

Constitution

# Constitution – Sex Workers Outreach Project

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9 April 2014

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# Constitution

## **Sex Workers Outreach Project**

### **An incorporated association**

#### **1 Association's name**

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The name of the association is Sex Workers Outreach Project (**SWOP**).

#### **2 Association's purpose**

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- (a) The association is established for the public charitable purpose of promoting the prevention and control of:
  - (1) HIV;
  - (2) Sexually Transmissible Infections
  - (3) Hepatitis; and
  - (4) other Blood-Borne Viruses,within the NSW sex industry, and in doing so, promoting the general health and wellbeing of sex workers in NSW.
- (b) To achieve this purpose, the association may, without limitation:
  - (1) develop and distribute health promotion programs, information, resources, support and industrial health and safety programs for NSW sex industry workers;
  - (2) provide health information and education through peer-based outreach programs to sex industry workplaces;
  - (3) work to reduce barriers and discrimination impeding sex worker access to health, safety and wellbeing;
  - (4) collaborate with organisations, institutions or other bodies to promote community awareness of sex industry issues;
  - (5) advocate for the human, health and industrial rights of workers in the NSW sex industry; and
  - (6) do all other things that are incidental or conducive to carrying out the association's purpose.

#### **3 Association's powers**

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Solely for carrying out the association's purpose, the association may:

- (a) raise funds or encourage contributions by way of gifts (by will or otherwise), grants, sponsorships, personal or public appeals or in any other manner;
- (b) provide funds, facilities or other material benefits;
- (c) accept and hold funds or property of any kind on or for any charitable objects or purposes;
- (d) engage or dismiss any employee, agent, contractor or professional person;
- (e) accept and undertake trusteeships, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration for doing so;
- (f) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges;
- (g) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
- (h) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (i) construct, improve, maintain, develop, work, manage and control real or personal property;
- (j) enter into contracts and deeds;
- (k) appoint an attorney or agent with powers (including the power to sub-delegate) and on terms the association thinks fit, and procure registration or recognition of the association in any other country or place;
- (l) enter into arrangements with any government or authority;
- (m) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the association's property (both present and future) and purchase, redeem or pay off those securities;
- (n) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
- (o) print and publish information in hard copy or by electronic means;
- (p) accept any gift of real or personal property, whether subject to any special trust or not and decline to accept any gift;
- (q) appoint patrons of the association;
- (r) make donations for charitable purposes;
- (s) arrange conferences, meetings and other forums; and
- (t) do all other things that are incidental or conducive to carrying out the association's purpose as set out in clause 2.

## 4 Not for profit

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### 4.1 Application of the association's income and property

- (a) The association's income and property must be applied solely towards promoting the association's purpose.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any Member.
- (c) This clause 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any Member to the extent permitted by law and this constitution.

### 4.2 Other payments to Members

All other payments to Members must be approved by the Committee including, but not limited to:

- (a) out-of-pocket expenses incurred by a Member in performing a duty as a Member of the association; or
- (b) a service rendered to the association by a Member in a professional or technical capacity or as an employee, other than in the capacity as a Member of the association, where:
  - (1) the provision of the service has the prior approval of the Committee; and
  - (2) the amount payable is not more than an amount that commercially would be reasonable payment for the service.

## 5 Membership

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### 5.1 Membership generally

The association must, at all times, have at least 5 Members.

### 5.2 Membership eligibility

- (a) A person is eligible to be a Member of the association if:
  - (1) the person is a natural person;
  - (2) the person is, or was previously, a sex worker in New South Wales;
  - (3) the person is not currently the owner or operator of a Sex Industry Business employing, contracting or otherwise deriving benefit from the work of one or more sex workers additional to, if applicable, the owner or operator of the Sex Industry Business;
  - (4) the person has been nominated and approved for membership of the association in accordance with clause 5.3; and

- (5) the person fulfils any other eligibility requirements as determined by the Committee from time to time.
- (b) The Members are:
  - (1) the persons who consent to be the initial Members; and
  - (2) any other persons the Committee admit to membership in accordance with this constitution.

### 5.3 Application

- (a) Every applicant for membership of the association (except the initial Members) must:
  - (1) apply in the form and manner decided by the Committee; and
  - (2) lodge their application with the secretary of the association (or a delegate approved by the Committee).
- (b) As soon as practicable after receipt of an application for membership, the secretary (or a delegate approved by the Committee) must refer the nomination to the Committee.
- (c) The Committee must consider the application and decide whether to admit or reject the admission of the applicant. The Committee need not give any reason for rejecting an application.
- (d) As soon as practicable after the Committee has approved or rejected the nomination (as applicable), the secretary must:
  - (1) notify the nominee, in writing, that the Committee approved or rejected the nomination (as applicable); and
  - (2) if the Committee approved the nomination, request the nominee to pay, within 28 days after receipt by the nominee of the notification, the sum payable under this constitution by a Member as entrance fee and annual subscription.
- (e) The secretary must, on payment by the nominee of the amounts referred to in clause 5.3(d)(2) within the period referred to in that provision, enter or cause to be entered the nominee's name in the register of Members and, on the name being so entered, the nominee becomes a Member of the association.

### 5.4 Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a Member of the association:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's membership.

## 6 When membership ceases

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### 6.1 Death, resignation and other events

A person immediately ceases to be a Member if the person:

- (a) dies;
- (b) resigns as a Member by giving written notice to the association;
- (c) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) fails to pay the annual membership fee under clause 8 within 3 months after the fee falls due; or
- (f) is expelled under clause 6.2 or 11.

## 6.2 **Expulsion**

- (a) The Committee may, by resolution, expel a Member from membership of the association if, in their absolute discretion, they decide it is not in the interests of the association for the person to remain a Member.
- (b) If the Committee intends to consider a resolution under clause 6.2(a), at least one week before the meeting at which the resolution is to be considered, they must give the Member written notice:
  - (1) stating the date, place and time of the meeting;
  - (2) setting out the intended resolution and the grounds on which it is based; and
  - (3) informing the Member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to a vote.

