers of the Board.....</b>		<b>24</b>
55.	General powers .....	24
56.	Execution of documents .....	24
57.	Committees and delegates.....	25
58.	Attorney or agent .....	25
59.	Observers at Board meeting.....	25
<b>Proceedings of Directors.....</b>		<b>25</b>
60.	Written resolutions of Directors .....	25
61.	Board Meetings.....	26
62.	Co-Chairs of the Board .....	27
63.	Board resolutions .....	28
64.	Valid proceedings .....	28
<b>Notices.....</b>		<b>28</b>
65.	Notices to Members .....	28
66.	Notice to Directors .....	29
67.	Notice to the Company .....	29
68.	Time of service .....	29
69.	Notice requirements .....	30
<b>Constitution .....</b>		<b>30</b>
70.	Amending the Constitution .....	30
<b>Winding up .....</b>		<b>30</b>
71.	Surplus assets not to be distributed to Members, unless exception applies .....	30
72.	Distribution of surplus assets of the gift fund.....	30
73.	Distribution of surplus assets (other than surplus assets of the gift fund).....	31

**National Allergy Council Limited**  
**Constitution**

## Preliminary

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### 1. Definitions

In this Constitution:

**A&AA** means Allergy & Anaphylaxis Australia (ACN 159 809 051).

**A&AA Co-Chair** means the Co-Chair of the Company Board appointed by A&AA from time to time.

**A&AA NAC Director** means a Director of the Company appointed by A&AA.

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

**AGM** has the meaning given in section 250N of the Corporations Act.

**ASCIA** means Australasian Society of Clinical Immunology and Allergy Limited (ACN 608 798 241).

**ASCIA Co-Chair** means the Co-Chair of the Company Board appointed by ASCIA from time to time.

**ASCIA NAC Director** means a Director of the Company appointed by ASCIA.

**Attending Member** means, in relation to a meeting of Members, the Member present at the place of the meeting, in person or by proxy, by attorney, by Corporate Representative or in accordance with clause 34(b).

**Board** means the Directors of the Company from time to time.

**Business Day** means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

**Co-Chairs** means the ASCIA Co-Chair and A&AA Co-Chair, acting jointly.

**Company** means National Allergy Council Limited being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN [659 207 584].

**Corporate Representative** means a person authorised in accordance with the Corporations Act (or a corresponding previous law) by a Member which is a body corporate to act as its representative at a meeting of Members.

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

**Deductible Contributions** means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for that purpose.

**Deductible Gift Recipient** has the meaning given in the Tax Act.

**Director** means a person who is, for the time being, a director of the Company including, where appropriate, an alternate director of the Company. For the avoidance of doubt this includes an Independent Director.

**Fee** means a fee or levy referred to in Article 19(a) or 21(b).

**Gifts** means gifts of money or property for the principal purpose of the Company.

**Initial Members** means the Members of the Company on the date of incorporation, being ASCIA and A&AA.

**Legal Costs** of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

**Liability** of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

**Member** means a person whose name is entered in the Register as a member of the Company.

**Nominations Committee** means the committee established in accordance with Article 57(d).

**Notice** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**Objects** means the Company's objects as outlined in Article 5 of this Constitution.

**Register** means the register of Members kept pursuant to the Corporations Act and, where appropriate, includes any branch register.

**Registered Charity** means a charity registered under the ACNC Act.

**Related Body Corporate** has the meaning given by the Corporations Act.

**Relevant Officer** means a person who is, or has been, a Director or Secretary.

**Secretary** means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

**Special Resolution** has the meaning given by the Corporations Act.

**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.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Taxation Administration Act 1953* (Cth).

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## 2. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) the word "includes" in any form is not a word of limitation;

- (e) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (f) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements; and
- (h) a reference to a person includes a natural person, corporation or other body corporate.

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### 3. Application of Corporations Act

- (a) Unless the context indicates a contrary intention, in this Constitution:
  - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
  - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.
- (c) For so long as, but notwithstanding that, the Company is registered as a charity under the ACNC Act, sections 191 and 192 of the Corporations Act shall be taken to apply to the Directors, and Parts 2G.2 and Part 2G.3 of the Corporations Act (to the extent that these provisions relate to meetings of members of a body corporate or Members' resolutions, other than in respect of requirements to lodge documents with ASIC under those provisions) shall be taken to apply to meetings of Members, for the purposes of this constitution as if the Company were not registered as a charity under the ACNC Act.

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### 4. Enforcement

- (a) Each Member submits to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

## Objects and Powers

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### 5. Objects of the Company

The Company's object is to promote the prevention or control of allergic diseases in Australians, thereby improving the health and quality of life of Australians with allergic diseases, and minimising the burden of allergic diseases on individuals, their carers, healthcare services and the community, by:

- (a) implementing the recommendations of the National Allergy Strategy identified in the National Allergy Strategy framework agreed between A&AA and ASCIA, dated on or around August 2015 (**National Allergy Strategy**), and present and future scoping work undertaken by the National Allergy Strategy;
- (b) developing accessible programs aimed at raising awareness of means for prevention and management of allergic diseases in the community;
- (c) working with peak bodies focussed on allergy management, to develop, update and coordinate training of relevant persons in allergic disease management;
- (d) creating greater awareness of the symptoms, causes, diagnostic methods and available treatments for allergic diseases;
- (e) encouraging research and highlight the need for research into allergic diseases, as well as to identify gaps in research in respect of allergy disease management;
- (f) disseminating robust evidence-based research findings in respect of allergic disease management and coordinate awareness and education programs that support implementation of such research; and
- (g) collaborating with relevant authorities, industry and other organisations to optimise health and wellbeing of Australians with allergic disease.

