

Australian Centre for Grief and Bereavement

ACN 159 297 444
ABN 22 038 903 478

A Public Company Limited by Guarantee

Constitution

Table of contents

1	DEFINITIONS AND INTERPRETATION.....	1
2	GENERAL	3
3	PURPOSES AND OBJECTS.....	4
4	INCOME AND PROPERTY	4
5	GUARANTEE OF MEMBERS	6
6	MEMBERSHIP	6
7	DISPUTES AND MEDIATION	9
8	FINANCIAL RECORDS	10
9	GENERAL MEETINGS	11
10	PROCEEDINGS AT GENERAL MEETINGS	13
11	BOARD OF DIRECTORS.....	17
12	RESIGNATION AND VACATION OF OFFICE	19
13	POWERS AND DUTIES OF THE BOARD	20
14	COMMITTEES.....	21
15	SECRETARY	21
16	PROCEEDINGS OF THE BOARD.....	21
17	POWER TO MAKE BY-LAWS	22
18	EXECUTION OF DOCUMENTS	23
19	MINUTES OF PROCEEDINGS	23
20	NOTICES.....	23
21	INDEMNITY.....	24
22	ACCESS.....	24
23	GIFT FUND	24
24	CONFIDENTIALITY.....	25
25	MEDIA AUTHORISATION AND CONDUCT.....	25
	APPENDIX 1	26

1 Definitions and Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

- (a) **ABN** means Australian Business Number.
- (b) **ACGB** means Australian Centre for Grief and Bereavement (ACN 159 297 444, ABN 22 038 903 478) established and continued under the Constitution.
- (c) **ACN** means Australian Company Number.
- (d) **ACNC** means Australian Charities and Not-for-profit Commission.
- (e) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* and includes any statutory modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (f) **Act** means the *Corporations Act 2001 (Cth)* and includes any statutory modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (g) **AGM** means an annual General Meeting of the ACGB held in accordance with section 250N of the Act.
- (h) **ASIC** means the Australian Securities and Investments Commission.
- (i) **Board** means the board of Directors of the ACGB as constituted from time to time.
- (j) **By-Laws** means by-laws of the ACGB made by the Board which Members and Directors must comply with as if they were part of the Constitution.
- (k) **Constitution** means this Constitution of ACGB and any supplementary, substituted or amended Constitution in force from time to time.
- (l) **CTH** means the Commonwealth of Australia.
- (m) **Deductible Contribution** means a donation of money or property as described in item 1, item 7 or item 8 of the table in section 30-15 of the ITAA 97.
- (n) **DGR** means an entity endorsed by the Australian Taxation Office or other applicable regulatory authority as a deductible gift recipient pursuant to subdivision 30-BA of the ITAA 1997, permitting gifts to the entity to be tax deductible.
- (o) **Director** means a member of the Board of the ACGB.
- (p) **Financial year** means the financial year of the ACGB being 1 July to 30 June.
- (q) **Gift Fund** means a fund established under clause 23 of this Constitution and pursuant to ITAA 97, into which donations of property or money, received by the ACGB from the public, that qualify as allowable deductions are placed.

- (r) **ITAA 97** means the *Income Tax Assessment Act 1997* (Cth).
- (s) **Member** means any person who is a Member at the date of adoption of the Constitution or who becomes a Member of the ACGB in accordance with the Act and this Constitution.
- (t) **Officer** means an officer of the ACGB within the meaning of section 9 of the Act and includes a Director or secretary of the ACGB.
- (u) **Register** means the register of Members of the ACGB to be kept pursuant to the Act.
- (v) **Responsible Persons** means persons having a degree of responsibility to the community as a whole because of their tenure of some public office or their position in the community including:
 - 1. church authorities and clergy;
 - 2. trustees or Board Members of a not-for-profit school or college, school principals or senior teachers or academics;
 - 3. judges, solicitors, doctors, accountants, graduate member of the Australian Institute of Company Directors and other professions which have a code of ethics or rules of conduct;
 - 4. mayors, councillors, town clerks and members of parliament;
 - 5. Justice of the Peace or other person before whom a statutory declaration may be made;
 - 6. recipients of awards from government for services to the community such as an Order of Australia;
 - 7. person known to a broad section of the community because he or she performs a public function; and
 - 8. any other person whose appointment is approved by the Commissioner of Taxation or a Deputy Commissioner of Taxation.
- (w) **Review** means a review of a financial report conducted for the purposes of the Act and in compliance with the ACNC Act.
- (x) **Reviewer** means an individual or entity who undertakes a review of a financial report of the ACGB for the purposes of the Act and in compliance with the ACNC Act.
- (y) **Special Resolution** means a resolution at a general meeting of the ACGB, of which 21 days' notice of the proposed resolution has been given, and being a resolution passed by a majority of 75% of the votes cast by Members entitled to vote on the resolution.

1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

- (a) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.
- (b) **(gender)** words importing one gender include all other genders.

- (c) **(headings)** headings and the table of contents are inserted for convenience only and do not affect interpretation of this Constitution.
- (d) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (e) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity, and a reference to a person includes their personal representatives, successors and permitted assigns.
- (f) **(references)** a reference to the background, a party, clause, paragraph, schedule or annexure is a reference to the background, a party, clause, paragraph, schedule or annexure to or of this Constitution.
- (g) **(replacement bodies)** a reference to a body (including an institute, association or authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- (h) **(singular)** the singular includes the plural and vice-versa.