## 6.3 **Resignation of membership**

- (a) A Member of the association may resign from membership of the association by first giving to the secretary written notice of at least one month (or such period as the Committee may determine) of the Member's intention to resign and, on the expiration of the period of notice, the Member ceases to be a Member.
- (b) If a Member of the association ceased to be a Member under clause 6.3(a), and in every other case where a Member ceases to hold membership, the secretary must make an appropriate entry in the register of Members recording the date on which the Member ceased to be a Member.

## 7 **Register of Members**

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- (a) The public officer of the association must establish and maintain a register of Members of the association specifying, in respect of each person who is a Member of the association:
  - (1) the person's name or industry name, or both;
  - (2) the person's postal, residential or email address;
  - (3) the date on which the person became a Member; and, if applicable
  - (4) the date on which the person ceased to be a Member.

- (b) The register of Members must be kept in New South Wales:
  - (1) at the main premises of the association; or
  - (2) if the association has no premises, at the association's official address.
- (c) Except in the circumstances referred to in clause 7(d), the register of Members must not be made available for inspection by any person.
- (d) A Committee Member may access information about a person contained on the register of Members only:
  - (1) for the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association;
  - (2) for any purpose necessary to comply with a requirement of the Act or the Regulation; or
  - (3) in order to comply with a legally binding requirement imposed by any other law applicable to the association, or a legally binding order of any court, government or semi-government authority, administrative or judicial body.

## 8 Fees and subscriptions

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- (a) A Member of the association, on admission to membership:
  - (1) must pay to the association a fee of \$20 or such other amount as determined by the Committee from time to time; or
  - (2) may elect to pay to the association a fee exceeding the amount referred to in clause 8(a)(1),

unless the requirement to pay such fee is waived by resolution of the Committee in relation to a particular Member.
- (b) In addition to any amount payable in accordance with clause 8(a), a Member of the association must pay to the association an annual membership fee of \$2 or, such other amount as determined by the Committee. This amount is to be paid by the Member:
  - (1) except as provided by clause 8(b)(2), before 1 July in each calendar year; or
  - (2) if the Member becomes a Member on or after 1 July in any calendar year, on becoming a Member and before 1 July in each succeeding calendar year.

## 9 Liability of Members

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The liability of a Member of the association towards the debts and liabilities of the association is limited to the amount, if any, unpaid by the Member in respect of membership of the association as required by clause 8.

## 10 Resolution of disputes

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- (a) A dispute between a Member and another Member (in their capacity as Members) of the association, or a dispute between a Member or Members and the association, are to be referred to a community justice centre for mediation under the *Community Justice Centres Act 1983*.
- (b) If a dispute is not resolved by mediation within 3 months of the referral to a community justice centre pursuant to clause 10(a), the dispute is to be referred to arbitration.
- (c) The *Commercial Arbitration Act 2010* applies to any such dispute referred to arbitration under clause 10(b).

## 11 Disciplining of Members

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### 11.1 Complaint about Member

- (a) A complaint may be made to the Committee by any person in respect of a Member of the association:
  - (1) refusing or neglecting to comply with a provision or provisions of this constitution; or
  - (2) having wilfully acted in a manner prejudicial to the interests of the association.
- (b) The Committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (c) If the Committee decides to deal with the complaint, the Committee:
  - (1) must cause notice of the complaint to be served on the Member concerned;
  - (2) must give the Member at least 14 days from the time the notice is served within which to make submission to the Committee in connection with the complaint; and
  - (3) must take into consideration any submissions made by the Member in connection with the complaint.
- (d) The Committee may, by resolution, expel the Member from the association or suspend the Member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (e) If the Committee expels or suspends a Member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the Member of:
  - (1) the action taken;
  - (2) the reasons given by the Committee for having taken that action; and
  - (3) the Member's right of appeal under clause 11.2.
- (f) The expulsion or suspension does not take effect until the later of:

- (1) until the expiration of the period within which the Member is entitled to appeal against the resolution concerned; or
- (2) if within that period, the Member exercises the right of appeal, unless and until the association confirms the resolution under clause 11.2.

## 11.2 Right of appeal of disciplined Member

- (a) A Member may appeal to the association in general meeting against a resolution of the Committee under clause 11.1, within 7 days after notice of the resolution is served on the Member, by lodging with the secretary a notice to that effect.
- (b) Such notice may, but need not, be accompanied by a statement of the grounds on which the Member intends to rely for the purposes of the appeal.
- (c) On receipt of such notice from a Member, the secretary must notify the Committee, which is to convene a general meeting of the association to be held within 28 days after the date on which the secretary received the notice.
- (d) At a general meeting of the association convened under this clause 11.2:
  - (1) no business other than the question of the appeal is to be transacted;
  - (2) the Committee and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and
  - (3) the Members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (e) The appeal is to be determined by a simple majority of votes cast by Members of the association.

# 12 Association's funds

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## 12.1 Sources of association's funds

- (a) Subject to this constitution, the funds of the association are to be derived from:
  - (1) any fees and annual subscriptions paid by Members pursuant to clause 8;
  - (2) Gifts, Deductible Contributions and other contributions received by the association; and
  - (3) such other sources as the Committee may resolve.
- (b) All Gifts and Deductible Contributions must be dealt with in accordance with clause 14.
- (c) All money received by the association that is not a Gift or Deductible Contribution must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account;
- (d) The association must, as soon as practicable after receiving such money, issue an appropriate receipt.

## 12.2 Management of association's funds

- (a) The funds of the association are to be used in accordance with clause 4.1.
- (b) The Committee must manage the funds of the association, including the drawing and signing of cheques on behalf of the association, in accordance with its powers and duties as set out in clause 17.6.