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### 6. Powers of the Company

Subject to Article 7, the Company has the following powers, which may only be used to carry out its Objects:

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

## Income and property

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### 7. Application of income and property

- (a) The Company is a not-for-profit. Subject to Articles 7(b) and 71, the profits (if any) or other income and property of the Company must be applied solely towards the promotion of the objects of the Company set out in Article 5 and must not be distributed to Members directly or indirectly.
- (b) Nothing in Article 7(a) prevents the Company making any payment in good faith of:
  - (i) reasonable and proper remuneration to any Member for any services actually rendered or goods supplied to the Company in the ordinary and usual course of business of the Company;

- (ii) the payment or reimbursement of out-of-pocket expenses incurred by a Member on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board;
  - (iii) reasonable and proper rent or fees to a Member for premises leased or licensed by any Member to the Company;
  - (iv) money to any Member, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (v) interest to a Member at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member; or
  - (vi) making a payment to a Member in carrying out the Company's objects set out in Article 5.
- (c) The Company must not pay fees to or on behalf of Directors or a Secretary but the Company may make payments to a Director or Secretary in good faith for:
- (i) the payment or reimbursement of out-of-pocket expenses reasonably incurred by a Director or Secretary in the performance of any duty as a director or secretary of the Company where that payment or reimbursement has been approved by the Board;
  - (ii) money to any Director or Secretary, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (iii) any salary or wage due to the Director or Secretary as an employee of the Company where the terms of employment have been approved by the Board;
  - (iv) an insurance premium in respect of a contract insuring a Director or Secretary for a liability incurred as an officer of the Company where the Board has approved the payment of the premium; or
  - (v) any payment pursuant to Article 54(a), 54(c) or 54(d) or a payment pursuant to any agreement or deed referred to in Article 54(e).

## Liability of Members

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### 8. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in Article 9.

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### 9. Extent of liability

Each Member undertakes to contribute an amount not exceeding \$10 (the guarantee) to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that person ceased to be a Member, for:



- (a) payment of the Company's debts and liabilities contracted before that person ceased to be a Member;
- (b) payment of the costs, charges and expenses of winding up the Company; and
- (c) adjustment of the rights of the contributories among themselves.

## Membership

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### 10. Number of Members

The number of Members of the Company must not be less than one, and must not exceed the maximum number (if any) which the Board may from time to time prescribe.

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### 11. Members of the Company

Except for the Initial Members, persons must only be admitted to the membership of the Company in accordance with Article 12.

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### 12. Applications

- (a) The Members of the Company shall consist of such organisations as the Directors shall admit to the Membership in accordance with the provisions of this Constitution. For the avoidance of doubt, natural persons may not be admitted to the Membership of the Company.
  - (b) The Directors may, at any time, establish different classes of Membership and may prescribe the membership qualification criteria, rights and privileges of organisations admitted to Membership in, or transferred into, such classifications.
  - (c) Each applicant to become a Member must sign and deliver to the Company an application in the form which the Board determines (which, for the avoidance of doubt, must include the proposed amount of the guarantee that the Member agrees to), and pay any initial fee which the Board determines.
  - (d) The Board determines in their absolute discretion whether an applicant may become a Member. The Board is not required to give any reason for the rejection of any application to become a Member.
  - (e) If an application to become a Member is accepted by the Board, the Company must give written notice of the acceptance to the applicant and enter the applicant's name in the Register.
  - (f) If an application to become a Member is rejected by the Board, the Company must give written notice of the rejection to the applicant and refund in full the fee (if any) paid by the applicant.
  - (g) Failure by the Company to comply with any notice requirement in this Article 12(e) or 12(f) does not invalidate the decision regarding an application.
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### 13. No transfers

The rights of being a Member are not transferable whether by operation of law or otherwise.

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### 14. Class rights

- (a) Subject to the Corporations Act and the rights of a particular class of Members, the Company may vary or cancel rights of Members in that class:

- (i) by a Special Resolution passed at a meeting of the Members included in that class; or
  - (ii) with the written consent of Members who are entitled to at least 75% of the votes that may be cast by Members included in that class.
- (b) Article 42 applies to a meeting held pursuant to Article 14(a)(i).

## Cessation of membership

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### 15. Resignation of a Member

- (a) Subject to Article 15(b), a Member may at any time resign as a Member of the Company by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.
- (b) If there is only one Member and the Member gives proper notice of resignation or on the same day all of the Members give proper notice of resignation, the notice or notices will be ineffective and the Member or Members cannot resign until either another person is appointed as a Member or the Company is wound up.
- (c) If a Member resigns, the Company must remove the Member's name from the Register.

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### 16. Expulsion of a Member

- (a) Subject to Article 16(b), if:
  - (i) a Member is in breach of a provision of this Constitution; or
  - (ii) any act or omission of a Member is, in the opinion of the Board, unbecoming of a Member, or prejudicial to the interests or reputation of the Company;
  - (iii) a Member is, or any step is taken for that Member to become, either an insolvent under administration or an externally administered body corporate; or
  - (iv) there is a succession by another body corporate or entity to the assets and liabilities of the Member,

the Company may expel the Member by a resolution of the Board and remove the Member's name from the Register.
- (b) The Company must not expel a Member pursuant to Article 16(a) unless:
  - (i) at least 5 Business Days notice has been given to the Member stating the date, time and place at which the question of expulsion of that Member is to be considered by the Board, and the nature of alleged event giving rise to the expulsion; and
  - (ii) the affected Member is given the opportunity of explaining to the Board, orally or in writing, why the Member should not be expelled.

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### 17. Other cessation events

Noting that Members may only be organisations pursuant to Article 12, if a Member is deregistered or dissolved pursuant to the laws of the jurisdiction in which the Member is incorporated or formed:

- (a) that Member ceases to be a member of the Company; and
- (b) the Company may remove the Member's name from the Register.

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## 18. Effect of cessation

- (a) A person who ceases to be a Member:
  - (i) remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the person to the Company as a Member; and
  - (ii) must pay to the Company interest at the rate the Board resolves on those amounts from the date of cessation until and including the date of payment of those amounts.
- (b) The Company may by resolution of the Board waive any or all of its rights pursuant to this Article 18.

