

Constitution

FOP Australia Ltd
ACN 603 200 871

A Public Company Limited by Guarantee

Corporations Act 2001

Table of Contents

1. Nature of Company	4
2. Objects	4
3. Not for profit	4
No profits for Members	4
Gift Fund.....	5
Change of Status.....	5
Winding up	5
4. Members	6
Membership.....	6
Application for membership	6
Members' obligations and rights	7
Membership fees	8
Register of Members	8
Resignation from membership.....	9
Removal from membership.....	9
Former Directors	9
Other cessation of membership	10
5. General meetings	10
Calling of general meetings	10
Notice of general meetings	10
Business at general meetings.....	11
Adjournment of general meetings.....	11
Cancellation of general meetings	11
Attendance at general meetings	11
Quorum at general meetings.....	11
Chairperson of general meetings	12
6. Voting at general meetings	13
Show of hands	13
Poll.....	13
Postal ballot.....	14
Proxies.....	15
7. Board of Directors	16
Duties owed by Directors.....	16
Number of Directors	16
Director Eligibility and Board Composition Policy.....	16
Election of Directors.....	17
Resignation from office	17
Removal from office.....	17
Vacation of office	18
Directors' expenses	18
8. Chair and Deputy Chair	18
9. Powers of the Board	19
10. Board meetings	19

Convening of Board meetings	19
Notice of Board meetings	20
Mode of Board meetings.....	20
Quorum at Board meetings.....	20
Voting at Board meetings	20
Resolution in writing	21
Validity of acts	21
Conflicts of Interest	21
11. Committees.....	22
12. Secretary	22
13. Chief Executive Officer	22
14. By-Laws	22
15. Indemnities and insurance.....	23
Officers' liabilities to third parties	23
Officers' costs and expenses	23
Insurance premiums.....	23
16. Seal and execution of documents.....	24
17. Accounts, audit and records.....	24
Financial year	24
Banking of monies.....	24
Accounts, records and reports.....	25
Audit	25
Rights of inspection	25
18. Notices.....	25
Persons authorised to give notices.....	25
Method of giving notices.....	25
Address for notices	26
Time notice is given.....	26
Proof of giving notices.....	26
19. Interpretation	26
Calculation of time.....	27
Replaceable rules	28
20. Definitions	28

1. Nature of Company

- 1.1 The Company is a public company limited by guarantee.
- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$10 to the assets of the Company if it is wound up while the person is a Member, or within 1 year after the person ceases to be a Member.

2. Objects

- 2.1 The primary object for which the Company is established is to:
 - (a) Promote and raise funds within the community for research into the cause(s), treatments and cure(s) for Fibrodysplasia Ossificans Progressiva (FOP);
 - (b) Conducting research that seeks to provide improved outcomes for people with FOP;
 - (c) Raising awareness within the medical community of the particular characteristics and symptoms of FOP to eliminate incorrect diagnoses that leads to incorrect treatment which can have severe outcomes for people with FOP;
 - (d) Assisting those with FOP and their families by providing support through networking with medical community, as well as information on the latest treatment guidelines and any advances in the search for treatments and a cure;
 - (e) Doing all such other things as are incidental or conducive to the operation of the Company and otherwise for the attainment of all or any of the above objects of the Company.

3. Not for profit

No profits for Members

- 3.1 Subject to clause 3.2, all of the assets and income of the Company must be applied solely in the furtherance of the objects of the Company and no portion may be distributed directly or indirectly to any Member.
- 3.2 Nothing in clause 3.1 prevents the payment, in good faith, of an amount, calculated on arm's length terms, in respect of:
 - (a) remuneration payable to an employee of the Company who is also a Member, for services actually rendered to the Company; or
 - (b) goods or services actually supplied by a Member to the Company in the ordinary and usual course of the Member's business;

- (c) interest (at a rate not exceeding interest at the rate for the time being charged by the Company's bankers for overdrawn accounts) on money borrowed from a Member;
- (d) rent for premises demised or let by a Member to the Company; or
- (e) payment to a Member in his or her capacity as a Director, under clause 7.15.

Gift fund

- 3.3 The Company, if endorsed as a deductible gift recipient in its own right, will ensure that it is carried on for the purposes in respect of which the Company is so endorsed or approved and must maintain for that purpose a fund (**Gift Fund**):
- (a) to which all gifts of money or property for those purposes are made;
 - (b) to which contributions are made in relation to an eligible fundraising event held for the principal purposes of the Company;
 - (c) to which all money received by the Company because of the gifts is credited; and
 - (d) which does not receive any other money or property.
- 3.4 The Company must use the Gift Fund only for its objects set out in rule 2.