## 13 Winding up

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- (a) If, on the winding up or dissolution of the association, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution:
  - (1) that is charitable at law;
  - (2) whose constitution prohibits distributions or payments to its Members and directors (if any) to an extent at least as great as is outlined in clause 4; and
  - (3) Gifts and Deductible Contributions to which can be deducted under Division 30 of the ITAA 97 due to it being characterised as a health promotion charity under item 1.1.6 of the table in section 30-20.
- (b) The identity of the institution referred to in clause 1 must be decided by the Committee, or if the Committee does not wish to decide or does not decide, it must be decided by the Members by ordinary resolution at or before the time of winding up of the association and, if the Members do not decide, by the Supreme Court of the state or territory in which the association is incorporated.

## 14 Establishment and operation of Gift Account

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### 14.1 Maintaining a Gift Account

- (a) The association must maintain a management account (**Gift Account**):
  - (1) to identify and record Gifts and Deductible Contributions;
  - (2) to identify and record any money received by the association because of those Gifts and Deductible Contributions; and
  - (3) that does not record any other money or property of the association.

### 14.2 Taxation Administration Act requirements

In accordance with section 382-15 of Schedule 1 of the *Taxation Administration Act 1953* (Cth), the Gift Account must record and explain all other acts the association engages in that are relevant to the association's status as a deductible gift recipient and show the use of the Gift Account in accordance with clause 14.3.

### 14.3 Limits on use of Gift Account

The association must use the Gift Account only for the association's purpose as described in clause 2.

### 14.4 Winding up or revocation of deductible gift recipient endorsement

- (a) Upon the earlier to occur of:
  - (1) the winding up of the association; or
  - (2) the association ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97,
 any surplus Gifts and Deductible Contributions and money received by the association because of those Gifts and Deductible Contributions must be transferred to an institution:
  - (3) which is charitable at law;
  - (4) whose constitution prohibits distributions or payments to its Members and directors (if any) to an extent at least as great as is outlined in clause 4.1; and
  - (5) gifts to which are deductible under Division 30 of ITAA 97 on the basis that it is characterised as a health promotion charity as described in item 1.1.6 of the table in section 30-20.
- (b) The identity of the institution referred to in clause 14.4(a) must be decided by the Committee, or if the Committee does not wish to decide or does not decide, it must be decided by the Members by ordinary resolution at or before the time of winding up of the association and, if the Members do not decide, by the Supreme Court of the New South Wales.

### 14.5 Receipts

Receipts for Gifts or Deductible Contributions must state the information required in the applicable provisions of section 30-228 of the ITAA 97.

## 15 Altering this constitution

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### 15.1 Charitable

The association must not pass a special resolution altering the constitution, if, as a result, the association will cease to be a charity.

### 15.2 Notice to Commissioner

- (a) The association must give written notice to the Commissioner if:
  - (1) a special resolution is passed materially altering clause 2; or
  - (2) the association ceases to be entitled to be endorsed as a tax concession charity or as a deductible gift recipient as a result of a change in its constitution or activities or otherwise.

- (b) The notice must be given as soon as possible after the passing of the special resolution or the cessation.

## 16 General meetings

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### 16.1 Calling general meetings

- (a) The association must hold its annual general meeting within 18 months of registration under the Act.
- (b) The association must hold its general meetings:
  - (1) within 6 months after the close of the Association's Financial Year; or
  - (2) within such later time as may be allowed by the Director-General or prescribed by the Regulation.
- (c) A general meeting may only be called:
  - (1) by a resolution of the Committee; or
  - (2) on the requisition in writing of a Member or Members representing at least 5 per cent of the total voting rights of all Members entitled to vote on the resolution.
- (d) The Committee may change the venue for, postpone or cancel a general meeting if:
  - (1) it considers that the meeting has become unnecessary;
  - (2) the venue would be unreasonable or impractical; or
  - (3) a change is necessary in the interests of conducting the meeting efficiently.
- (e) If the general meeting was not called by a resolution of the Committee or was called in accordance with a Members' requisition under clause 16.1(c)(2), then it may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

### 16.2 Notice of general meetings

- (a) Notice of every general meeting must be given in any manner authorised by clause 21 to each person who is at the date of the notice:
  - (1) a Member;
  - (2) a Committee Member; or
  - (3) the auditor of the association, if applicable.
- (b) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting;
  - (2) state the general nature of the business to be transacted at the meeting; and
  - (3) specify a place, fax number or electronic address for the receipt of proxies.

- (c) A person may waive notice of a general meeting by written notice to the association.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting does not invalidate any thing done or resolution passed at the general meeting if:
  - (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person has notified or notifies the association of that person's agreement to that thing or resolution.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
  - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

### 16.3 Quorum at general meetings

- (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 of Members is present when the meeting proceeds to business.
- (b) A quorum consists of a Member or Members making up not less than 10 per cent of the current membership of the association as at the date of the general meeting, whether attending in person or by proxy, or such other number as resolved by the Committee.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (1) where the meeting was convened on the requisition of Members, the meeting must be dissolved; or
  - (2) in any other case the meeting stands adjourned to the day, and at the time and place, that the Committee decides or, if the Committee does not make a decision, to the same day in the next week at the same time and place.
- (d) If at the adjourned meeting under clause 16.3(c)(2), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### 16.4 General meetings by technology

- (a) The simultaneous linking together by telephone or other electronic means of a sufficient number of the Members in person, to constitute a quorum constitutes a meeting of the Members, provided each Member has a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this constitution relating to meetings of the Members apply, as far as they can, with any necessary changes, to meetings of the Members by telephone or other electronic means.

- (c) A Member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the Members involved was at that place for the duration of the meeting.

## 16.5 Chairperson of general meetings

- (a) The chairperson of the Committee must preside as chairperson at a general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If there is no chairperson of the Committee or both the conditions in clause 16.5(a) have not been met, the Members present must elect another chairperson of the meeting.
- (c) A chairperson elected under clause 16.5(b) must be:
  - (1) another Committee Member who is present and willing to act; or
  - (2) if no other Committee Member present at the meeting is willing to act, a Member who is present and willing to act.