## Fees and other payments

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### 19. Setting of Fees

- (a) Subject to the Corporations Act and the terms of membership of a class of Members, the Company may by resolution of the Board require the payment of Fees by Members of any amount, on any terms and at any times as the Board resolves, including payment by instalments.
- (b) The Company may when admitting Members make Fees payable for one or more Members for different amounts and at different times as the Board resolves.
- (c) The Company may by resolution of the Board revoke or postpone a Fee or extend the time for payment of a Fee, at any time prior to the date on which payment of that Fee is due.

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### 20. Notice of Fees

- (a) The Company must give notice of Fees to the Members who are required to pay the Fees at least 10 Business Days before the due date for payment. The notice must specify the amount of the Fee, the time or times and place of payment and any other information as the Board resolves.
- (b) The non-receipt of a notice of a Fee by, or the accidental omission to give notice of a Fee to, any Member does not waive the requirement for the Member to pay the Fee.

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### 21. Payment of Fees

- (a) Each Member must pay to the Company the amount of each Fee payable by the Member in the manner, at the time and at the place specified in the notice of the Fee.
- (b) If the terms of membership of a class of Members require an amount to be paid as fee or levy on a fixed date, each Member in that class of Members must pay that amount to the Company at that time and that amount is treated for the purposes of this Constitution as if a Fee for that amount had been properly determined by the Board of which appropriate notice has been given.

- (c) In a proceeding to recover a Fee, or an amount payable due to the failure to pay or late payment of a Fee, proof that:
- (i) the name of the person is entered in the Register as a Member;
  - (ii) the person is in the class of Members liable to pay the Fee;
  - (iii) there is a record in the minute books of the Company of the resolution determining the Fee or the terms of membership of a class of Members requiring the payment of the Fee; and
  - (iv) notice of the Fee was given or taken to be given to the person in accordance with this Constitution,
- is conclusive evidence of the obligation of that person to pay the Fee.

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## 22. Interest payable

- (a) If an amount payable to the Company as a Fee is not paid before or on the time for payment, the person who owes the amount must pay to the Company:
- (i) interest on the unpaid part of the amount from the date payment is due to the date of payment at the rate that the Board resolves; and
  - (ii) all costs and expenses that the Company incurs due to the failure to pay or the late payment.
- (b) Interest pursuant to Article 22(a) accrues daily and may be capitalised at any interval that the Board resolves.
- (c) The Company may by resolution of the Board waive payment of some or all of the interest, costs or expenses payable pursuant to Article 22(a).

## Proceedings of Members

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### 23. Written resolutions of Members

While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.

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### 24. Annual General Meetings

- (a) A general meeting called the Annual General Meeting (**AGM**), must be held by the Company:
- (i) within 18 months after registration of the Company; and
  - (ii) after the first AGM, at least once in every calendar year.
- (b) The Company will hold AGMs in accordance with section 250N and Div 8 of Part 2G.2 of the Corporations Act.
- (c) In accordance with the Corporations Act, where the Company has only one Member, the Company is not required to hold an AGM.

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### 25. Calling meetings of Members

- (a) The Company may by resolution of the Board call a meeting of Members to be held at the time and place (including 2 or more venues using technology which gives

Attending Members as a whole a reasonable opportunity to participate) and in the manner that the Board resolves.

- (b) No Member may call or arrange to hold a meeting of Members except where permitted by the Corporations Act.

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## 26. Notice of meetings of Members

- (a) Where the Company has called a meeting of Members, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- (b) A person may waive notice of any meeting of Members by written notice to the Company.
- (c) A person who has not duly received notice of a meeting of Members may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- (d) A person's attendance at a meeting of Members waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.

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## 27. Business of meetings

Except with the approval of the Board, with the permission of the Co-Chairs of the meeting or pursuant to the Corporations Act, no person may move at any meeting of Members:

- (a) any resolution except in the form set out in the notice of meeting given pursuant to Article 26(a); or
- (b) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Members to inspect or obtain.

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## 28. Quorum

- (a) No business may be transacted at a meeting of Members except, subject to Article 29, the election of the Co-Chairs of the meeting unless a quorum for a meeting of Members is present at the time when the meeting commences.
- (b) A quorum for a meeting of Members is:
  - (i) 2 Attending Members entitled to vote on a resolution at that meeting, provided there is at least 1 Corporate Representative from each of ASCIA and A&AA present at the meeting; or
  - (ii) if only one Member is entitled to vote at that meeting, then its Corporate Representative.

Each individual present may only be counted once towards a quorum. If a Member has appointed more than one proxy or attorney or Corporate Representative, only one of them, being the last proxy or attorney or Corporate Representative appointed by that Member in writing, may:

- (iii) be counted towards a quorum; and
  - (iv) vote on behalf of that Member,
- at a meeting of Members.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Members, the meeting is dissolved unless the Co-Chairs of the meeting or the Board adjourn the meeting to a date, time and place determined by the Co-Chairs or the Board.
  - (d) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned meeting of Members, the meeting is dissolved.

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## 29. Co-Chairs of meetings of Members

- (a) The Co-Chairs must co-chair each meeting of Members jointly.
- (b) If at a meeting of Members, the ASCIA Co-Chair:
  - (i) is not present at a meeting of Members;
  - (ii) is not present within 15 minutes after the time appointed for the commencement of a meeting of Members; or
  - (iii) is not willing to co-chair all or part of the meeting,

then the other ASCIA NAC Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of ASCIA NAC Directors or if none of the ASCIA NAC Directors present is willing to act, the Corporate Representative of ASCIA present at the meeting may elect him or herself to act as the ASCIA Co-Chair for the purposes of that meeting of Members.
- (c) If at a meeting of Members, the A&AA Co-Chair:
  - (i) is not present at a meeting of Members;
  - (ii) is not present within 15 minutes after the time appointed for the commencement of a meeting of Members; or
  - (iii) is not willing to co-chair all or part of the meeting,