2 General

2.1 Name of the company

The name of the company is Australian Centre for Grief and Bereavement (**ACGB**).

2.2 Replaceable rules

This Constitution takes the place of the Replaceable Rules contained in the Act.

2.3 Limited Liability

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

2.4 Constitution

- (a) This Constitution contains provisions setting out the manner in which the Members of the ACGB have agreed to conduct the internal administration of the ACGB.
- (b) This Constitution shall have effect as a contract:
 - 1. between the ACGB and each Member;
 - 2. between the ACGB and each Director;
 - 3. between the ACGB and each Member who performs an executive position of the ACGB;
 - 4. between a Member and each other Member,pursuant to which each Member agrees to accept the provisions of this Constitution, and comply with those provisions, so far as they apply to that Member.
- (c) A special resolution is required to alter this Constitution in accordance with the Act.

- (d) A special resolution making a material alteration to clauses 3, 4, 5 and 23 of this Constitution has no effect unless approved in writing by the Australian Taxation Office, the ACNC, ASIC or other applicable regulatory authority.

2.5 Powers of the ACGB

Subject to the provisions of this Constitution and provided that its capacities and powers are exercised, directly or indirectly, in the furtherance of its purposes, the ACGB has the legal capacity and powers of an individual and a company limited by guarantee under the Act.

3 Purposes and Objects

The ACGB was established to pursue the following charitable purposes:

- (a) To develop and provide a range of specialist interventions and innovative education services, informed by evidence based practice, for grieving people who are at risk of adverse outcomes;
- (b) To provide grief education and a range of consultancy services to develop and enhance the capacity of individuals, organisations and communities to deal effectively with loss;
- (c) To provide grief and bereavement counselling training and supervision through the placement of practitioners at the ACGB Counselling and Support Service and other settings as deemed appropriate;
- (d) To build the capacity of the universal health services to provide bereavement supports and responses;
- (e) To provide advocacy and representation on grief and bereavement issues in order to inform policy development, raise community awareness and support universal access to mainstream grief and bereavement services;
- (f) To undertake research, program evaluation, public policy development and the production of evidence based publications and resources to enhance grief and bereavement knowledge and practice;
- (g) To maintain cooperative links with relevant state, national and international groups and organisations in relation to grief and bereavement;
- (h) To promote, develop and monitor competence in bereavement practice;
- (i) To collect and raise funds for the promotion of the preceding purposes and objects of the ACGB;
- (j) To do such things as may be incidental or conducive to the attainment of the purposes and objects set out in this constitution; and
- (k) To embrace other purposes and objects as may be decided by the Board from time to time.

4 Income and Property

4.1 Not-for-profit

- (a) The ACGB is a Not-for-profit public company limited by guarantee.

- (b) The income, property, profits and financial surplus of the ACGB, whenever derived, must be applied solely towards the promotion of the purposes of the ACGB as set out in this Constitution.
- (c) The ACGB must not carry on business for the purpose of profit or gain to its Members.
- (d) No portion of the ACGB's income, property or profits may be paid, distributed or transferred, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any of the Members, Directors, or their relatives, except as provided by this Constitution.

4.2 Payment for services rendered

- (a) Nothing in this Constitution prevents the payment in good faith to an Officer, employee or Member (whether directly or indirectly):
 - 1. of reasonable and proper remuneration for any services to the ACGB;
 - 2. for goods supplied in the ordinary and usual course of business;
 - 3. of interest on money borrowed at a commercial rate;
 - 4. of reasonable rent for premises let to the ACGB;
 - 5. of reasonable out-of-pocket expenses properly incurred in carrying out their duties in connection with the affairs of the ACGB;

4.3 Payment to Directors

- (a) The ACGB must not pay fees to a Director for acting as a Director.
- (b) The ACGB may:
 - 1. reimburse for out-of-pocket expenses incurred in carrying out the duties of a Director where payment does not exceed any amount previously approved by the Board;
 - 2. pay a Director for any service rendered to the ACGB in a professional or technical capacity where provision of that service has the prior approval of the Board and the amount payable is approved by resolution of the Board and is reasonable on commercial terms; and
 - 3. pay premiums for insurances indemnifying Officers and Directors, as allowed by law and this Constitution.

4.4 No distribution of profits to Members on winding up or revocation

- (a) If the ACGB is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities are to be given or transferred to one or more charities:
 - 1. having objects or purposes similar to the objects and purposes of the ACGB;
 - 2. whose Constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by this Constitution; and

3. which are charitable at law, exempt from income tax and are a DGR under the ITAA 97.
- (b) If the ACGB's DGR endorsement is revoked (whether or not the ACGB is wound up) any surplus assets and property in the Gift fund must be transferred to one or more charities with the characteristics outlined in 5.4(a).
- (c) The Members at or before the time of dissolution may determine the identity of the charity or charities for the purpose of clause 4.4(a) or (b).
- (d) If the Members fail to determine the identity of the charity or charities under clause 4.4(b), the Board or the Supreme Court of Victoria may make that determination.