## 16.6 Conducting and adjourning general meetings

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision on the matter will be final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by clause 16.6(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (e) Where a meeting is adjourned, the Committee may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by requisition of Members. If a meeting is called and arranged to be held by a requisition of Members, the Committee may not postpone it beyond the date that is 1 month after notice of the requisition of Members was received and may not cancel it without the consent of the requisitioning Members.

## 16.7 Decisions at general meetings

- (a) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the Members present at the meeting. Such a decision is for all purposes a decision of the Members.
- (b) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and

- (2) the proposed resolution is taken as lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (1) the chairperson of the meeting;
  - (2) at least 2 Members present and with the right to vote on the resolution; or
  - (3) a Member or Members present at the meeting and representing at least 5 per cent of the total voting rights of all Members entitled to vote on the resolution or a poll.
- (d) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been:
  - (1) carried;
  - (2) carried unanimously;
  - (3) carried by a particular majority; or
  - (4) lost,
 and an entry to that effect in the book containing the minutes of the association's proceedings, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.
- (i) Special resolutions may only be passed by the association in accordance with section 39 of the Act.

## 16.8 Voting rights

- (a) Subject to this constitution, at a general meeting every Member present has one vote.
- (b) Subject to clause 16.8(c), a proxy or attorney is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member in his or her own right.
- (c) A proxy or attorney may only represent a maximum of 10 Members in addition to any vote the person may have as a Member in his or her own right.
- (d) An objection to the qualification of a person to vote at a general meeting must be:
  - (1) raised before or at the meeting at which the vote objected to is given or tendered; and

- (2) referred to the chairperson of the meeting, whose decision is final.
- (e) A vote not disallowed by the chairperson of a meeting under clause 16.8(d) is valid for all purposes.

### 16.9 Representation at general meetings

- (a) Subject to this constitution, each Member entitled to vote at a meeting of Members may vote:
  - (1) in person; or
  - (2) by one proxy; or
  - (3) by one attorney.
- (b) A proxy or attorney must be a Member of the association.
- (c) A proxy or attorney may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

### 16.10 Authority of a proxy or attorney

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney is to be taken to confer authority:
  - (1) to agree to a meeting being convened by shorter notice than is required by this constitution; and
  - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given.
- (b) Even though the instrument (appointing a proxy or attorney) may refer to specific resolutions and may direct the proxy or attorney on how to vote on those resolutions, unless otherwise provided, it is taken to confer authority:
  - (1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (2) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
  - (3) to act generally at the meeting.
- (c) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (d) Subject to clause 16.10(e), an instrument appointing a proxy or attorney need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed, or a certified copy of the authority, are:
  - (1) received at the registered office of the association, a fax number at the association's registered office or at another place, fax number or

- electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
- (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (3) in the case of a poll, produced when the poll is taken.

(f) The Committee may waive all or any of the requirements of clauses 16.10(d) and 16.10(e) and in particular, may, on production of other evidence to prove the valid appointment or a proxy or attorney required by the Committee, accept:

- (1) an oral appointment of a proxy or attorney;
- (2) an appointment of a proxy or attorney which is not signed in the manner required by clause 16.10(d); and
- (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or a power of attorney or other authority under which the instrument is signed.

(g) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the revocation of the instrument or the authority under which the instrument was executed, if no written notice of the revocation has been received by the association by the time and at one of the places at which the instrument appointing the proxy or attorney must be deposited, tabled or produced under clause 16.10(e).

(h) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

### 16.11 Postal ballots

- (a) The association may hold a postal ballot to determine any issue or proposal (other than an appeal under clause 11.2).
- (b) A postal ballot is to be conducted in accordance with Schedule 3 to the Regulation.

### 16.12 Special General Meetings

- (a) The Committee may, whenever it thinks fit, convene a special general meeting of the association.
- (b) The Committee must, on the requisition in writing of a Member or Members present at the meeting and representing at least 5 per cent of the total voting rights of all Members entitled to vote on the resolution, convene a special general meeting of the association.
- (c) A requisition of Members for a special general meeting:
  - (1) must state the purpose or purposes of the meeting;
  - (2) must be signed by the Members making the requisition;
  - (3) must be lodged with the secretary; and

- (4) may consist of several documents in a similar form, each signed by one or more of the Member making the requisition.
- (d) If the Committee fails to convene a special general meeting to be held within 1 month after that date on which a requisition of Members for the meeting is lodged with the secretary, any one or more of the Members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (e) A special general meeting convened by a Member or Members as referred to in clause 16.12(d) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Committee.

## 17 The Committee

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### 17.1 Composition and membership of Committee

- (a) The Committee is to be composed of:
  - (1) the office-bearers of the association;
  - (2) at least 3 Members (or such other number as is required by the Act), each of whom is aged 18 years or more and at least 3 of whom are normally resident in Australia;
  - (3) such number of other Committee Members as are admitted, not in excess of the maximum number fixed by the Committee or by resolution of the association in accordance with clause 17.2(b),
- (b) The minimum number of Committee Members is 3. The maximum number of Committee Members is 7, unless the association in general meeting resolves otherwise. The Committee must not fix a maximum which is less than the number of Committee Members in office at the time.
- (c) If there are insufficient Committee Members to fill any vacancies on the Committee, any vacant positions remaining on the Committee are taken to be casual vacancies.