Change of status

- 3.5 If, during its lifetime, the Company ceases to be endorsed as a deductible gift recipient under subdivision 30 - BA of the ITAA, any surplus assets of the Gift Fund must be transferred to a fund, authority or institution:
- (a) which is charitable at law;
 - (b) gifts to which can be deducted under Division 30 of the ITAA; and
 - (c) which has been approved in writing by the Company.

Winding up

- 3.6 If:
- (a) the Company ceases to be endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA;
 - (b) the Company is wound up and, at that time, the Company is endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA;
- 3.7 any surplus assets of the Gift Fund must be transferred to a fund, authority or institution:

- (a) which is charitable at law;
- (b) gifts to which can be deducted under Division 30 of the ITAA; and
- (c) which has been approved in writing by the Company.

3.8 Subject to rule 3.5, if at the time of winding up or dissolution of the Company, any property remains, other than in the Gift Fund, after satisfaction of all its debts and liabilities, that property must not be paid or distributed to any of the members of the Company but must be given or transferred to some other institution or institutions determined by the members of the Company at or before the time of the dissolution which:

- (a) has similar objects to the Company;
- (b) is endorsed by the Commissioner of Taxation as a public benevolent institution for the purposes of the ITAA; and
- (c) which has been approved in writing by the members of the Company.

4. Members

Membership

4.1 There is a single class of membership of the Company comprising the persons that agreed to be members on the application for registration of the Company and such other persons as the Board admits as Members in accordance with this Constitution.

Application for membership

4.2 Membership is open to any individual who:

- (a) demonstrates to the satisfaction of the Board that he or she is supportive of or has a bona fide interest in the achievement of the objects of the Company;
- (b) completes and lodges an application for membership:
 - (i) in the form and manner, and providing such supporting information, as may be from time to time prescribed by the Board; and
 - (ii) signed by the applicant or is identifiable as the applicants;
- (c) pays the entrance fee and annual membership fee, if any, from time to time prescribed by the Board when lodging the application for membership; and
- (d) is accepted to membership by the Board.

4.3 In respect of each application for membership duly made in accordance

with this Constitution:

- (a) the Secretary must provide the application to the Board or its duly authorised delegate promptly after receipt of the application;
- (b) the Board or its duly authorised delegate must consider the application promptly and, after considering it, determine in the Board's sole and absolute discretion whether to accept or reject the application;
- (c) if the application is accepted, the applicant must be admitted forthwith as a Member and the Secretary must:
 - (i) notify the applicant in writing of the admission to membership and the class and category, if any, of that membership; and
 - (ii) issue a receipt for the membership fee paid by the Member; and
 - (iii) cause the required details to be entered in the Register;
- (d) if the application is rejected:
 - (i) the Secretary must notify the applicant in writing of the rejection of the application;
 - (ii) the Secretary must refund in full the membership fee paid with the application; and
 - (iii) that person may not apply for membership again within 1 year of the rejection; and
- (e) the Board is not required to give reasons for accepting or rejecting any application.

Members' obligations and rights

- 4.4 The Members agree to be bound by the provisions of this Constitution.
- 4.5 For so long as a Member abides by the provisions of this Constitution, the Member will enjoy the rights and privileges of membership under the Act, this Constitution and the By-Laws.
- 4.6 Members have the rights to:
 - (a) receive notices of, attend and be heard at any general meeting;
 - (b) cast 1 vote in person or by proxy at any properly convened general meeting of Members; and
 - (c) cast 1 vote in any properly held postal ballot.

Membership fees

- 4.7 The entrance fees and annual membership fees for Members, if any, and the time and manner of payment of such fees are as determined by the Board from time to time.
- 4.8 If a Member's membership fee or any part of it remains unpaid for 2 months after it becomes payable, the Board may give the Member a notice of default:
- (a) requiring the Member to pay the unpaid membership fee within the time determined by the Board and specified in the notice; and
 - (b) informing the Member that his or her rights as a Member (under this Constitution or otherwise) may be suspended and he or she may be removed from membership if the membership fee remains unpaid within the time specified in the notice.
- 4.9 If a Member's membership fee or any part of it remains unpaid after the time specified in a notice given to the Member under clause 4.8, the Board may, in its absolute discretion and without any further recourse to the Member, suspend the Member's rights as a Member (under this Constitution or otherwise) until such time as the Member has paid all arrears of membership fees.
- 4.10 A Member who resigns or is removed from Membership or otherwise ceases to be a Member is not entitled to any refund of any entrance fee or annual membership fees.