5 Guarantee of Members

In the event that the ACGB is wound up, each Member undertakes to contribute a maximum of \$1.00 to the ACGB for payment of:

- (a) the debts and liabilities of the ACGB contracted before the Member ceased to be a Member;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

while the Member is a Member or within one year after the Member ceases to be a Member.

6 Membership

6.1 Transition of existing Members

The Members of the ACGB as at the date the Constitution is adopted will be deemed to have met the eligibility criteria for membership and the rights and benefits of their membership as conferred by ACGB will be preserved.

6.2 Classes of Members

- (a) The Board may:
 1. establish new or different classes of Members;
 2. prescribe the qualifications, rights and privileges of persons to become a Member of a class;
 3. determine or change the existing classes of membership including any entitlements including voting rights;
 4. set and amend the amounts and due dates of membership fees, entrance fees, annual subscription fees for the various classes of membership, sponsorship payments and other periodical payments from Members or supporters of the ACGB;
 5. establish By-Laws to set out the eligibility criteria for admission to membership and classes of membership and define the rights and benefits, duties and obligations, and status of Members, within the various classes of membership.

- (b) The Members in General Meetings are not entitled to amend or revoke a decision or determination of the Board made pursuant to this clause.

6.3 Admission to membership

- (a) The Board has absolute discretion to admit or reject any applicant for membership in accordance with this constitution and the By-Laws.
- (a) The Board may confer “Honorary” or ‘Life’ membership status of the ACGB on any individual who has given outstanding service to the ACGB or its Objects (without the need for application). Unless otherwise expressly stated such individuals will be Members of the ACGB for the purposes of the Act.

6.4 Rights of Members

The rights of Members are not transferrable and end when the Member ceases to be a Member in accordance with this Constitution.

6.5 Privacy of Members

Personal information about Members is collected for the purpose of membership and is not otherwise disclosed except where authorised by law or where reasonably necessary for other purposes directly incidental to membership, in accordance with the ACGB privacy policy.

6.6 Register of Members

- (a) The ACGB must maintain a register of Members in accordance with the Act.
- (b) Each Member is required to provide to the secretary details of an address in Australia where the ACGB can send notices.
- (c) If a Member fails to provide an address, the address of the Member is deemed to be the registered office of the ACGB.
- (d) The following must be entered in the register of Members in respect of each Member:
 - 1. the full name of the Member;
 - 2. the residential address, address for service of notices (including electronic addresses, facsimile number and electronic mail address, if any, of the Member);
 - 3. the category of membership;
 - 4. the date of admission to and cessation of membership;
 - 5. the date of last payment of the Member’s annual subscription; and
 - 6. such other information as the Board requires.
- (e) Each Member must notify the secretary in writing of any change in that person’s name, address, facsimile number or electronic mail address within 1 month after the change.

6.7 Cessation of membership

A Member ceases to be a Member if they:

- (a) cease to meet the eligibility criteria for membership under this Constitution or the By-Laws;
- (b) become a salaried employee of ACGB;
- (c) die or cease to have legal capacity;
- (d) resign in writing, providing 1 months' notice to the secretary;
- (e) become insolvent, bankrupt, under administration or upon making any arrangement or composition with their creditors generally;
- (f) are expelled under this Constitution; or
- (g) have not responded within three months to a written request from the secretary that they respond in writing that they want to remain a Member.

6.8 Non-payment of Subscription

- (a) If any subscription or other membership fee of a Member remains unpaid, the Member will be debarred from all privileges of membership. The Board may, if it thinks fit, reinstate the Member on payment of all arrears.
- (b) The Board may at any time terminate the membership of a Member for non-payment of membership fees if:
 - 1. the membership fees payable by the Member have remained unpaid for a period of not less than one (1) month after the due date for payment; and
 - 2. after the end of that one (1) month period, a notice of default has been given to the Member by the secretary; and
 - 3. the membership fees payable by the Member remain in arrears for a period of one (1) month after the date of service of the notice of default upon the Member in relation to those outstanding fees.
- (c) The Board may resolve to grant an extension of time on a case by case basis by reason of extenuating circumstances. Membership will cease upon the expiration of any period of extension where fees remain outstanding.

6.9 Effect of cessation

A Member who ceases to be a Member continues to be liable for:

- (a) any subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the ACGB; and
- (c) the Guarantee, subject to the provisions of clause 5.

6.10 Discipline of Members

- (a) The Board may resolve to censure, suspend or expel a Member from the ACGB if the Board considers that:
 - 1. the Member has breached or neglected to comply with the provisions of this Constitution; or

2. the Member's conduct is causing, has caused, or is likely to cause harm to the ACGB or be prejudicial to the interests of the ACGB.
- (b) At least 14 days before the meeting of the Board, at which a resolution under clause 6.10(a) is passed, the ACGB must provide the Member with:
1. notice of the meeting;
 2. any allegations against them;
 3. the intended resolution; and
 4. advice that the Member may, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation or defence they think fit.
- (c) The Board may investigate the conduct of any Member, and any Member who is the subject of a review must provide reasonable assistance to the Board.
- (d) After considering any explanation or defence, the Board may:
1. take no further action;
 2. warn the Member;
 3. suspend the Member's rights as a Member for a period of no more than 12 months;
 4. expel the Member;
 5. refer the decision to an unbiased, independent person on conditions that the Board consider appropriate (however, the person can only make a decision that the Board could have made under this Constitution); or
 6. require the matter to be determined at a general meeting.
- (e) The secretary must give written notice to the Member of the decision of the Board under clause 6.10 within 14 days of the date of the Board's resolution.
- (f) Disciplinary procedures must be completed as soon as reasonably practical.
- (g) The Board's decision to warn or suspend a Member is final and binding on the Member.
- (h) 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 clause 6.10.