then the other A&AA NAC Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of A&AA NAC Directors or if none of the A&AA NAC Directors present is willing to act, the Corporate Representative of A&AA present at the meeting may elect him or herself to act as the A&AA Co-Chair for the purposes of that meeting of Members.
- (d) The ASCIA Co-Chair, at a meeting of Members, may, for any item of business at that meeting or for any part of that meeting, vacate the position of ASCIA co-chair in favour of another ASCIA NAC Director nominated by him or her (**Acting ASCIA Co-Chair**). Where an instrument of proxy appoints the ASCIA Co-Chair as proxy for part of proceedings for which an Acting ASCIA Co-Chair has been nominated, the instrument of proxy is taken to be in favour of the Acting ASCIA Co-Chair for the relevant part of the proceedings.
- (e) The A&AA Co-Chair, at a meeting of Members, may, for any item of business at that meeting or for any part of that meeting, vacate the position of A&AA co-chair in favour of another A&AA NAC Director nominated by him or her (**Acting A&AA Co-Chair**). Where an instrument of proxy appoints the A&AA Co-Chair as proxy for part of proceedings for which an Acting A&AA Co-Chair has been nominated, the

instrument of proxy is taken to be in favour of the Acting A&AA Co-Chair for the relevant part of the proceedings.

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### 30. Conduct of meetings of Members

- (a) Subject to the Corporations Act, the Co-Chairs of a meeting of Members are jointly responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The Co-Chairs of a meeting of Members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The Co-Chairs of a meeting of Members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The Co-Chairs of a meeting of Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The Co-Chairs of a meeting of Members may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The Co-Chairs of a meeting of Members may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- (g) The Co-Chairs of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
  - (i) in the opinion of the Co-Chairs, is not complying with the reasonable directions of the Co-Chairs;
  - (ii) has any audio or visual recording or broadcasting device;
  - (iii) has a placard or banner;
  - (iv) has an Article the Co-Chairs consider to be dangerous, offensive or liable to cause disruption;
  - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - (vi) refuses to produce or to permit examination of any Article, or the contents of any Article, in the person's possession; or
  - (vii) is not entitled pursuant to the Corporations Act or this Constitution to attend the meeting.
- (h) If the Co-Chairs of a meeting of Members consider that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the Co-Chairs may nominate a separate meeting place using any technology that gives Attending Members as a whole a reasonable opportunity to participate.
- (i) The Co-Chairs of a meeting of Members may delegate any power conferred by this Article 30 to any person.
- (j) Nothing contained in this Article 30 limits the powers conferred by law on the Co-Chairs of a meeting of Members.



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### 31. Attendance at meeting of Members

- (a) Subject to this Constitution and any rights and restrictions of a class of Members, a Member who is entitled to attend and cast a vote at a meeting of Members, may attend and vote by proxy, by attorney or by Corporate Representative.
- (b) The Co-Chairs of a meeting of Members may require a person acting as a proxy, attorney or Corporate Representative at that meeting to establish to the Co-Chairs' satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the Co-Chairs may exclude the person from attending or voting at the meeting.
- (c) A Director is entitled to receive notice of and to attend all meetings of Members and all meetings of a class of Members and is entitled to speak at those meetings.
- (d) A person requested by the Board to attend a meeting of Members or a meeting of a class of Members is, regardless of whether that person is a Member or not, entitled to attend that meeting and, at the request of the Co-Chairs of the meeting, is entitled to speak at that meeting.

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### 32. Authority of Representative

- (a) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the person so appointed has the same rights to speak, demand a poll, join in demanding a poll or act generally at a meeting of Member to which the appointment relates, as the appointing Member would have had if that Member was present at the meeting.
- (b) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the appointment is taken to confer authority to:
  - (i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion; and
  - (ii) vote on any procedural motion, including any motion to elect a Co-Chair of the meeting of Members to which the appointment relates, to vacate the chair or to adjourn the meeting,even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Corporate Representative how to vote on particular resolutions.
- (c) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

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### 33. Multiple appointments

- (a) If more than one attorney or Corporate Representative appointed by a Member is present at a meeting of Members and the Company has not received notice of any revocation of any of the appointments:
  - (i) an attorney or Corporate Representative appointed to act at that particular meeting may act to the exclusion of an attorney or Corporate Representative appointed pursuant to a standing appointment; and
  - (ii) subject to Article 33(a)(i), an attorney or Corporate Representative appointed pursuant to the most recent appointment may act to the



exclusion of an attorney or Corporate Representative appointed earlier in time.

- (b) An appointment of a proxy of a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Members) if the Company receives a further appointment of a proxy from that Member which would result in there being more than one proxy of that Member entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article 33(b).
- (c) The appointment of a proxy for a Member is not revoked by an attorney or Corporate Representative for that Member attending and taking part in a meeting of Members to which the appointment relates, but if that attorney or Corporate Representative votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Member's proxy on that resolution.

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## 34. Voting at meeting of Members

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands, unless a poll is demanded in accordance with Article 37 and that demand is not withdrawn.
- (b) The Board may determine that Members entitled to attend and vote at a meeting of Members or at a meeting of a class of Members may vote at that meeting without an Attending Member in respect of that person being present at that meeting (and voting in this manner is referred to in this Article 34(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, including the class of Members entitled to cast a direct vote, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Member casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Members, a direct vote cast by an eligible Member is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.
- (c) Subject to this Constitution and any rights or restrictions of a class of Members, on a show of hands at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution and any rights or restrictions of a class of Members, on a poll at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote for each Member that the Attending Member represents.
- (e) Subject to this Constitution and any rights or restrictions of a class of Members, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Members on any resolution to be put at a meeting of Members, each Attending Member having a right to vote on the resolution has one vote.
- (f) An objection to a right to vote at a meeting of Members or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Article 34(f) must be decided by the Co-Chairs of the meeting of Members, whose decision, made in good faith, is final and conclusive.
- (g) Except where a resolution at a meeting of Members requires a special majority pursuant to the law, the resolution is passed if more votes are cast by Attending Members entitled to vote in favour on the resolution than against it.