Register of Members

- 4.11 A Register of Members must be kept in accordance with the Act.
- 4.12 The following details must be entered and kept current in the Register in respect of each Member:
- (a) the Member's full name, residential address, postal address, telephone number and e-mail address;
 - (b) the date of admission to and cessation of membership;
 - (c) the class of membership;
 - (d) the category, if any, of membership; and
 - (e) such other information as the Board requires.
- 4.13 The Register must be open for inspection by Members in accordance with the Act.
- 4.14 Each Member must notify the Secretary in writing of any change in that Member's name, residential address, postal address, telephone number or e-mail address within 1 month after the change.

Resignation from membership

- 4.15 A Member may resign from membership by giving written notice to the Secretary.
- 4.16 A Member's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.
- 4.17 A Member's liability for any fees, subscriptions or other moneys in arrears at the date of resignation continues until discharged by payment.

Removal from membership

- 4.18 Subject to clause 4.19, if a Member:
- (a) fails to comply with any of the provisions of this Constitution; or
 - (b) has membership fees in arrears for a period of 2 months or more following the giving of a notice to that Member under clause 4.8; or
 - (c) conducts him or herself in a manner considered to be injurious or prejudicial to the character or interests of the Company;
- the Member may be removed from membership by ordinary resolution of the Company.
- 4.19 A Member may only be removed under clause 4.18 if:
- (a) the Board has first given at least 2 months' written notice to the Member stating the intention to terminate the Member's membership, setting out the grounds of the intended termination, inviting the Member to provide to the Board any written representations which the Member wishes to be put to the meeting and specifying the time by which such representations must be received;
 - (b) the Board has included in the notice of the meeting a copy of the Member's written representations (unless the written representations were not provided by the Member in time to be included in the notice, in which case the written representations have, if required by the Member, been read out at the meeting); and
 - (c) whether or not the Member has provided written representations, the Member has been given a full and fair opportunity to address the meeting.

Former Directors

- 4.20 Where a person ceases to be a Director, the Board may remove the person from membership of the Company by ordinary resolution of the Board.

Other cessation of membership

4.21 A Member otherwise ceases to be a Member if the Member:

- (a) dies;
- (b) becomes bankrupt;
- (c) becomes of unsound mind or a person whose property is liable to be dealt with under a law regarding mental health; or
- (d) is convicted of an indictable offence.

5. General meetings

Calling of general meetings

- 5.1 General meetings of the Company may be called and held at the times and places and in the manner determined by the Board.
- 5.2 The Company must provide reasonable means by which members have an adequate opportunity to raise with the Board concerns about the governance of the Company.
- 5.3 Members may call or requisition a general meeting in accordance with the Act as if the Company were not an ACNC Registered Entity.

Notice of general meetings

- 5.4 Notice of every general meeting must be given to every Member, Director and the auditor, if any, for the time being of the Company. No other person is entitled to receive notices of general meetings.
- 5.5 Notice of a general meeting:
 - (a) must be given not less than 21 days prior to the meeting;
 - (b) may be given by any form of communication permitted by the Act; and
 - (c) must specify:
 - (i) the place, the date and the time of the meeting;
 - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the business to be transacted;
 - (iv) if it is proposed to move a special resolution at the meeting, the intention to propose the special resolution and the resolution; and
 - (v) any other matters required by the Act.

-
-
- 5.6 The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

Business at general meetings

- 5.7 Except as permitted by the Act or with the approval of the Board, no person may move at any general meeting any business of which notice has not been given under clause 5.5, other than the following at an annual general meeting:
- (a) the receipt and consideration of the accounts and reports of the Board and the auditors; or
 - (b) the appointment of an auditor.

Adjournment of general meetings

- 5.8 The chairperson of any general meeting at which a quorum is present may, with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- 5.9 The only business that may be transacted at any adjourned general meeting is the business left unfinished at the meeting from which the adjournment took place.
- 5.10 When a general meeting is adjourned under clause 5.8 for 30 days or more notice of the adjourned meeting must be given in the same manner as in the case of an original meeting.
- 5.11 When a general meeting is adjourned under clause 5.8 for less than 30 days, it is not necessary to give a further notice of the adjourned meeting.

Cancellation of general meetings

- 5.12 The Board may cancel or postpone any general meeting (other than a meeting which has been called or requisitioned by Members) at any time prior to the date on which it is to be held.
- 5.13 If a general meeting has been cancelled or postponed, notice of the cancellation or postponement must be given in the same manner as in the case of the original meeting.

Attendance at general meetings

- 5.14 A person, whether or not a Member, who is invited or requested by the Board to attend a general meeting is entitled to attend that general meeting.

