

K&L GATES

**Constitution of Western Australia AIDS
Council (Inc.)**

An Incorporated Association

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Western Australian AIDS Council (Inc.)

An incorporated association

1. Name of Association

The name of the Association is Western Australian AIDS Council (Inc.).

2. Definitions and interpretation

2.1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

Act means the *Associations Incorporation Act 2015 (WA)* and any regulations made under that statute;

Annual General Meeting means the annual general meeting of the Association convened under clause 8.1;

Association means Western Australian AIDS Council (Inc.) ;

Board means the board of management referred to in clause 11.1;

Board Member means a person elected or appointed to the Board from time to time;

Board Register means the register maintained in accordance with section 58 of the Act and referred to in clause 13.7;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia;

Chairperson means the person elected or appointed to the office of chairperson of the Association from time to time, subject to clause 12.2(d);

Chairperson of the Finance, Audit Sub-Committee means the person elected or appointed to the office of chairperson of the Finance, Audit and Risk Committee;

Commissioner means the person designated as the Commissioner from time to time under section 153 of the Act;

Constitution means this constitution as amended, supplemented or replaced from time to time;

convene means to call together for a formal meeting;

Co-opted Board Member means a Board Member referred to in clause 11.1(b);

Financial Records includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents of prime entry; and

- (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements;

Financial Report means a financial report of a tier 2 association or tier 3 association prepared in accordance with Part 5 of the Act and which consists of:

- (d) the Financial Statements for the relevant Financial Year;
- (e) the notes to the Financial Statements; and
- (f) the Committee's declaration about the Financial Statements and notes;

Financial Statements means financial statements prepared in accordance with Division 3 of the Act;

Financial Year has the meaning given in clause 18.5;

General Meeting means a meeting of the Members that all Members are entitled to receive notice of and attend;

Life Member means a Member described in clause 5.3(c);

Member means a member of the Association entered in the Register and includes ordinary Members, Organisational Members and Life Members;

Membership Fee has the meaning given in clause 5.6(a);

Objects means the objects of the Association as set out in clause 3.1;

Office Holder means a Board Member referred to in clause 11.1(a);

Officer has the meaning given in section 3 of the Act;

Ordinary Resolution means a resolution of the Association other than a Special Resolution;

Organisational Member means a Member described in clause 5.3(b);

Poll means voting conducted in written form (as opposed to a show of hands);

Present means, in connection with a meeting, a Member being present in person or by proxy, attorney or Representative, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, providing the pre-requisites for a valid meeting at different venues are observed;

Register means the register of Members of the Association maintained in accordance with section 53 of the Act and referred to in clause 7.1;

Representative means a natural person representing an Organisation Member in accordance with clause 5.7;

Secretary means the person elected or appointed to the office of secretary of the Association from time to time;

Special Resolution has the meaning given in clause 9.2(b);

Tax Act means the *Income Tax Assessment Act 1997* (Cth);

Term has the meaning given in clause 13.2;

Tier 1 association means an incorporated association to which section 64(1) of the Act applies;

Tier 2 association means an incorporated association to which section 64(2) of the Act applies; and

Tier 3 association means an incorporated association to which section 64(3) of the Act applies.

2.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) the headings are used for convenience only and do not affect the interpretation of this Constitution;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a document includes the document as modified from time to time and any document replacing it;
- (e) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (f) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (g) the word "month" means calendar month and the word "year" means 12 months;
- (h) the words "written" or "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (i) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (j) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body; and
- (k) any expression in a provision of this Constitution that relates to a particular provision of the Act has the same meaning as in that provision of the Act.

2.3 Compliance with the Act

This Constitution is subject to the Act, which overrides any clause in this Constitution that is inconsistent or not permitted by the Act.

2.4 Transitional

Everything done under this Constitution continues to have the same operation and effect after the adoption of any successor Constitution as if properly done under that Constitution.