- (h) In the case of an equality of votes on a resolution at a meeting of Members, the Co-Chairs of that meeting do not have a casting vote on that resolution.
- (i) Unless a poll is demanded and the demand is not withdrawn, a determination by the Co-Chairs of a meeting of Members following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

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### **35. Voting by representatives**

- (a) The validity of any resolution passed at a meeting of Members is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Member.
- (b) If a proxy of a Member purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Member to cast in a given way must be treated as cast in that way.
- (c) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Members by a person appointed by a Member as a proxy, attorney or Corporate Representative is valid despite the revocation of the appointment (or the authority pursuant to which the appointment was executed), if no notice in writing of that matter has been received by the Company before the time appointed for the commencement of that meeting.

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### **36. Restrictions on voting rights**

- (a) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members to which the authority relates is suspended while the Member is present in person at that meeting.
- (b) An Attending Member is not entitled to vote on any resolution on which any Fee or other amount due and payable to the Company in respect of that Member's membership of the Company has not been paid.
- (c) An Attending Member is not entitled to vote on a resolution at a meeting of Members where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (d) The Company must disregard any vote on a resolution at a meeting of Members purported to be cast by an Attending Member where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 36(d) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the Co-Chairs of that meeting.

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### **37. Polls**

- (a) A poll on a resolution at a meeting of Members may be demanded by a Member only in accordance with the Corporations Act or by the Co-Chairs of that meeting.
- (b) No poll may be demanded at a meeting of Members on the election of the Co-Chairs of that meeting, or unless the Co-Chairs of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.

- (d) A poll demanded on a resolution at a meeting of Members for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Members must be taken in the manner and at the time and place the Co-Chairs of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (f) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

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### **38. Proxies**

- (a) A Member who is entitled to attend and vote at a meeting of Members may appoint a person as proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act.
- (c) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.
- (d) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Member is not filled in, the proxy of that Member is:
  - (i) the person specified by the Company in the form of proxy in the case that Member does not choose; or
  - (ii) if no person is so specified, the Co-Chairs of that meeting.

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### **39. Receipt of appointments**

- (a) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Member may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Member and received by the Company if the requirements set out in the notice of meeting are complied with. For the avoidance of doubt, a proxy appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) given by a Member to the Company by way of electronic means must be received by the Company not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.

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### **40. Adjournments**

- (a) The Co-Chairs of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Co-Chairs.

- (b) If the Co-Chairs of a meeting of Members exercise the right to adjourn that meeting pursuant to Article 40(a), the Co-Chairs may (but are not obliged to) obtain the approval of Attending Members to the adjournment.
- (c) No persons other than the Co-Chairs of a meeting of Members may adjourn that meeting.
- (d) The Company may give such notice of a meeting of Members resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a meeting of Members which is resumed after an adjournment.

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## 41. Cancellations and postponements

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Members or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 41(a) does not apply to a meeting called in accordance with the Corporations Act by Members or by the Board on the request of Members, unless those Members consent to the cancellation or postponement of the meeting.
- (c) The Company may give notice of a cancellation or postponement or change of place of a meeting of Members as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the original notice calling the meeting.

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## 42. Meetings of a class of Members

All the provisions of this Constitution relating to a meeting of Members apply so far as they are capable of application and with any necessary changes to a meeting of a class of Members required to be held pursuant to this Constitution or the Corporations Act except that:

- (a) a quorum is 2 Attending Members who are (or whose Member that they represent are) members of that class of Members, or if only one person is a member of that class of Members, that person (or an Attending Member representing that person); and
- (b) any Attending Member who is (or whose Member that they represent is) a member of that class of Members may demand a poll.

## Directors

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## 43. Composition of the Board

- (a) Subject to Article 43(c), the Board must comprise of:
  - (i) two A&AA NAC Directors determined and appointed in accordance with Article 44;

- (ii) two ASCIA NAC Directors determined and appointed in accordance with Article 45; and
  - (iii) to the extent determined by the majority of A&AA NAC Directors and ASCIA NAC Directors, up to two additional Independent Directors determined and appointed in accordance with Article 46.
- (b) The Board may determine that the Board should be composed differently than as set out in Article 43(a) and put a proposal to Members to amend this Constitution accordingly. For the avoidance of doubt, the Board must be comprised as contemplated in Article 43(a) unless and until Members approve amendments to that Article as contemplated in this Article.
- (c) Notwithstanding Article 43(a), the Directors on the date of registration of the Company (upon which this constitution will be adopted), and the positions they hold and their remaining term of appointments, are set out below:

Name	Position	Expiry of term of appointment
Maria Said	A&AA NAC Director (Co-Chair)	17 May 2024
Kezia Adams	A&AA NAC Director	17 May 2024
Dr Preeti Joshi	ASCIA NAC Director (Co-Chair)	17 May 2024
Dr Melanie Wong	ASCIA NAC Director	17 May 2024

- (d) A Director appointed under Articles 44 and 45 may at any time be removed from office by the Member responsible for the appointment of that Director and upon such removal, the Member responsible for the appointment of the nominee Director so removed may appoint a replacement nominee Director of that Member.

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#### 44. Appointment of A&AA Directors

- (a) Subject to Article 43(b), whenever a position of A&AA NAC Director is to be filled (whether one or more A&AA NAC Directors), the following process must be followed:
- (i) A&AA may nominate a person to serve as an A&AA NAC Director in writing, with such notice to be signed by or on behalf of A&AA and lodged with the Secretary for at least 14 days before the Company's AGM at which the nomination is to take effect;
  - (ii) the Board must propose the appointment of any person or persons nominated by A&AA to fill any vacant A&AA NAC Director position or positions in accordance with this Article at the next AGM of the Company following the completion of the nominations process in this Article; and
  - (iii) the person nominated as A&AA NAC Director in accordance with this Article will be declared elected at the next AGM of the Company.
- (b) Any such person or persons whose appointment as A&AA NAC Director is approved by the Company's AGM is thereby a Director and must be confirmed promptly after the AGM by the Board as an A&AA Director.