Quorum at general meetings

- 5.15 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

- 5.16 A quorum for the purposes of a general meeting is the number of Directors then on the Board plus 2.
- 5.17 For the purpose of calculation of a quorum, Members must be regarded as present whether present personally, by their Representative or by proxy.
- 5.18 If a quorum is not present within 30 minutes from the time appointed for the meeting or a longer period allowed by the chairperson:
- (a) if the meeting was called or requisitioned by Members, it must be dissolved; or
 - (b) in any other case, it must be adjourned to the same day in the next week at the same time and place, or to another day, time and place determined by the Board.
- 5.19 Notwithstanding any other provision of this Constitution, if a general meeting is adjourned under sub-clause 5.18(b):
- (a) not less than 5 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting;
 - (b) a quorum for the purpose of the adjourned meeting is 3; and
 - (c) if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting must be dissolved.

Chairperson of general meetings

- 5.20 The Chair or, in his or her absence, the Deputy Chair, if any, is entitled to chair every general meeting.
- 5.21 The Directors present at a general meeting must elect 1 of the Directors present to chair the meeting if any of the following apply:
- (a) there is not then a Chair or Deputy Chair;
 - (b) neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting; or
 - (c) neither the Chair nor the Deputy Chair is willing to act.
- 5.22 The Members present at a general meeting must elect 1 of the Members present to chair the meeting if either of the following applies:
- (a) there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or
 - (b) all Directors present decline to chair the meeting.
- 5.23 Except as provided by the Act, the general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the chairperson.

-
-
- 5.24 The chairperson of a general meeting may, in his or her discretion, refuse admission to, or expel from, the meeting any person:
- (a) using a recording device;
 - (b) in possession of a placard or banner;
 - (c) in possession of an object considered by the chairperson to be dangerous, offensive or liable to cause disruption;
 - (d) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 - (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
 - (f) whose conduct, in the reasonable opinion of the chairperson, is inappropriate; or
 - (g) who is not a Member, Director or auditor of the Company.

6. Voting at general meetings

- 6.1 At a general meeting, a resolution put to the vote of the meeting must be decided by a majority vote of the Members present or represented and entitled to vote at the meeting. If the votes are equal, the question is decided in the negative.
- 6.2 The chairperson of a general meeting is not entitled to a second or casting vote on any resolution, whether by show of hands or on a poll.
- 6.3 A Member whose membership fees are more than 2 months in arrears at the date of a general meeting is not entitled to vote at that meeting.

Show of hands

- 6.4 At a general meeting, a resolution put to the vote of the meeting, must be decided on a show of hands unless a poll is demanded in accordance with clause 6.8.
- 6.5 On a show of hands, every Member present in person, by phone, or by video link; and entitled to vote on the resolution; has 1 vote.
- 6.6 For the avoidance of doubt, on a show of hands a Member may not vote by proxy.
- 6.7 If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

Poll

- 6.8 A poll may be demanded in respect of a resolution at a general meeting by:
- (a) at least 3 Members entitled to vote on the resolution;
 - (b) Members with at least 5% of the votes that may be cast on the resolution; or
 - (c) the chairperson.
- 6.9 A poll may be demanded in respect of a resolution at a general meeting:
- (a) before the vote on that resolution is taken;
 - (b) before the voting result on a show of hands is declared; or
 - (c) immediately after the voting result on a show of hands is declared.
- 6.10 A poll may not be demanded on the election of a chairperson.
- 6.11 Every Member present in person or by proxy has:
- (a) the right to join in the demand for a poll; and
 - (b) 1 vote in the poll.
- 6.12 The demand for a poll may be withdrawn.
- 6.13 If a poll is duly demanded, it must be:
- (a) secret;
 - (b) taken in the manner directed by the chairperson;
 - (c) on a question of adjournment, taken immediately;
 - (d) on any other question, taken either at once or after an interval or adjournment or otherwise as directed by the chairperson and does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll is demanded.
- 6.14 In the case of any dispute as to the admission or rejection of a vote, the chairperson's determination in respect of the dispute is final.
- 6.15 The result of the poll is the resolution of the meeting at which the poll is demanded.

Postal ballot

- 6.16 Notwithstanding any other provision of this Constitution, to the extent permitted by law, a resolution of the Members decided by postal ballot conducted in accordance with this Constitution is as valid and effective as if it had been passed at a general meeting duly called and constituted.

6.17 All postal ballots must be held in such a manner as to provide a reasonable opportunity for the Members to cast a vote and otherwise in the manner prescribed from time to time by the Board.

6.18 A postal ballot may be held by electronic means.

Proxies

6.19 A Member entitled to vote at a general meeting may appoint 1 Member as his or her proxy, to attend and vote in his or her place at a general meeting.

6.20 The proxy must be appointed in writing, in the form from time to time Required by the Board, and signed by the Member appointing the proxy.