### 17.2 Appointing and removing Committee Members

- (a) The first Committee Members are those named in the attachment to this constitution.
- (b) The Committee may appoint any individual as a Committee Member, either to fill a casual vacancy or as an addition to the existing Committee Members, provided:
  - (1) the number of Committee Members does not exceed the maximum number fixed under clause 17.1(b); and
  - (2) before appointing the Committee Member, that individual signs a consent to act as a Committee Member.
- (c) The Members may by resolution appoint a Committee Member, provided:
  - (1) the number of Committee Members does not exceed the maximum number fixed under clause 17.1(b); and

- (2) before appointing the Committee Member, that individual signs a consent to act as a Committee Member.
- (d) The secretary must, as soon as practicable following the appointment and within 1 month of the appointment, enter or cause to be entered the appointee's name in the register of Committee Members.
- (e) In the event of a casual vacancy occurring in the membership of the Committee, the Committee may appoint a Member of the association to fill the vacancy and the Member so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next following the date of the appointment.

### 17.3 Register of Committee Members

- (a) The public officer of the association must establish and maintain a register of Committee Members of the association as required by the Act and the Regulation.
- (b) The register of Committee Members must be updated within 1 month of any change in the Committee's membership occurring.
- (c) The register of Committee Members must be kept in New South Wales:
  - (1) at the main premises of the association; or
  - (2) if the association has no premises, at the association's official address.

### 17.4 Vacation of office

The office of a Committee Member becomes vacant:

- (a) if the Committee Member dies;
- (b) if the Committee Member becomes of unsound mind or a Committee Member is, or their estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) if the Committee Member ceases to be a Member of the association;
- (d) if the Committee Member is removed from office in accordance with clause 6.2 or clause 11;
- (e) if the Committee Member becomes insolvent within the meaning of the *Corporations Act 2001* (Cth);
- (f) if the Committee Member is prohibited from holding an equivalent role, for example disqualification as director of a company under Part 2D.6 of the *Corporations Act 2001* (Cth).
- (g) if the Committee Member is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months; or
- (h) except to the extent of a leave of absence granted by the Committee, if the Committee Member fails to attend at least 3 consecutive meetings of the Committee or at least 4 meetings over a period of 365 days; or
- (i) if the Committee Member resigns by written notice to the secretary of the association.

## 17.5 Committee Members may contract with the association and hold other offices

- (a) A Committee Member who has a direct or indirect interest in a matter that is being considered or that is about to be considered at a meeting of the Committee, where such interest appears to raise a conflict with the proper performance of the Committee Member's duties in relation to the consideration of the matter, must:
  - (1) as soon as possible after the relevant facts have come to the Committee Member's knowledge, disclose the nature of the interest at a Committee meeting in accordance with section 31(2) of the Act;
  - (2) not, unless the Committee otherwise determines, be present while the matter is being considered at the meeting; or
  - (3) not, unless the Committee otherwise determines, vote on the matter.
- (b) For the purposes of the making of a determination by the Committee under clauses 17.5(a)(2) or 17.5(a)(3), a Committee Member who has a direct or indirect interest in a matter to which the disclosure relates must not:
  - (1) be present while the determination is being considered by the Committee; or
  - (2) take part in the making by the Committee of the determination.
- (c) The secretary of the association must record the particulars of any disclosure made by a Committee Member under clause 17.5(a)(1) in a book kept for that purpose and that book must be open for inspection, for a fee of \$5.00, by any Member of the association at any reasonable hour.
- (d) No act, transaction, agreement, instrument, resolution or other thing with a third party is invalid or voidable only because a Committee Member fails to comply with this clause 17.5
- (e) A Committee Member is not disqualified from contracting or entering into an arrangement with the association as vendor, purchaser or in another capacity, merely because the Committee Member holds office as a Committee Member or because of the fiduciary obligations arising from that office.
- (f) A contract or arrangement entered into by or on behalf of the association in which a Committee Member is in any way interested is not invalid or voidable merely because the Committee Member holds office as a Committee Member or because of the fiduciary obligations arising from that office.
- (g) A Committee Member who is interested in an arrangement involving the association is not liable to account to the association for any profit realised under the arrangement merely because the Committee Member holds office as a Committee Member or because of the fiduciary obligations arising from that office, provided that the Committee Member complies with applicable disclosure requirements under this clause 17.5 and the Act.
- (h) A Committee Member may hold any other office or position (except auditor) in the association or related body corporate in conjunction with his or her position as Committee Member and may be appointed to that office or position on terms (including remuneration and tenure) that the Committee decides.
- (i) A Committee Member may be or become:
  - (1) a director of;

- (2) another officer of; or
- (3) interested in,

a related body corporate or other body corporate associated with the association, and, with the consent of the Committee, need not account to the association for remuneration or other benefits the Committee Member receives as a director or officer of, or from having an interest in, that body corporate.

- (j) The Committee Members may exercise the voting rights conferred by shares in a body corporate held or owned by the association in the manner that they think fit.

## 17.6 Powers and duties of the Committee

Subject to the Act, the Regulation and this constitution, and to any resolution passed by the association in a general meeting:

- (a) the Committee is responsible for managing the association's affairs and carrying out the association's objects. The Committee may exercise to the exclusion of the association in general meeting all the association's powers which are not required, by the Act or by this constitution, to be exercised by the association in general meeting;
- (b) the Committee may decide how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the association;
- (c) the Committee may pay out of the association's funds all expenses of the promotion, formation and registration of the association;
- (d) the Committee may:
  - (1) appoint or employ an officer, agent or attorney of the association with the powers, discretions and duties vested in or exercisable by the Committee, on the terms the Committee decides;
  - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the association and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause; and
- (e) a power of attorney may contain provisions for the protection and convenience of the attorney or persons dealing with the attorney that the Committee thinks fit.

## 17.7 Proceedings of the Committee

- (a) The Committee may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The simultaneous linking together by telephone or other electronic means of a sufficient number of the Committee Members to constitute a quorum constitutes a meeting of the Committee. All the provisions in this constitution relating to meetings of the Committee apply, as far as they can and with any necessary changes, to meetings of the Committee by telephone or other electronic means.