7 Disputes and Mediation

- (a) The following dispute resolution procedure applies to disputes under this Constitution between:
1. a Member and a Director;
 2. one or more Members;
 3. one or more Directors; or

4. a Member or Director and the ACGB.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 6.10 until the disciplinary procedure is complete. A dispute resolution procedure in relation to a disciplinary procedure can only be commenced if Board have resolved to expel a Member.
 - (c) The parties to a dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all the parties;
 - (d) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten (10) days, hold a meeting in the presence of a mediator and, in good faith, attempt to settle the dispute;
 - (e) The mediator must be an accredited mediator to be agreed by the parties or, failing agreement, appointed by the Board;
 - (f) A mediator can be a Member of the ACGB, but cannot act in this capacity if they are a party to the dispute;
 - (g) The mediator must not determine the dispute;
 - (b) If the mediation process does not result in the resolution of the dispute, the parties may seek to resolve the dispute otherwise at law.

8 Financial Records

8.1 Keeping of Accounting and financial records

- (a) The Board must cause the ACGB to keep written financial and business records that explain the transactions and financial position of the ACGB, to enable true and fair financial statements and any other documents required by the Act or this Constitution to be prepared.
- (b) The financial records must be kept:
 - 1. in such manner as to enable them to be conveniently and properly Reviewed or audited;
 - 2. for seven years after the completion of the transactions or operations to which they relate; and
 - 3. at the ACGB's registered office or at such other place as the Board's think fit.
- (c) The financial records must at all times be open to inspection by the Board.
- (d) The Board must cause the ACGB to appoint and retain a properly qualified Reviewer or auditor to review or audit the ACGB's financial statements in accordance with the Act.
- (e) The Board must lay copies of the financial report including a copy of the Reviewer or auditor's report and any other documentation required under the Act before each AGM.

8.2 Inspection of financial records of the ACGB

- (a) The Board will, subject to any requirements of the Act, regulate the manner and extent to which the financial records and other documents of the ACGB will be open to public inspection or the inspection by Members other than Directors.
- (b) No Member, other than a Director, has the right to inspect any document of the ACGB except as provided by the Act (or other applicable laws) or as authorised by the Board.

9 General Meetings

9.1 AGM

- (a) An AGM of the ACGB must be held in accordance with the Act and at such times and places as the Board may determine.
- (b) The ordinary business of the AGM is:
 - 1. to receive and consider the accounts, balance sheets and the reports of the Directors and the Reviewers or auditors and any other documents required by law to be laid before the meeting;
 - 2. to elect Directors in place of those retiring or ceasing to hold office; and
 - 3. to transact any other business which under the Constitution or the Act is to be transacted at an AGM.
- (c) No business may be transacted at an AGM other than:
 - 1. the ordinary business referred to in clause 9.1; and
 - 2. any special business set out in the notice of meeting.
- (d) The Reviewer or auditor or their representative are entitled to attend and be heard on any part of the business of a meeting concerning a Review or audit in their capacity as Reviewer or auditor. The Reviewer or auditor or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the Review or audit.

9.2 Special General Meeting

- (a) A general meeting of the Members other than the AGM is called a special general meeting.
- (b) The Board may call a special general meeting and must convene a special general meeting on a requisition of Members as provided for by Section 249D the Act.
- (c) The requirements for the requisition for a special general meeting are as provided for by Section 249D the Act.
- (d) Special general meetings may only consider business of which notice has been given in accordance with clause 9.3.

9.3 Notice of general meetings

- (a) Subject to the Act, at least 21 days' notice must be given of a general meeting.
- (b) The contents of the notice of meeting must conform to the requirements of section 249L of the Act.
- (c) Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director, secretary and Reviewer or auditor.
- (d) Notice to joint Members must be given to the joint Member first named in the register of Members.
- (e) The ACGB may give the notice of meeting to a Member:
 - 1. personally, and is deemed to have been served when delivered;
 - 2. by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member, and is deemed to have been served 3 days after the date of posting;
 - 3. by sending it to the fax number or electronic address (if any) nominated by the Member, and is deemed to have served the day after it is sent; or
 - 4. by any other means authorised by the Act.
- (f) The accidental omission to give notice of a general meeting to, or the non-receipt of any such notice by, any of the Members does not invalidate any resolution passed at any such meeting.
- (g) A Member desiring to bring any business before a meeting may give notice of that business in writing to the Board who must include all legitimate business in the notice calling the next general meeting after the receipt of the notice.