6.21 A person attending a general meeting as proxy has all the rights and powers of the relevant Member, except where expressly stated to the contrary in:

- (a) the document appointing the proxy; or
- (b) this Constitution.

6.22 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

6.23 A document appointing a proxy is valid at any adjournment of a meeting to which the proxy relates, unless otherwise specified in the document.

6.24 A document appointing a proxy may appoint the proxy for a period of up to 1 year, for all or stipulated general meetings during that period.

6.25 A document appointing a proxy is invalid unless the document appointing the proxy is received by the Company:

- (a) at the Company's registered office (or other address, facsimile number or electronic address specified for that purpose in the notice convening the meeting); and
- (b) at least 24 hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote.

6.26 A vote made under a proxy is valid despite any of the following facts, unless the Company receives written notice of the fact before the commencement of the meeting at which the vote is cast:

- (a) the Member has died;
- (b) the Member has become legally incapable of voting;
- (c) the proxy or authority under which the proxy was signed has been revoked.

- 6.27 A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

7. Board of Directors

Duties owed by Directors

- 7.1 The Directors are subject to and must comply with duties owed at law, including but not limited to the duties prescribed by the ACNC Governance Standards.

Number of Directors

- 7.2 The number of Directors must be not less than 3 and not more than 10.
- 7.3 If the number of Directors is reduced below the minimum number prescribed by this Constitution, the continuing Director or Directors may act only to:
- (a) appoint additional Directors to the minimum number prescribed by this Constitution; or
 - (b) convene a general meeting.
- 7.4 The Company may, by ordinary resolution, increase the maximum number of Directors and may determine in what rotation the Directors appointed as the result of any such alteration are to go out of office.

Director Eligibility and Board Composition Policy

- 7.5 The Board may agree a policy in writing from time to time regarding director eligibility and board composition. As a minimum, for the appointment or election of directors:
- (a) the person must be a Member;
 - (b) the person must not be an employee of the Company or any related entity employing staff of the Company; and
 - (c) the person is not prohibited by law from being a director of company and for so long as the Company is an ACNC Registered Entity has not at any time in the preceding 12 months been disqualified by the Commissioner.
 - (d) The Board shall, if at all possible, comprise at least two persons with FOP
 - (e) There shall be no more than two members from any one family on the Board at any one time.

- 7.6 A Director must notify the Board if any circumstance arises which has the potential to impact upon their eligibility to continue to act as a director.

Election of directors

- 7.7 At each annual general meeting of the Company 1/3 of the directors for the time being or, if their number is not 3 or a multiple of 3, then the number nearest to but not exceeding 1/3, retire from office but no director may retain office for more than 3 years without submitting himself or herself for re-election even though the submission results in more than 1/3 of the directors retiring from office.
- 7.8 The director or directors to retire at an annual general meeting are those who have been longest in office since their election.
- 7.9 As between or among 2 or more directors who became directors on the same day, the director or directors to retire are determined by lot unless they otherwise agree between or among themselves.
- 7.10 A retiring director is eligible for re-election without the necessity of giving any previous notice of his or her intention to submit himself or herself for re-election.
- 7.11 Unless the directors decide to reduce the number of directors in office the Company at any annual general meeting at which any director retires may fill the vacated office by re-electing the retiring director or electing some other qualified person.
- 7.12 If at the annual general meeting the vacated office is not filled, the retiring director, if willing and not disqualified, must be treated as re-elected unless the directors decide to reduce the number of directors in office or a resolution for the re-election of that director is put and lost.

Resignation from office

- 7.13 A Director may resign from office by giving written notice to the Secretary.
- 7.14 A Director's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.

Removal from office

- 7.15 The Company may, by ordinary resolution, remove any Director from office.
- 7.16 At any general meeting at which it is proposed to remove a Director under clause 7.15, the Director must be given the opportunity to present his or her case, orally or in writing or by both of those means.
- 7.17 A Director who is removed under clause 7.15 retains office until the dissolution or adjournment of the general meeting at which the Director is removed.

Vacation of office

- 7.18 The office of a Director becomes vacant if the Director:
- (a) becomes prohibited from being a director of a company by reason of the Act or the ACNC Act, any order made under the Act or ACNC Act or otherwise at law;
 - (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) ceases to be a Member;
 - (e) becomes an employee of the Company or any related entity employing staff of the Company; or
 - (f) the Company resolves that the office of that Director be vacated.

Directors' expenses

- 7.19 Directors may be paid all reasonable travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board or any of its committee or general meetings or otherwise in the execution of their duties as Directors, provided that such expenses have first been approved by the Board in its discretion.