- (c) A Committee Member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the Committee Members involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, a technical difficulty occurs which means that one or more Committee Members cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, if a quorum of Committee Members remains present, continue with the meeting.

### **17.8 Convening meetings of the Committee**

- (a) A Committee Member may convene a meeting of the Committee whenever he or she thinks fit.
- (b) A secretary must, on the requisition of a Committee Member, convene a meeting of the Committee.

### **17.9 Notice of meetings of the Committee**

- (a) Subject to this constitution, notice of a meeting of the Committee must be given to each person who is at the time of giving the notice a Committee Member, except a Committee Member on leave of absence approved by the Committee.
- (b) A notice of a meeting of the Committee:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting; and
  - (4) may be given in person or by post, telephone, fax or other electronic means.
- (c) A Committee Member may waive notice of a meeting of the Committee by notifying the association to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of the Committee by, or a failure to give notice of a meeting of the Committee to, a Committee Member does not invalidate any thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) the Committee Member has waived or waives notice of that meeting under clause 17.9(c) before or after the meeting;
  - (3) the Committee Member has notified or notifies the association of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means before or after the meeting; or
  - (4) the Committee Member attended the meeting.
- (e) Attendance by a person at a meeting of the Committee waives any objection which that person may have to a failure to give notice of the meeting.

## 17.10 Quorum at meetings of the Committee

- (a) No business may be transacted at a meeting of the Committee unless a quorum of Committee Members is present at the time the business is dealt with.
- (b) A quorum consists of four Committee Members present at the meeting.
- (c) If there is a vacancy in the office of a Committee Member then, subject to clause 17.10(d), the remaining Committee Members may act.
- (d) If the number of Committee Members in office at any time is not sufficient to constitute a quorum, or is less than the minimum number of Committee Members fixed under this constitution, the remaining Committee Members must act as soon as possible to appoint additional Committee Members, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

## 17.11 Chairperson of the Committee

- (a) The Committee may elect one of the Committee Members as chairperson of the Committee and may decide the period for which that Committee Member is to be the chairperson.
- (b) The chairperson of the Committee must preside as chairperson at each meeting of the Committee if present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If there is no chairperson of the Committee or the conditions in clause 17.11(b) have not been met, the Committee Members present must elect one of the Committee Members as chairperson of the meeting.

## 17.12 Decisions of the Committee

- (a) A meeting of the Committee at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Committee under this constitution.
- (b) Questions arising at a meeting of the Committee must be decided:
  - (1) where 5 or more Committee Members are present, by a majority of votes cast by the Committee Members present; or
  - (2) where a bare quorum of 4 Committee Members is present, by a unanimous vote cast by the Committee Members present.
- (c) A decision taken in accordance with clause 17.12(b) is for all purposes a decision of the Committee.
- (d) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.

## 17.13 Written resolutions of the Committee

- (a) A resolution is taken to have been passed by a meeting of the Committee if:
  - (1) all the Committee Members (except any Committee Member on leave of absence approved by the Committee, any Committee Member who

disqualifies himself or herself from considering the resolution in question and any Committee Member who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and

(2) the Committee Members who sign or consent to the resolution would have constituted a quorum at a meeting of the Committee held to consider that resolution.

(b) A Committee Member may consent to a resolution by:

(1) signing the document containing the resolution (or a copy of that document);

(2) giving to the association at its registered office a written notice (including by fax or other electronic means) addressed to the secretary or to the chairperson of the Committee signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or

(3) telephoning the secretary or the chairperson of Committee and signifying assent to the resolution and clearly identifying its terms.

#### **17.14 Minutes of meetings and minutes of resolutions**

(a) The Committee must ensure:

(1) minutes of proceedings; and

(2) resolutions of general meetings and of meetings of the Committee (and of any sub-Committees),

are recorded in books kept for the purpose, within one month after the relevant meeting is held.

(b) The Committee must ensure that minutes of resolutions passed by the Committee (or any sub-Committee) without a meeting are recorded in books kept for that purpose within one month after the resolution is passed.

(c) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

#### **17.15 Sub- committees**

(a) The Committee may delegate any of their powers to one or more sub- Committees consisting of at least one Committee Member and such number of Members as they think fit.

(b) A sub-Committee to which powers have been delegated must exercise those powers delegated in accordance with directions given by the Committee.

(c) Provisions of this constitution that apply to meetings and resolutions of the Committee apply, as far as they can, with any necessary changes, to meetings and resolutions of a sub-Committee.

#### **17.16 Delegation to individual Committee Members**

(a) The Committee may delegate any of their powers to one Committee Member.

(b) A Committee Member to whom powers have been delegated must exercise those powers delegated in accordance with directions given by the Committee.

### 17.17 Validity of acts

An act done by a person acting as a Committee Member, a meeting of the Committee, or a sub-Committee attended by a person acting as a Committee Member, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the Committee or the sub-Committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a Committee Member;
- (b) the person being disqualified as a Committee Member or having vacated office; or
- (c) the person not being entitled to vote.

## 18 Office-bearers

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### 18.1 Public officer

- (a) The first public officer is the person who has consented to act as the public officer of the association and who is named the public officer of the association in the application for incorporation of the association.
- (b) When the first public officer ceases to be the public officer of the association, the Committee must appoint a public officer.
- (c) Within 28 days after taking office as an association's public officer (other than its first public officer), a person must notify the Director-General, in the approved form, of:
  - (1) the person's full name and date of birth;
  - (2) the person's address for service of notices, being either the person's residential address or some other address at which the person can generally be found; and
  - (3) the fact that the person has taken office as public officer.
- (d) If there is any change in the address of the public officer of an association, the public officer must notify the Director-General, in the approved form, of the new address within 28 days after the change occurs.
- (e) An act done by a person acting as the public officer, a meeting of the Committee, or a sub-Committee attended by a person acting as the public officer, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the Committee or the sub-Committee (as applicable) when the act was done:
  - (1) a defect in the appointment of the person as the public officer;
  - (2) the person being disqualified as a public officer or having vacated office; or
  - (3) the person not being entitled to vote.