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## 45. Appointment of ASCIA NAC Directors

- (a) Subject to Article 43(b), whenever a position of ASCIA NAC Director is to be filled (whether one or more ASCIA NAC Directors), the following process must be followed:
- (i) ASCIA may nominate a person to serve as an ASCIA NAC Director in writing, with such notice to be signed by or on behalf of ASCIA and lodged with the Secretary for at least 14 days before the Company's AGM at which the nomination is to take effect;
  - (ii) the Board must propose the appointment of any person or persons nominated by ASCIA to fill any vacant ASCIA NAC Director position or positions in accordance with this Article at the next AGM of the Company following the completion of the nominations process in this Article; and
  - (iii) the person nominated as ASCIA NAC Director in accordance with this Article will be declared elected at the next AGM of the Company.
- (b) Any such person or persons whose appointment as ASCIA NAC Director is approved by the Company's AGM is thereby a Director and must be confirmed promptly after the AGM by the Board as an ASCIA NAC Director.

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## 46. Appointment of Independent Directors

- (a) A person proposed as an Independent Director:
- (i) must satisfy the criteria determined by the Board from time to time for a candidate for that position;
  - (ii) must not be a member of A&AA, ASCIA or any other Member of the Company; and
  - (iii) must possess some or all of the following:
    - A. a demonstrated commitment to the purpose, functions, mission and values of the Company;
    - B. knowledge of allergy and anaphylaxis issues or policy issues of relevance to allergy and anaphylaxis;
    - C. adequate experience with the community and/or advocacy sectors;
    - D. governance experience or qualifications; and
    - E. specific skills, experience or attributes of relevance to the governance of the Company.
- (b) The Board must propose the appointment of any person or persons recommended by the Nominations Committee to be appointed as an Independent Director at the next AGM following the making of the relevant recommendation.
- (c) Any person or persons whose appointment as an Independent Director is approved by the AGM is thereby an Independent Director of the Company and must be appointed confirmed after the AGM by the Board as an Independent Director.

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## 47. Term of Office

- (a) Subject to Article 48(c), each Director will be appointed for a two (2) year term.

- (b) Each Director can serve a maximum of one (1) term of the duration set out in Article 47(a), unless:
- (i) if that Director is an A&AA NAC Director, A&AA provides written notice to the Company prior to the end of that A&AA Director's current term that his or her appointment be extended for a further two (2) year term and that A&AA NAC Director consents to such extension of his or her term of appointment, provided that no A&AA NAC Director may serve as a Director of the Company for more than eight (8) years in aggregate;
  - (ii) if that Director is an ASCIA NAC Director, ASCIA provides written notice to the Company prior to the end of that ASCIA NAC Director's current term that his or her appointment be extended for a further two (2) year term and that ASCIA NAC Director consents to such extension of his or her term of appointment, provided that no ASCIA NAC Director may serve as a Director of the Company for more than eight (8) years in aggregate;
  - (iii) if that Director is an Independent Director, the majority of A&AA NAC Directors and ASCIA NAC Directors provide written notice to the Company prior to the end of that Independent Director's current term that his or her appointment be extended for a further two (2) year term and that Independent Director consents to such extension of his or her term of appointment, provided that no Independent Director may serve as a Director of the Company for more than eight (8) years in aggregate,

provided that if a Director is appointed for less than a full term (for example, to fill a casual vacancy), that term will not be taken into account for the purposes of determining the maximum number of terms under this Article.

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## 48. Retirement of Directors

Subject to the terms of Article 47(b):

- (a) a Director must retire from office no later than the longer of the second AGM of the Company or two (2) years, following that Director's last election, appointment or extension of appointment under clause 47(b);
- (b) a Director who retires pursuant to Article 48(a) holds office as a Director until the end of the meeting at which the Director retires, and is eligible for re-appointment; and
- (c) a Director appointed pursuant to Article 50(a) must retire at the next AGM occurring after that appointment and is eligible for re-election.

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## 49. Termination of office

A person ceases to be a Director (and the office of that Director shall become vacant) if the person:

- (a) fails to attend Board meetings (either personally or by an alternate director) for a continuous period of 3 months without the consent of the Board;
- (b) resigns by notice in writing to the Company;
- (c) is removed from office pursuant to the Corporations Act;
- (d) is an employee (whether full-time or part-time) of the Company or of any related body corporate of the Company and ceases to be an employee of the Company or of a related body corporate of the Company (unless that Director was appointed by



A&AA or ASCIA as its nominee Director under Articles 44 or 45 and remains the nominee of the relevant appointing Member);

- (e) becomes an insolvent under administration;
- (f) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health;
- (g) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act or the ACNC Act;
- (h) where appointed by A&AA or ASCIA as its nominee Director under Articles 44 or 45:
  - (i) ceases to be the nominee of the relevant appointing Member; or
  - (ii) is removed as a Director by resolution of more than 50% of all the Members in accordance with the Corporations Act, at which point, upon such removal, the relevant appointing Member responsible for the appointment of that nominee Director may appoint a replacement nominee Director; or
- (i) where appointed as an Independent Director under Article 46, is removed as a Director by resolution of more than 50% of all the Members in accordance with the Corporations Act.

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## 50. Casual Vacancies

- (a) In the event that the office of a nominee Director appointed by A&AA or ASCIA under Articles 44 or 45 becomes vacant:
  - (i) the Member which originally appointed that Director may appoint a replacement Director; and
  - (ii) the remaining Directors of the Board may request the Member responsible for the appointment of that nominee Director to nominate a replacement nominee Director, with such nomination to be at the discretion of the relevant Member.
- (b) In the event that the office of an Independent Director appointed under Article 46 becomes vacant, the Board may by simple majority vote appoint any person as an Independent Director to fill that casual vacancy until such time as that vacancy is filled in accordance with any other provision of this Constitution. In determining the person to be appointed as Independent Director pursuant to this Article the Board must seek a recommendation from the Nominations Committee as to an appropriate person to fill the vacancy. If the Board approves the person nominated by the Nominations Committee the Board may appoint that person as an Independent Director for the remaining term of the Independent Director whose vacancy is being filled. If there is less than 6 months of that term remaining the Board may decide not to fill that vacancy. For the avoidance of doubt, any such person appointed as Independent Director pursuant to this Article need not be a Member of the Company.