8. Chair and Deputy Chair

- 8.1 At the first Board meeting held after the vacation of office of the Chair under clause 8.4, the Board must elect a Director as Chair.
- 8.2 If there is no Deputy Chair, the Board may elect a Director as Deputy Chair at any time.
- 8.3 The election of the Chair and Deputy Chair (if any) may be held by any means determined by the Board, but in the event of an equality of votes, the matter must be determined by the drawing of lots.
- 8.4 A Director elected by the Board as Chair or Deputy Chair holds that office until:
- (a) the expiration of that Director's current term of office as Director;
 - (b) the Director ceases to be a Director in accordance with this Constitution;
 - (c) the Director resigns from the office of Chair or Deputy Chair (as the case may be) by written notice to the Secretary; or

-
-
- (d) the Board, by ordinary resolution excluding the relevant Director, removes the Director from the office of Chair or Deputy Chair (as the case may be).
- 8.5 A Director who is re-appointed as a Director following expiration of the term during which the Director was elected as Chair is eligible for re-election as Chair, provided that the Director has not then already served 2 consecutive full terms as Chair.
- 8.6 The Chair or, in his or her absence, the Deputy Chair (if any) is entitled to preside as chairperson at every Board meeting.
- 8.7 The Directors present at a Board meeting must elect 1 of the Directors present to chair the meeting if any of the following apply:
- (a) there is not then a Chair or Deputy Chair;
 - (b) neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting; or
 - (c) neither the Chair nor the Deputy Chair is willing to act.

9. Powers of the Board

- 9.1 The governance of the Company is the responsibility of the Board of Directors duly appointed under and in accordance with this Constitution.
- 9.2 The Board may exercise all the powers of the Company which are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting.
- 9.3 If the Company holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board may exercise any and all voting rights conferred by the membership, shares or interests in any manner it considers fit.

10. Board meetings

Convening of Board meetings

- 10.1 Subject to the provisions of the Act and this Constitution, the Board may meet for the dispatch of business and regulate its meetings as it thinks fit.
- 10.2 The Board must meet at least twice in each financial year.
- 10.3 Any Director may request the Secretary to convene a Board meeting at any time and the Secretary must comply with such request.

Notice of Board meetings

- 10.4 Notice of each Board meeting must be given to each Director at least 14 days before the meeting or otherwise as determined by the Board, except all Directors may waive in writing the required period of notice for a particular meeting.
- 10.5 Notice of Board meeting may be given to a Director by:
- (a) mail or delivery to the usual place of residence of the Director; or
 - (b) mail, delivery, facsimile transmission or e-mail to any other address, facsimile number or e-mail address given by the Director to the Secretary for that purpose (unless and until the Director informs the Secretary that he or she may not be contacted at that other address, facsimile number or e-mail address).

Mode of Board meetings

- 10.6 A Board meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable time before the meeting.

Quorum at Board meetings

- 10.7 A quorum for the purposes of a Board meeting is half the number of Directors then on the Board, rounded up to the nearest whole number.
- 10.8 If a quorum is not present within 30 minutes from the time appointed for a Board meeting or a longer period allowed by the chairperson:
- (a) the meeting must be adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the chairperson may determine; and
 - (b) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting lapses.

Voting at Board meetings

- 10.9 Questions arising at a Board meeting must be decided by a majority vote of Directors present and voting. If the votes are equal, the question is decided in the negative.
- 10.10 The chairperson does not have a second or casting vote at Board meetings.

Resolution in writing

- 10.11 A resolution in writing signed by all Directors is as valid and effectual as if it had been passed at a Board meeting duly convened and held.
- 10.12 A resolution in writing may consist of several documents in like form, each signed by 1 or more Directors and if so signed it takes effect on the latest date on which a Director signs 1 of the documents.
- 10.13 For the purpose of clause 10.12, a resolution bearing an electronic copy of a signature is deemed to be signed.

Validity of acts

- 10.14 All acts done by the Board or a Committee or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person as a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

Conflicts of Interest

- 10.15 The Board must agree from time to time in writing on its policy for the regulation of conflicts of interest.
- 10.16 If there are not enough Directors to form a quorum as a result of 1 or more Directors having an interest which disqualifies them from voting, then 1 or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting and the Company in general meeting may pass a resolution to deal with the matter.
- 10.17 A Director may only be engaged to provide goods or services to or on behalf of the Company if:
- (a) that Director is for bona fide reasons considered by Board, agreed to be a suitable person to provide, such goods or services;
 - (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
 - (c) the goods or services are provided on arms-length terms;
 - (d) the provision of the goods and services is disclosed clearly and expressly to the Members in the Company's annual report; and
 - (e) the Board agrees, by ordinary resolution excluding the interested Director, to the provision of the goods or services by the Director.