9.4 Circular resolution of Members

- (a) Subject to the provisions of the Act, the Board may submit a question or resolution to the vote of all Members entitled to a vote at a general meeting of the ACGB by means of a postal vote or electronic means, in such form and returnable in such manner as the Board decides, provided that notice of any vote has been given in the manner provided in clause 9.3.
- (b) If a membership is held jointly, each of the joint Members must sign the document to pass the resolution.
- (c) Separate copies of a document or form referred to in clause 9.4(a) may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) 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.
- (e) Circular resolutions cannot be used for a resolution to remove a Reviewer or auditor.

- (f) A resolution approved by the Members voting by circular resolution will have the same force and effect as such a resolution would have if carried by such a majority or specific majority at a duly constituted general meeting of the ACGB.

9.5 Technology

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

9.6 Representatives

- (a) Members who are incorporated bodies may appoint an individual to represent them at general meetings. Attendance by other individuals under or through a corporate Member may be limited by the By-Laws.
- (b) Appointments must be made in writing, naming the individual to represent the Member and sent at least 24 hours before the meeting, or given to the chair of the meeting before or at the commencement of the meeting.
- (c) Representatives may exercise all rights of Members at the general meeting under this Constitution.

10 Proceedings at General Meetings

10.1 Quorum and decision-making

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum is present at the commencement of business. The quorum must be present at all times during the meeting.
- (b) The quorum for consideration of the business at a general meeting is the presence in person, by proxy or attorney of at least 5 Members entitled to vote.

10.2 Adjournment in absence of quorum

- (a) A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Board specify.
- (b) If the Board does not specify one or more of those requirements, the meeting is to be adjourned to the same day in the next week, at the same time and same place.
- (c) If no quorum is present at the adjourned meeting within 30 minutes after the time for the meeting, the Members present, if at least 3 Members, will be a quorum. If 3 Members are not present the meeting is dissolved.

10.3 Chairing meetings of Members

- (a) The chairperson of the Board is entitled to take the chair at every general meeting.
- (b) If at any general meeting:
 1. there is no chairperson of the Board; or

2. the chairperson of the Board is not present at the specified time for holding the meeting; or
3. the chairperson of the Board is unwilling to act as chairperson of the meeting,

the Directors present may choose another Director as chairperson of the meeting and if no Director is present or if each of the Directors present is unwilling to act as chairperson of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

10.4 Business of General Meetings

- (a) The chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
 1. in possession of any image or sound-recording device;
 2. in possession of an object considered by the chairperson to be dangerous, offensive or liable to cause disruption;
 3. who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 4. who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 5. who is not:
 - (i) a Member or a proxy, or an attorney or authorised representative of a Member;
 - (ii) a Director; or
 - (iii) the Reviewer or auditor of the ACGB.

10.5 Adjournment of meeting

- (a) The chairperson of a meeting may, with the approval of the Members present, adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting on a date, at a time and place as the Board specify.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) The chairperson must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the chairperson must do so.
- (d) When a meeting is adjourned for 30 days or more, new notice of the resumed meeting must be given as in the case of an original meeting.

10.6 Declaration of vote on a show of hands; when poll demanded

- (a) At any meeting, a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is demanded.

- (b) A poll may be demanded:
 - 1. before a vote is taken;
 - 2. before the voting results on a show of hands are declared; or
 - 3. immediately after the voting results on a show of hands are declared.
- (c) A poll may be demanded by:
 - 1. the chairperson of the meeting;
 - 2. any Member present in person or by representative, attorney or proxy; or
 - 3. any Member of the Board.
- (d) Unless a poll is demanded a declaration by the chairperson that a resolution has, on a show of hands, been carried or lost, having regard to the majority required, and an entry to that effect in the book containing the minutes of proceedings of the ACGB will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (e) The demand for a poll may be withdrawn.

10.7 Taking a poll

If a poll is duly demanded it must be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on the question of an adjournment must be taken at once.

10.8 Casting vote by chairperson

In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands or poll takes place will be entitled to a second or casting vote.

10.9 Voting

- (a) Subject to clause 6, the voting rights of the Members will be set out in the By-Laws.
- (b) Each Member who has the right to vote may vote in person, by the appointment of a proxy, attorney or representative.
- (c) A proxy, attorney or representative need not be a Member but cannot be a salaried employee of the ACGB and may be appointed for all, any number of, or for a particular meeting.
- (d) The decision of the chairperson of a meeting as to the validity of a proxy, power of attorney or appointment of a representative will be final and conclusive.
- (e) Where a person present at a general meeting represents more than one Member personally, by proxy, attorney or representative, that person is entitled only to one vote on a show of hands; and

- (f) If the person appointed as proxy, attorney or representative has 2 or more appointments that specify different ways to vote on the resolution, the proxy, attorney or representative must not vote on a show of hands.
- (g) A Member is not entitled to vote at a general meeting unless all moneys due and payable by the Member to the ACGB have been paid, excluding and annual subscription or other payment notified within 30 days of the general meeting.
- (h) In the case of any dispute as to the admission or rejection of a vote, the chairperson's determination in respect of the dispute made in good faith is final.