### 18.2 President

- (a) The association in general meeting may appoint the president of the association by resolution.

- (b) The president must, as soon as practicable after being appointed president, lodge notice with the association of his or her address.
- (c) It is the duty of the president to:
  - (1) represent the Committee and the organisation at public events as required;
  - (2) be the public face of the Committee;
  - (3) chair Committee meetings unless the Committee decides otherwise;
  - (4) be the primary point of contact between the CEO and the Committee;
  - (5) provide leadership to encourage the effective operation of the Committee;
  - (6) ensure proper supervision of the CEO;
  - (7) carry out such other duties and perform such other functions as the Committee may resolve.

### **18.3 Vice-president**

- (a) The association in general meeting may appoint the vice-president of the association by resolution.
- (b) The vice-president must, as soon as practicable after being appointed vice-president, lodge notice with the association of his or her address.
- (c) It is the duty of the vice-president to:
  - (1) undertake the responsibilities of the President in the absence of the President;
  - (2) support the President in the fulfilment of the President's responsibilities; and
  - (3) carry out such other duties and perform such other functions as the Committee may resolve.

### **18.4 Secretary**

- (a) The association in general meeting may appoint the secretary of the association by resolution.
- (b) The secretary must, as soon as practicable after being appointed secretary, lodge notice with the association of his or her address.
- (c) It is the duty of the secretary:
  - (1) to ensure proper records are kept of Committee meetings and general meetings, including keeping minutes of:
    - (A) all appointments of office-bearers and Committee Members;
    - (B) the names of Committee Members present at a Committee meeting or a general meeting; and
    - (C) all proceedings at Committee meetings and general meetings;
  - (2) to ensure provision to NSW Fair Trading of SWOP's Annual Returns and other information required by law; and

- (3) to carry out such other duties and perform such other functions as the Committee may resolve.
- (d) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next meeting.

### 18.5 Treasurer

- (a) The association in general meeting may appoint the treasurer of the Committee by resolution.
- (b) The treasurer must, as soon as practicable after being appointed treasurer, lodge notice with the association of his or her address.
- (c) It is the duty of the treasurer of the association
  - (1) to ensure:
    - (A) that all money due to the association is collected and received and that all payments authorised by the association are made; and
    - (B) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association;
  - (2) together with the President, to act as a key point of contact between the CEO and the Committee;
  - (3) to work with the CEO to ensure the Committee receives all the financial information it requires to exercise its governance responsibilities; and
  - (4) to carry out such other duties and perform such other functions as the Committee may resolve.

### 18.6 Provisions that apply to all office-bearers

- (a) A reference in this clause 18.6 to an office-bearer is a reference to a public officer, the president of the association, the vice-president of the association, the secretary of the association and the treasurer of the association.
- (b) Only current Committee Members are eligible to be appointed as office-bearers.
- (c) The appointment of an office-bearer may be for the period, at the remuneration and on the conditions that the Committee thinks fit.
- (d) In the event that an office-bearer resigns, is removed from, or otherwise vacates their role as an office-bearer before the expiry of the period referred to in 18.6(a), the Committee may, by resolution, appoint another Committee Member to that position until the earlier of:
  - (1) the expiration of the aforementioned period; and
  - (2) the appointment of another Committee Member to the office-bearer role by the association in general meeting.
- (e) Subject to any contract between the association and the relevant office-bearer, an office-bearer may be removed or dismissed by the Committee at any time, with or without cause.
- (f) The Committee may:

- (1) confer on an office-bearer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the Committee) it thinks fit;
- (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an office-bearer; and
- (3) authorise the office-bearer to delegate all or any of the powers, discretions and duties conferred on him or her.

(g) An act done by a person acting as an office-bearer is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person when the act was done:

- (1) a defect in the person's appointment as an office-bearer; or
- (2) the person being disqualified to be an office-bearer.

## 19 Indemnity and insurance

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### 19.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this clause 19 apply to Indemnified Officers.

### 19.2 Indemnity

- (a) The association must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer-bearer, Ordinary Committee Member, or Member of the association as the case may be.
- (b) This indemnity:
  - (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an office-bearer or Committee Member of the association; and
  - (2) operates only to the extent that the loss or liability in question is not covered by insurance.

### 19.3 Insurance

The association may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an office-bearer, Ordinary Committee Member or Member of the association where the Committee considers it appropriate to do so.

### 19.4 Savings

Nothing in this clause 19:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this indemnity or insurance; or
- (b) limits the capacity of the association to indemnify or provide or pay for insurance for any person to whom this clause 19 does not apply.

## 20 Books of the association

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### 20.1 Custody of books

Except as otherwise provided by this constitution, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the association.

### 20.2 Inspection of books

- (a) Subject to the exceptions in clauses 20.2(b), 20.2(c), 20.2(d), and 20.2(e), the records, books and other financial documents of the association are only available for inspection by current Committee Members and are not available for inspection by any other person.
- (b) The record of disclosure of interests must be kept with the register of Committee Members, and must be made available for inspection in accordance with clause 17.5(c).
- (c) The Committee may resolve to make available such records, books and other financial documents of the association to Members and third parties as it considers reasonably necessary to carry out the affairs of the association.
- (d) A Committee Member must make any such books, records and other financial documents of the association available for any purpose necessary to comply with a requirement of the Act or the Regulation.
- (e) A Committee Member must make any such books, records and other financial documents of the association available as is necessary to comply with a legally binding requirement imposed by any other law applicable to the association, or a legally binding order of any court, government or semi-government authority, administrative or judicial body.

## 21 Notices

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### 21.1 Notices by the association to Members

- (a) The association may give notices, including a notice of general meeting to a Member:
  - (1) personally;
  - (2) by sending it by post to the address for the Member in the register of Members or the alternative address (if any) nominated by the Member; or
  - (3) by sending it to the fax number or electronic address (if any) nominated by the Member.