11. Committees

- 11.1 The Board may appoint one or more committees consisting of such Directors or other Members as the Board thinks fit.
- 11.2 The Board may appoint any member of a Committee as chairperson of that Committee.
- 11.3 In the exercise of any powers delegated to it, a Committee must:
 - (a) conform to the directions of the Board;
 - (b) report to the Board; and
 - (c) otherwise conduct its meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.
- 11.4 The Board may delegate any of its powers, except this power to delegate, to a Committee.

12. Secretary

- 12.1 The Board may appoint (on the terms and conditions it sees fit) and terminate the appointment of the secretary of the Company.
- 12.2 The Secretary is responsible for carrying out all acts and deeds required by this Constitution or the Act to be carried out by the secretary of the Company.

13. Chief Executive Officer

- 13.1 The Board may appoint any person to the position of chief executive officer for the period and on the terms and conditions (including as to remuneration) the Board sees fit.
- 13.2 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on the CEO any of the powers that the Board can exercise.
- 13.3 The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.
- 13.4 If the CEO becomes incapable of acting in that capacity, the Directors may appoint any other person other than a Director to act temporarily as CEO until such time as the position can be filled permanently.

14. By-Laws

- 14.1 The Board may make, adopt, amend and repeal By-Laws with respect to

any matter or thing for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Company, which By-Laws are binding on the Members.

- 14.2 To the extent of any inconsistency, this Constitution prevails over the By-Laws.

15. Indemnities and insurance

Officers' liabilities to third parties

- 15.1 Every officer and past officer of the Company is indemnified against a liability incurred by that person as an officer, other than a liability:
- (a) to the Company or a related body corporate;
 - (b) for a pecuniary penalty under section 1317G of the Act or for compensation under section 1317H of the Act; or
 - (c) which arises from conduct that involves a lack of good faith.

Officers' costs and expenses

- 15.2 Every officer and past officer of the Company is indemnified by the Company against a liability for costs and expenses incurred by that person as an officer, other than legal costs incurred:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under clause 15.1;
 - (b) in defending or resisting proceedings in which judgement is made against the person or the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this sub-clause does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order); or
 - (d) in connection with any application in relation to those proceedings in which the Court denies relief to the person.

Insurance premiums

- 15.3 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company against:

-
-
- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
 - (b) any other liability incurred by the person as an officer of the Company, except a liability which arises from conduct that involves a willful breach of duty owed by the officer to the Company or, to the extent that they are applicable, a contravention of sections 182, 183 or 184(2) or (3) of the Act.

16. Seal and execution of documents

16.1 The Company may have a Seal.

16.2 If the Company has a Seal:

- (a) the Board must provide for its safe custody; and
- (b) it may only be used by authority of the Board.

16.3 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) a Director and some other person appointed by the Board for the purpose.

16.4 The Company may execute a document, including a deed, without use of the Seal if the document is signed by:

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

16.5 Notwithstanding clauses 16.3 and 16.4, any document, including a deed, may be executed by the Company in any other manner permitted by law.

17. Accounts, audit and records

Financial year

17.1 The financial year of the Company commences on the 1st day of July and ends on the 30th day of June in the following calendar year.

Banking of monies

17.2 All monies of the Company must be banked in a bank account in the name of the Company at such bank as the Board may from time to time direct.

Accounts, records and reports

- 17.3 The Board must ensure that the Company complies with all record keeping and reporting requirements prescribed by law
- 17.4 The Board must provide for the safe custody of the books, records, documents, instruments of title and securities of the Company.

Audit

- 17.5 A registered company auditor, must be appointed to the Company if required by the Act or the ACNC Act.
- 17.6 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.
- 17.7 The auditor or his or her representative is entitled to attend any general meeting and be heard on any part of the business of the meeting which concerns the auditor. The auditor or his or her representative, if present at the meeting, may be questioned by the Members about the audit.

Rights of inspection

- 17.8 Subject to this Constitution and the law, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members. A Member does not have the right to inspect any document of the Company except as provided by the law or authorised by the Board.

18. Notices

Persons authorised to give notices

- 18.1 A notice given under this Constitution may be given:
- (a) on behalf of the Company by a solicitor for the Company, the Secretary or a Director; or
 - (b) on behalf of a Member by a solicitor, secretary or director of the Member.
- 18.2 The signature of a person on a notice given by the Company or a Member may be written, printed or stamped.