10.10 Proxies

- (a) An appointment of a proxy is valid if it meets the requirements of the Act and this Constitution.
- (b) The instrument appointing a proxy:
 - 1. must be in writing signed by the Member or the attorney of the Member or, if the Member is a corporation, signed by a duly authorised officer;
 - 2. is deemed to include the right to demand or join in demanding a poll;
 - 3. is valid for any adjournment of the meeting, as well as for the meeting to which it relates.
 - 4. Must be lodged at the registered office of the ACGB or such other place as is specified in the notice convening the meeting not less than 48 hours before the general meeting.
 - 5. Is not valid after the expiration of 12 months after the date of its execution, except where a Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the ACGB until revocation.
- (c) A Member is entitled to instruct their proxy to vote in favour of or against any proposed resolutions.
- (d) Unless otherwise instructed the proxy may vote as they think fit

10.11 Validity of vote

- (a) Unless the ACGB has received written notice of the matter before the start or resumption of the general meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - 1. The appointing Member dies;
 - 2. The Member is mentally incapacitated;
 - 3. The Member revokes the proxy's appointment; or
 - 4. The Member revokes the authority under which the proxy was appointed by a third party.

- (b) A proxy is not revoked by the appointing Member attending and taking part in the meeting, unless the Member votes at the meeting on the resolution for which the proxy is proposed to be used.

10.12 Attorney of Members

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the ACGB. Before the attorney is entitled to act under the power of attorney, the power of attorney or a certified copy of the power of attorney must be produced for inspection at the registered office or any other place the Board may determine from time to time. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

11 Board of Directors

11.1 Board of Directors

- (a) The affairs of the ACGB are to be under the direction of a Board of Directors constituted under this Constitution.
- (b) The Board is to consist of no less than 4 but no more than 10 Directors appointed in accordance with this Constitution.
- (c) The Board shall be comprised of a majority of Responsible Persons.

11.2 Qualification of Directors

- (a) No person is eligible to be appointed or act as Director of the ACGB unless:
 - 1. that person is over the age of 18 years of age;
 - 2. that person is not prohibited or disqualified or otherwise prevented from acting as a Director of the ACGB under the Act; and
 - 3. that person is a Member of ACGB or will be deemed to be appointed a Member under the Constitution.
- (b) The Reviewer or auditor is ineligible to be elected or appointed as a Director.

11.3 Term of Office

- (a) Directors elected by the Members hold office for a period of 3 consecutive years.
- (b) A Member may seek re-election to the Board at the conclusion of their term in office as set out in clause 11.3(a) and subject to 11.3(c).
- (c) A Director must retire from office at the conclusion of 3 consecutive terms in office, being 9 consecutive years unless the Board resolves that the Director can stand for office for a further fixed term.
- (d) A former Director, who ceases to hold office by reason of the maximum term of office under clause 11.3(c), is not eligible for election or appointment to the Board until having been out of office for 3 years.

11.4 Nomination Process

- (a) Nominations for candidates for the position of Director must be called for by the Board, prior to each AGM of the ACGB.
- (b) Nominations for candidates for the position of Director must:
 - 1. be in writing;
 - 2. be endorsed by at least two Members (not including the candidate);
 - 3. be accompanied by the written consent of the candidate;
 - 4. be accompanied by a brief statement from the candidate outlining their skills and experience, and how they propose to fulfil their commitments as Director and add value to the ACGB; and
 - 5. be submitted to the Board at such address as notified by the Board, not less than 30 days before the date fixed for an AGM or any other date unanimously set by the Board.

11.5 Notice of candidates

- (a) No less than 2 days before the date fixed for the holding of the AGM, the Board must either issue to all Members, publish on the Company's website or display in a conspicuous place in the registered office a list of:
 - 1. eligible candidates nominated for the position of Director; and
 - 2. candidates who, being eligible for re-election, have offered themselves for re-election.
- (b) The candidates must be put to the Members for election as per clause 11.6 and no further nominations will be received at the AGM or after the date on which nominations closed under clause 11.4(b)(5).

11.6 Election of the Board

- (a) If only one nomination for each vacancy, or new position is received (including any retiring Director who is deemed to be a candidate), the candidates nominated will be deemed to be elected.
- (b) If the number of nominations exceeds the number of vacancies to be filled, a vote will be held in accordance with clause 11.6 (c).
- (c) On any vote to appoint a Director at an AGM:
 - 1. the chairperson must collect the votes of the Members;
 - 2. all votes must be on the prescribed form (being the form prescribed by the Board from time to time);
 - 3. votes must be tallied in simple form, not a preferential system. That is, Members will vote for the candidate/s they most prefer, in accordance with the number of nominations. The candidates with the most votes will be declared elected;
 - 4. if votes are tied, the Members will re-vote on the tied candidates and the candidate with the most votes on the revote will be declared elected.

5. If on a re-vote, the votes remain tied, the chairperson of the meeting will have the casting vote.

11.7 Power of the Board to fill casual vacancies

- (a) The Board has the power at any time and from time to time to appoint a qualified person as a Director either to fill a casual vacancy among the Board or as an addition to the existing Members. However, the total number of Directors may not at any time exceed 10 the maximum required in clause 11.1.
- (b) Any person appointed under this clause 11.7 holds office until the next AGM of the ACGB but will, subject to this Constitution, be eligible for re-election at that AGM.
- (c) The Board may continue to act notwithstanding a vacancy on the Board, but if the number of Directors falls below 4 being the minimum required in clause 11.1 then the Board will not act, except in the case of emergencies or for the purpose of filling vacancies.