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## 51. Alternate directors

- (a) A Director (other than a Co-Chair) may:
  - (i) without the need for approval of other Directors, appoint another Director; and



- (ii) with the approval of a majority of the other Directors, appoint a person who is not a Director,

as an alternate director of that Director for any period, provided that the term of the alternate Director must not exceed the term of his or her appointing Director.

- (b) The appointing Director may terminate the appointment of his or her alternate director at any time.
- (c) A notice of appointment, or termination of appointment, of an alternate director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company.
- (d) An alternate director is entitled to receive notice of Board meetings and, subject to this Constitution and the Corporations Act, to attend, count in the quorum of, speak at, and vote at a Board meeting at which his or her appointing Director is not present.
- (e) Subject to this Constitution, the Corporations Act, and the instrument of appointment of an alternate director, an alternate director may exercise all the powers (except the power pursuant to Article 51(a)) of a Director, to the extent that that his or her appointing Director has not exercised them.
- (f) The office of an alternate director is terminated if the appointing Director ceases to be a Director.
- (g) Subject to Article 7, the Company is not required to pay any remuneration or benefit to an alternate director.
- (h) An alternate director is an officer of the Company and not an agent of his or her appointing Director.

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## 52. Interests of Directors

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
  - (i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
  - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
  - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
  - (iv) entering into any agreement or arrangement with the Company; or
  - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.

- (d) If a Director has an interest in a matter, then subject to Article 52(c), Article 52(e) and this Constitution:
- (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
  - (ii) that Director may participate in and vote on matters that relate to the interest;
  - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
  - (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest (subject to Article 7(c)); and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed pursuant to Article 52(b), Article 52(d)(iv) applies only if the interest is disclosed before the transaction is entered into.

## Officers

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### 53. Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including, subject to Article 7, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

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### 54. Indemnity and insurance

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Article 54(a):
  - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
  - (iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
  - (i) enter into, or agree to enter into; or

- (ii) pay, or agree to pay, a premium for,
 

a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
  - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - (ii) indemnify that person against any Liability and Legal Costs of that person;
  - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
  - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## Powers of the Board

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### 55. General powers

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 61, a resolution passed by signing a document in accordance with Article 60, or in accordance with a delegation of the power pursuant to Articles 57 or 58. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Articles 57 or 58.

### 56. Execution of documents

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

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## 57. Committees and delegates

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, Article 61 applies with the necessary changes to meetings and resolutions of a committee of the Board.
- (d) The Board must ensure that at all times a committee of the Board is maintained in accordance with this Article to be referred to as the 'Nominations Committee' to recommend to the Board persons to be appointed as Independent Directors who satisfy the criteria set out in Article 46(a), and following the process for selecting candidates for that position as determined by the Board from time to time. In making the recommendation above the Nominations Committee must have regard to an appropriate mix of skills, experience and attributes for the Board.

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## 58. Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

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## 59. Observers at Board meeting

- (a) The Board may at its discretion, from time to time, resolve to invite one or more observers to be present at a subsequent Board meeting, provided that such observer will not be entitled to vote at the Board meeting.
- (b) Observers may speak at any Board meeting, if invited to speak by the Co-Chairs, acting jointly, unless directed otherwise by the Co-Chairs, acting jointly.

## Proceedings of Directors

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## 60. Written resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number and type of Directors required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document. For the avoidance of doubt, having regard to Article 61(i), a written resolution must be signed by at least the ASCIA Co-Chair and one other ASCIA NAC Director, and the A&AA Co-Chair and one other A&AA NAC Director to be passed.

- (b) A resolution pursuant to Article 60(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors entitled to vote on the resolution. A facsimile transmission or other document produced by electronic means (for example, an email attaching the signed resolution) under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 60(a) and is taken to be signed when received by the Company in legible form.
- (c) For the purposes of Article 60(a), the reference to Directors includes any alternate director who is appointed by a Director who is at the relevant time on leave of absence approved by the Board but does not include any other alternate directors.

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## 61. Board Meetings

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and an alternate director appointed by a Director on leave of absence approved by the Board. Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (d) A Director or alternate director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.
- (e) A person who attends a Board meeting waives any objection that person and:
  - (i) if the person is a Director, any alternate director appointed by that person; or
  - (ii) if the person is an alternate director, the Director who appointed that person as alternate director,may have to a failure to give notice of the meeting.
- (f) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (g) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this constitution on registration of the Company, consents to the use of each of the following technologies for the holding of a Board meeting:
  - (i) telephone;
  - (ii) video;
  - (iii) any other technology which permits each Director to communicate with every other participating Director; or
  - (iv) any combination of these technologies.A Director may withdraw the consent given pursuant to this Article 61(g) in accordance with the Corporations Act.

- (h) If a Board meeting is held in 2 or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the Co-Chairs of the meeting that the Director is discontinuing his or her participation in the meeting; and
  - (ii) the Co-Chairs of that meeting may determine at which of those places the meeting will be taken to have been held.
- (i) Until otherwise determined by the Board, a quorum for a Board meeting is 4 Directors entitled to vote on a resolution that may be proposed at that meeting provided there is at least the ASCIA Co-Chair and one other ASCIA NAC Director, and the A&AA Co-Chair and one other A&AA NAC Director, present at the meeting. A quorum for a Board meeting must be present at all times during the meeting. Each individual present is counted towards a quorum in respect of each appointment as an alternate director of another Director in addition (if applicable) to being counted as a Director.