Method of giving notices

- 18.3 A notice by the Company or a Member may be given under this Constitution by any of the following means:
- (a) by delivering it to the street address of the addressee;
 - (b) by sending it by prepaid ordinary post (or by airmail if outside

-
-
- Australia) to the street or postal address of the addressee; or
- (c) by sending it by facsimile or e-mail to the facsimile number or email address of the addressee.

Address for notices

- 18.4 For the purposes of clause 18.3:
- (a) the street and postal address of the Company is the registered office of the Company, or such other address as was last formally notified by the Company to the Member;
- (b) the facsimile number and e-mail address of the Company are the details last formally notified by the Company to the Member;
- (c) the street and postal addresses, facsimile number and e-mail address of a Member are the details last formally notified by the Member to the Secretary.

Time notice is given

- 18.5 A notice given in accordance with this Constitution is deemed to be given, served and received at the following times:
- (a) if delivered to the street address of the addressee, at the time of delivery;
- (b) if sent by post to the street or postal address of the addressee, on the 3rd business day (or 5th business day if outside Australia) after posting; or
- (c) if sent by facsimile or e-mail, the next business day after it is sent.

Proof of giving notices

- 18.6 The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:
- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgement of receipt of the e-mail or equivalent proof that the email was successfully transmitted.

19. Interpretation

- 19.1 In this Constitution, unless the context requires otherwise:

-
-
- (a) a reference to any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation and a reference to a specific provision of such legislation is a reference to the equivalent provision in any later amended, re-enacted or replacement legislation;
 - (b) a reference to this Constitution, where amended, means this Constitution as so amended;
 - (c) a reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule of this Constitution;
 - (d) a word which denotes:
 - (i) the singular denotes the plural and vice versa;
 - (ii) any gender denotes the other genders; and
 - (iii) a person denotes an individual and a body corporate;
 - (e) where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (f) an expression used but not defined in this Constitution has the same meaning as given in the Act;
 - (g) writing includes any mode of representing or reproducing words in a visible form; and
 - (h) a reference to 'dollars' or '\$' means Australian dollars.

19.2 Headings and any table of contents must be ignored in the interpretation of this Constitution.

Calculation of time

19.3 In this Constitution, unless the context requires otherwise:

- (a) a reference to a time of day means that time of day in the state or territory in which the Company's registered office is located;
- (b) a reference to a business day means a day during which banks are open for general banking business in the state or territory in which the Company's registered office is located;
- (c) for the purposes of determining the length of a period (but not its commencement) a reference to:
 - (I) a day means a period of time commencing at midnight and ending 24 hours later; and
 - (ii) a month means a calendar month which is a period commencing at the beginning of a day of 1 of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if

there is no such corresponding day, ending at the expiration of that next month;

- (d) where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event; and
- (e) a provision of this Constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

Replaceable rules

- 19.4 Each of the provisions of the Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Act are displaced and do not apply to the Company.

20. Definitions

20.1 In this Constitution, unless the context requires otherwise:

- (a) **ACNC Act** means the *Australian Charities and Not-for-Profit Commission Act 2012*;
- (b) **ACNC Governance Standards** means the governance standards prescribed by Division 45 of the *Australian Charities and Not-for-profits Commission Regulation 2013*.
- (c) **ACNC Registered Entity** means an entity which is registered with the Australian Charities and Not-for-Profit Commission pursuant to the ACNC Act;
- (d) **Act** means **the** *Corporations Act 2001*;
- (e) **Board** means the Board of Directors of the Company;
- (f) **By-Laws** means by-laws made or adopted under clause 14;
- (g) **CEO** means the chief executive officer of the Company, appointed under clause 13.1;
- (h) **Chair** means the chair of the Board, elected from time to time under clause 8.1;
- (i) **Chairperson** means the person entitled to preside as chair at a particular:
 - (i) Board meeting, as determined under clauses 8.6 and 8.7; or
 - (ii) general meeting, as determined under clauses 5.20 to 5.22;

- (j) **Commissioner** means the Commissioner of the *Australian Charities and Not-for-profits Commission* as established by the ACNC Act.
- (k) **Committee** means a committee appointed by the Board under clause
- (l) **Company** means FOP Australia
- (m) **Director** means a person appointed in accordance with this Constitution to perform the duties of a director of the Company;
- (n) **Deputy Chair** means the deputy chair of the Board, if any, elected from time to time under clause 8.1;
- (o) **Member** means a person who, at the relevant time, is a member of the Company in accordance with this Constitution;
- (p) **Register** means the register of Members kept by the Company under clause 4.11-;
- (q) **Representative** means, in relation to a Member, the representative of the Member appointed under clause 7;
- (r) **Seal** means the common seal of the Company (if any); and
- (s) **Secretary** means the person appointed as secretary of the Company under clause 12.1.