11.8 Deemed to be admitted as a Member

- (a) Subject to clause 11.8(b) any person who is appointed as a Director will be deemed to have been approved or accepted by the Board as a Member of the ACGB, although the Board may require a candidate to:
 1. Complete the application for membership; and
 2. Pay any moneys payable in respect of any entrance, membership or subscription fee.
- (b) Clause 11.8(a) does not apply to a person who has within 24 months of their appointment been expelled as a Member, in which case, the person's nomination and appointment is conditional upon the Board resolving to allow the nomination or appointment. In the absence of the prescribed resolution the appointment is invalid and deemed vacant.

11.9 Chairperson

The Directors must elect a Director to act as chairperson of the Board and who will have functions and duties as may be determined by the Board from time to time.

12 Resignation and Vacation of office

12.1 Resignation

Any Director may resign from the Board by notice in writing delivered to the secretary. Resignation takes effect at the time when such notice is received by the secretary unless some later time and date is specified in the notice as the effective time and date.

12.2 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act or the ACNC Act, the office becomes vacant if that Director:

- (a) ceases to be a Member;

- (b) is removed as a director by resolution of the Members;
- (c) becomes an employee of the ACGB;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) becomes insolvent or under any form of insolvent administration;
- (f) becomes a bankrupt under the Bankruptcy Act or makes any arrangement or composition with personal creditors generally;
- (g) dies;
- (h) fails to attend 3 consecutive meetings of the Board without the prior approval of the Board;
- (i) in the opinion of Board brings the ACGB into disrepute; or
- (j) in the opinion of the Board acts contrary to the Constitution or the By-Laws.

13 Powers and duties of the Board

13.1 General powers

- (a) The Board may, subject to this Constitution and the Act, exercise all such powers and functions as may be exercised by the ACGB other than those powers and functions that are required by this Constitution to be exercised by general meetings of the Members of the ACGB.
- (b) The Board, subject to this Constitution and the Act, has the power to perform all such acts and things as appear to the Board to be essential for the proper management and control of the business and affairs of the ACGB.

13.2 Delegation

- (a) The Board may delegate exclusively or non-exclusively any of its powers and/or functions (not being duties imposed on the Board as the Directors of the ACGB by the Act or the general law) as the Board thinks fit.
- (b) The Board may at any time withdraw or vary any of the powers delegated pursuant to clause 13.2(a).

13.3 Control and investment of ACGB's funds

- (a) The Board controls the ACGB's funds and manages its financial affairs.
- (b) All cheques and other negotiable instruments, and all receipts for money paid to the ACGB must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by 2 Members of the Board or in such other manner as the Board may determine from time to time.

13.4 Liability

Subject to the Corporations Act, Board Members are not liable by reason only of their Board membership to contribute towards the payment of the debts and liabilities of the ACGB or the costs, charges and expenses of the winding up of the ACGB.

14 Committees

The Board may establish one or more committees consisting of such Members of the ACGB and/or other persons as the Board thinks fit. Any committee so formed must conform to any By-Laws that may from time to time be made or given by the Board in relation to such committee, and subject thereto all Members of such committees will have one vote.

15 Secretary

- (a) The ACGB must have at least one secretary, who may also be a Director.
- (b) The secretary must be appointed by the Board, after giving the ACGB their signed consent to act as secretary of the ACGB, and may be removed by the Board.
- (c) The secretary holds office on such terms and conditions in relation to remuneration and otherwise as the Board determines.

The role of secretary includes maintain the register of ACGB's Members and maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

16 Proceedings of the Board

16.1 Meetings

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit provided that it meet at least 3 times each Financial Year.
- (b) The quorum necessary for the transaction of the business of the Board is 4 Directors. The quorum must be present at all times during the meeting.
- (c) Written notice of each Board meeting must be given to each Director by delivering it, or by sending it by post, facsimile or email addressed to his or her usual or last known postal address or facsimile or email contact at least 2 business days before the date of the meeting.
- (d) In cases of urgency, a meeting may be held without the notice provided that as much notice as practicable is given by whatever means will reach each Director as soon as possible;
- (e) The business transacted at the Board meeting will be only that listed on the notice, however the chairperson of the meeting may allow other business deemed urgent to be transacted or where there is no objection.

16.2 Meetings by telephone or other means of communication

The Board may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Members present at the meeting is at that place for the duration of the meeting.

16.3 Votes at meetings

Questions raised at any Board meeting are decided by a majority of votes each Director has one vote. The chairperson of the Board meeting may, in addition to a deliberative vote, have a second or casting vote in the event of an equality of votes.

16.4 Circular resolutions

- (a) The Directors may pass a circular resolution without a Directors meeting being held. The resolution is as valid and effectual as if it was passed at a Board meeting.
- (b) The Company may send a circular resolution either in writing, by email or facsimile transmission with at least two days notice, unless the resolution is urgent. If the resolution is urgent as much notice as is practicable must be given.
- (c) A circular resolution may be a single document setting out the resolution and circulated to all Directors in turn or separate copies of that document, as long as the wording of the resolution is the same, circulated to each director simultaneously.
- (d) A circular resolution is passed when it has been affirmed by a majority of Directors.