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## 62. Co-Chairs of the Board

- (a) The Company must elect two Co-Chairs of the Board at any time, with one Co-Chair to be appointed by the ASCIA NAC Directors, and another Co-Chair to be appointed by the A&AA NAC Directors, in accordance with this Article 62.
- (b) The ASCIA NAC Directors must elect one of the ASCIA NAC Directors to be a Co-Chair of the Board (**Nominated ASCIA Co-Chair**) for any period that the ASCIA NAC Directors resolve, or if no period is specified, until that Nominated ASCIA Co-Chair ceases to be a Director. The ASCIA NAC Directors may remove, and replace, the Nominated ASCIA Co-Chair at any time by written notice to the Board.
- (c) The A&AA NAC Directors must elect one of the A&AA NAC Directors to be a Co-Chair of the Board (**Nominated A&AA Co-Chair**) for any period that the A&AA NAC Directors resolve, or if no period is specified, until that Nominated A&AA Co-Chair ceases to be a Director. The A&AA NAC Directors may remove, and replace, the Nominated A&AA Co-Chair at any time by written notice to the Board.
- (d) The Co-Chairs of the Board must chair each Board meeting, jointly.
- (e) If at a Board meeting, the A&AA Co-Chair:
  - (i) has not been elected pursuant to Article 62(a);
  - (ii) is not present within 15 minutes after the time appointed for the commencement of the Board meeting; or
  - (iii) is not willing to co-chair all or part of the Board meeting,
 then the other A&AA NAC Directors who are or will be present at the meeting may (by majority vote) elect one of their number to act as the A&AA Co-Chair for the purposes of that Board meeting.
- (f) If at a Board meeting, the ASCIA Co-Chair:
  - (i) has not been elected pursuant to Article 62(a);
  - (ii) is not present within 15 minutes after the time appointed for the commencement of the Board meeting; or
  - (iii) is not willing to co-chair all or part of the Board meeting,

then the other ASCIA NAC Directors who are or will be present at the meeting may (by majority vote) elect one of their number to act as the ASCIA Co-Chair for the purposes of that Board meeting.

- (g) A person does not cease to be a Co-Chair of the Board if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting (or any adjournment of that meeting).

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## 63. Board resolutions

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Articles 50 and 52 and this Article 63, each Director present in person or by his or her alternate director has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the Co-Chairs of that meeting, acting jointly, have one casting vote on that resolution in addition to any vote the relevant Co-Chairs each have in his or her capacity as a Director in respect of that resolution, provided that each Co-Chair is entitled to vote on the resolution, agrees on the resolution with the other Co-Chair, and more than two Directors are present and entitled to vote on the resolution. To the extent that the Co-Chairs do not agree on the resolution, the Co-Chairs, acting jointly, will not have a casting vote.

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## 64. Valid proceedings

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
- (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
  - (ii) a person so appointed being disqualified or not being entitled to vote, if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Members.

## Notices

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### 65. Notices to Members

- (a) The Company may give Notice to a Member by any of the following means in the Board's discretion:
- (i) delivering it to that Member or its Corporate Representative;
  - (ii) delivering it or sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member for that purpose;
  - (iii) sending it to the electronic address (if any) nominated by that Member for that purpose;



- (iv) if permitted by the Corporations Act, notifying that Member of the notice's availability by an electronic means nominated by the Member for that purpose; or
- (v) any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Member whose address for Notices is not within Australia by air-mail, air courier or electronic transmission.
- (c) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

## **66. Notice to Directors**

The Company may give Notice to a Director or alternate director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

## **67. Notice to the Company**

A person may give Notice to the Company by:

- (a) delivering it or sending it by post to the registered office of the Company;
- (b) delivering it or sending it by post to a place nominated by the Company for that purpose;
- (c) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (d) any other means permitted by the Corporations Act.

## **68. Time of service**

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director or an alternate director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A Notice given in accordance with Article 65(a)(iv) is taken to be given on the day after the date on which the Member is notified that the Notice is available.
- (d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.



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## 69. Notice requirements

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the Notice is taken to be given.

## Constitution

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### 70. Amending the Constitution

- (a) Subject to Article 70(b), this Constitution may only be modified or repealed by Special Resolution.
- (b) The Members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a Registered Charity or a Deductible Gift Recipient.

## Winding up

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### 71. Surplus assets not to be distributed to Members, unless exception applies

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 body corporate, or operates as a fund or institution, that meets the requirements in Article 72(a) or 73(a).

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### 72. Distribution of surplus assets of the gift fund

- (a) If the Company is wound up or if the Company's deductible gift recipient endorsement is revoked, any surplus assets of the gift fund must be transferred to one or more bodies corporate, funds or institutions, as decided by the Directors, that is a charity or are charities:
  - (i) having a charitable object or charitable objects similar to or inclusive of the Object of the Company;
  - (ii) to which donations or gifts can be made that are tax deductible under Division 30 of the applicable Tax Act or any successive legislation; and
  - (iii) being a not-for-profit entity whose governing documents prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Article 7.
- (b) For the purpose of this Article 72, 'surplus assets of the gift fund' means:
  - (i) Gifts;
  - (ii) Deductible Contributions; and
  - (iii) money received by the Company because of such Gifts and Deductible Contributions.

- (c) A Member or former Member of the Company may receive a distribution of surplus assets of the gift fund under this Article 72 if that Member or former Member is an organisation that meets the requirements of Article 72(a).

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### **73. Distribution of surplus assets (other than surplus assets of the gift fund)**

On a winding up of the Company, any surplus assets (other than surplus assets of the gift fund) of the Company remaining after the payment of its debts must not be paid to or distributed among the Members (except in accordance with Article 71 and this Article 73), but must be given or transferred to:

- (a) one or more bodies corporate, funds or institutions (whether or not a Member or Members), selected by the Members by resolution at or before the dissolution of the Company, that is a charity or are charities:
- (i) having a charitable object or charitable objects similar to or inclusive of the Object of the Company; and
  - (ii) being a not-for profit entity whose governing documents prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Article 7; or
- (b) if there are no bodies corporate, funds or institutions which meet the requirements of Article 73(a), one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Members by resolution at or before dissolution of the Company that is a charity or are charities, to which donations or gifts can be made that are allowable deductions pursuant to Division 30 of the applicable Tax Act; or
- (c) if the Members do not make a selection pursuant to Article 73(a) or 73(b) for any reason, one or more bodies corporate, funds or institutions meeting the requirements of either Article 73(a) or 73(b) selected by the Board, subject to the Board obtaining court approval pursuant to the Corporations Act to exercise this power.