- (b) If a Member has specified both their name and industry name to be entered on the register of Members, the Member may request which of their name or industry name, or both, the association may address the person by for the purposes of clauses 7(d)(1) and 21.1(a).

## 21.2 Notices by the association to Committee Members

Subject to this constitution, a notice may be given by the association to any Committee Member by:

- (a) serving it personally at the Committee Member's usual residential or business address;
- (b) sending it by post in a prepaid envelope to the Committee Member's usual residential or business address; or
- (c) sending it to the fax number or electronic address supplied by the Committee Member to the association for giving notices.

## 21.3 Notices by Member, Committee Member or Committee to the association

Subject to this constitution, a notice may be given by a Member, Committee Member or the Committee to the association by:

- (a) serving it on the association at the registered office of the association;
- (b) sending it by post in a prepaid envelope to the registered office of the association; or
- (c) sending it to the principal fax number or the principal electronic address of the association at its registered office.

## 21.4 Time of service

- (a) A notice properly addressed and posted is taken to be served:
  - (1) in the case of a notice of a general meeting, at 10.00am on the day after the date it was posted; or
  - (2) in any other case, at the time the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the fax report produced by the sender's fax machine.
- (c) Where a notice is sent by an electronic messaging system with a delivery verification function, the notice is taken as served on generation of a delivery verification notice, log entry, or other confirmation by the electronic messaging system.
- (d) Where a notice is sent by email or other electronic messaging system (not covered by clause 21.4(c)), the notice is served on delivery to:
  - (1) the addressee's email or electronic messaging system account if the addressee is a natural person; or
  - (2) the corporation's computer systems if the addressee is a corporation.

- (e) If service under clauses 21.4(b), 21.4(c) and 21.4(d) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following Business Day.

## 21.5 Other communications and documents

Clauses 21.1 to 21.4 (inclusive) apply, as far as they can, with any necessary changes, to the service of any communication or document.

## 21.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by fax or electronic transmission or any other form of written communication.

# 22 Association's financial year

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The association's financial year is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 July and ending on the following 30 June  
**(Association's Financial Year).**

# 23 Definitions and interpretation

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## 23.1 Definitions

The meanings of the terms used in this constitution are set out below.

Term	Meaning
<b>Act</b>	means the <i>Associations Incorporation Act 2009 (NSW)</i>
<b>Association's Financial Year</b>	has the meaning given to that term in clause 22.
<b>Business Day</b>	means a day on which banks are open for business in Sydney, New South Wales excluding a Saturday, Sunday or a public holiday in that city.
<b>CEO</b>	means the Chief Executive Officer of the association.

Term	Meaning
<b>Commissioner</b>	means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.
<b>Committee</b>	means the committee of the association.
<b>Committee Member</b>	means a current Member of the Committee.
<b>Deductible Contribution</b>	means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the principal purpose of the association.
<b>Director-General</b>	means the Commissioner for Fair Trading, Department of Finance and Services.
<b>Gift</b>	means a gift to the association as described in item 1 of the table in section 30-15 of the ITAA 97.
<b>Indemnified Officer</b>	means:
	<ol style="list-style-type: none"> <li data-bbox="489 1197 1279 1260">1 each person who is or has been a Committee Member or office-bearer (within the meaning of clause 18.6(a)) of the association; and</li> <li data-bbox="489 1266 1208 1320">2 any other Members or former Members of the association as the Committee in each case decides.</li> </ol>
<b>ITAA 97</b>	means the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Member</b>	means a Member of the association.
<b>Ordinary Committee Member</b>	means a Committee Member who is not an office-bearer of the association.
<b>Registered Address</b>	means a Member's address as notified to the association by the Member and recorded in the association's records.
<b>Regulation</b>	means the <i>Associations Incorporation Regulation 2010</i> (NSW).
<b>Secretary</b>	means:

Term	Meaning
	<ul style="list-style-type: none"> <li data-bbox="605 428 636 458">(a) the person holding office under this constitution as secretary of the association; or</li> <li data-bbox="605 496 636 525">(b) if no such person holds that office, the public officer of the association.</li> </ul>
<b>Sex Industry Business</b>	<p data-bbox="489 624 568 653">means:</p> <ul style="list-style-type: none"> <li data-bbox="536 676 1311 754">(a) a brothel within the meaning of the <i>Restricted Premises Act 1943</i> (NSW), other than premises used or likely to be used for the purposes of sex work by no more than one sex worker; or</li> <li data-bbox="536 770 1311 871">(b) an operation of premises for related sex uses within the meaning of the <i>Restricted Premises Act 1943</i> (NSW), other than premises used or likely to be used for the purposes of related sex uses by no more than one worker.</li> </ul>
<b>Special General Meeting</b>	<p data-bbox="489 950 1271 1001">means a general meeting of the association other than an annual general meeting</p>

## 23.2 Interpretation

In this constitution:

- (a) references to notices include formal notices of meeting, all documents and other communications from the association to its Members;
- (b) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (c) a reference to a Member present at a general meeting is a reference to a Member present in person or by proxy or attorney;
- (d) a reference to writing and written includes printing, lithography, electronic means of writing (e.g. fax, email) and other ways of representing or reproducing words in a visible form;
- (e) the singular includes the plural and the plural includes the singular; and
- (f) headings and bold type are used for convenience only and do not affect the interpretation of this constitution.

## 24 Application of the Act

### 24.1 What parts of the Act apply

Unless the contrary intention appears:

- (a) an expression used in a clause that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to clause 24.1(a), an expression in a clause that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

## Initial Members

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The initial Members of the association (whose consents are set out below) adopt, on registration of the association, the attached constitution as the association's constitution.

**Full name of initial Member**

**Signatures consenting to be a Member**

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**Date:**