16.5 Validity of acts

All acts done at any Board meeting or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Members or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a Committee Member.

16.6 Conflicts

Any Board Member who is in any way, directly or indirectly, interested in any contract or arrangement or proposed contract or arrangement with the ACGB must declare the nature of such interest prior to the consideration of such matter and must not:

- (a) be present while the matter is being considered; or
- (b) vote on the matter.

17 Power to Make By-Laws

- (a) The Board has the power from time to time to make, amend and repeal all such By-Laws as it deems necessary or desirable for the proper conduct and management of the ACGB, the regulation of its affairs, and the furtherance of its objects and purposes.
- (b) No By-Law may be inconsistent with, nor will it affect a repeal or modification of anything contained in the Constitution and in the event of inconsistency the Constitution prevails.

18 Execution of Documents

18.1 Authorised signatories

The ACGB may execute a document, including a deed, by having the document signed by:

- (a) 2 Directors; or
- (b) a Director and the secretary.

18.2 Attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the ACGB for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.

19 Minutes of Proceedings

19.1 ACGB must maintain minute books

- (a) The Board must cause the ACGB to keep minute books in which it records:
 - 1. proceedings and resolutions of Members' meetings;
 - 2. proceedings and resolutions of Board and committee meetings (together with the names of the Directors present at each meeting of the ACGB, the Board and of any Committees);
 - 3. resolutions passed by Members without a meeting; and
 - 4. resolutions passed by Board without a meeting.
- (b) The ACGB must ensure that the minutes of a meeting are signed by the chairperson of the meeting or the chairperson of the next meeting within a reasonable time after the meeting. The minutes of any Board meeting or of any Committee or of the ACGB properly created and endorsed are evidence of the matters stated in the minutes.
- (c) The ACGB must ensure that any minutes which record the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

20 Notices

20.1 Service of notices

A notice may be given by the ACGB to a Member, or in the case of joint holders to the Member whose name stands first in the Register, in any of the formats described in clause 9.3(c) and the deemed date of service is as set out in clause 9.3.

20.2 Service on deceased Members

A notice delivered to the registered address of a Member pursuant to this Constitution is deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators (notwithstanding that the Member is then dead and whether or not the ACGB has notice of the Member's death).

21 Indemnity

21.1 Extent of indemnity

Subject to Part 2D.2 of the Act, a person who is or has been an Officer, Reviewer or auditor of the ACGB is indemnified by the ACGB against any liability to another person (other than the ACGB or a related body corporate of the ACGB as defined in the Act) incurred in that person's capacity as an Officer unless the liability:

1. arises out of conduct involving a lack of good faith; or
2. is for a pecuniary penalty order or composition order under Part 9.4B of the Act.

21.2 Insurance

Subject to law, the ACGB may purchase and maintain a contract of Insurance for any person who is or has been an Officer, Reviewer or auditor, against any liability incurred by the Officer which does not arise out of conduct involving a wilful breach of duty in relation to the ACGB or a contravention of Sections 182 or 183 of the Act; or

22 Access

- (a) Where the Directors consider it appropriate, the ACGB may give a Director or former Director access to various ACGB papers, including documents provided or available to the Directors and other papers referred to those documents.
- (b) A Director has a right to access the financial records of the ACGB at all reasonable times.

23 Gift Fund

- (a) The ACGB may establish a Gift Fund by maintaining a separate bank account for Deductible Contributions made to the ACGB.
- (b) Deductible Contributions will be deposited into the Gift Fund and will be kept separate from other funds of the ACGB and will only be used for the purposes of the ACGB.
- (c) Receipts for gifts to the ACGB's Gift Fund will state:
 1. the name of the ACGB and that the receipt is for a gift made to the ACGB;
 2. the ABN of the ACGB;
 3. the fact that the receipt is for a gift; and
 4. any other matter required to be included in the receipt pursuant to the requirements of the ITAA 97.
- (d) The Gift Fund is subject to clause 4.4 of this Constitution with respect to the winding up of the ACGB.
- (e) To avoid any doubt, the Gift Fund is a component of the ACGB's finances and is not a separate instrument, entity or structure to the ACGB.

24 Confidentiality

24.1 Maintain confidentiality

All Directors and Members must maintain the confidentiality of ACGB Information and must not disclose any ACGB Information to any person except:

- (a) with the prior written consent of the Board;
- (b) to the Board, the ACGB's employees and the professional advisors of the ACGB; and
- (c) if applicable, as required by law, after first consulting the Board about the form and content of the disclosure.

25 Media Authorisation and Conduct

- (a) No individual Director of the ACGB or any individual Member of the ACGB may make media comment, issue media releases, participate in media interviews, or correspond with the media on behalf of the ACGB without the authorisation of the Board.
- (b) The Board may issue directions, regulations, rules or codes in relation to media authorisation and conduct.

APPENDIX 1

[Pursuant to Clause 10.10]

APPOINTMENT OF PROXY

Newcastle

Level 7
Sparke Helmore Building
28 Honeysuckle Drive
Newcastle NSW 2300
PO Box 812
Newcastle NSW 2300
DX 7829 Newcastle
Ph: +61 2 4924 7200
Fax: +61 2 4924 7299

Our ref: KGM.AUS113/1