3. Objects and powers of the Association

3.1 Objects

The objects of the Association are:

- (a) Recognising the unique nature of the HIV epidemic, and in partnership with our community, to continue to:
 - (i) Lead the Western Australian community response to eliminate new HIV transmissions, HIV-related stigma and the adverse social and health impacts of HIV, BBV and other STIs.
 - (ii) Honour and build upon the rich history of the Council's commitment to be bold, innovative and responsive in serving and partnering with our community.
 - (iii) Improve health and wellbeing outcomes for people living with or affected by HIV.
 - (iv) Provide support through benevolent assistance programs, to people living with HIV, including direct financial assistance where appropriate.
- (b) To achieve the most effective public health outcomes generally by:
 - (i) Promoting and delivering inherently empathetic and compassionate human services that are evidence-based, holistic and person-centred.
 - (ii) Influencing public and social policy, practice and research.
 - (iii) Representing the interests of a diverse and inclusive community.
- (c) To educate communities and develop partnerships by:
 - (i) Providing accurate and relevant public health information and research via multiple platforms.
 - (ii) Effectively engaging within communities to empower and enable individuals to make informed decisions for themselves.
 - (iii) Positioning the Council to adapt and expand its role locally, nationally and regionally.
- (d) To reduce and prevent harm by:

- (i) Utilising expertise and adaptive models of care to respond to emerging issues, employing a harm-reduction framework.
- (ii) Innovating, leading and excelling in the creation and delivery of services that embody best practice principles.

3.2 Powers

The Association has all the powers of an incorporated association under the Act. The Association may only use its powers to do:

- (a) anything which it considers will advance or achieve the Objects; and
- (b) all other things that are incidental to carrying out the Objects.

4. Not for profit

- (a) All property and income of the Association must be applied solely towards promoting the Objects, and no part of the Association's property or income may be paid or otherwise distributed, directly or indirectly to any Member, except in good faith in promoting the Objects.
- (b) A payment may be made (directly or indirectly) to a Member out of the funds of the Association only if it is authorised under clause 4(c).
- (c) A payment to a Member out of the funds of the Association is authorised if it is:
 - (i) a payment in good faith to that Member of reasonable remuneration for services provided to the Association; or reasonable compensation for goods supplied to the Association in the ordinary course of business;
 - (ii) payment on an indemnity or insurance policy in favour of any Member against any losses, liabilities, damages, costs, charges or expenses incurred by the Member in providing paid or unpaid services to the Association;
 - (iii) the payment of interest on money borrowed from a Member by the Association, at a rate not exceeding the cash rate published from time to time by the Reserve Bank of Australia;
 - (iv) the payment of reasonable rent to the Member for any premises leased by the Member to the Association; or
 - (v) the reimbursement of reasonable expenses properly incurred by a Member on behalf of the Association.

5. Membership of the Association

5.1 Number of Members

- (a) The minimum number of Members of the Association is 6.
- (b) The maximum number of Members of the Association is at the discretion of the Board.

5.2 Membership classes

- (a) The membership of the Association will consist of:
 - (i) ordinary Members, who are natural persons;
 - (ii) Organisational Members, who are organisations or bodies corporate;
 - (iii) Life Members, who are natural persons; and
 - (iv) any other classes of Members as may be established by the Board from time to time in accordance with clause 5.2(b).
- (b) Subject to the Act, the Board may at any time create additional classes of membership of the Association and determine the eligibility criteria, rights, obligations, restrictions and any nomination procedure attaching to those other classes of membership.

5.3 Membership rights

(a) Ordinary Members

An ordinary Member has all the rights provided to Members under this Constitution, including (but not limited to) the right to:

- (i) receive notices from the Association;
- (ii) attend, request the convening of and vote at all General Meetings of the Association; and
- (iii) be elected to the Board and any sub-committees of the Association.

(b) Organisational Members

(i) Subject to clause 5.3(b)(ii), an Organisational Member has all the rights provided to Members under this Constitution, including (but not limited to) the right to:

- (A) receive notices from the Association; and
- (B) attend, request the convening of and vote at all General Meetings of the Association.

(ii) The Representative of an Organisational Member is not eligible for election or appointment to the Board.

(c) Life Members

A Life Member:

- (i) has all the rights provided to Members under this Constitution as set out in clause 5.3(a), and
- (ii) does not pay membership fees. A Life Member's membership is automatically renewed each year, subject to cessation of membership in accordance with clause 6.1.

5.4 Eligibility for membership

- (a) Any natural person who:
 - (i) supports the Objects;
 - (ii) complies with any additional eligibility criteria set by the Board from time to time; and
 - (iii) who is nominated in writing by one Member and seconded by another Member

is eligible to apply for membership as an ordinary Member.

- (b) An organisation or body corporate who, in the opinion of the Board, will contribute to the Objects is eligible to apply for membership as an Organisational Member.
- (c) A Member who, in the opinion of the Board, has made an outstanding contribution to the Association over a long period of time, is eligible to become a Life Member, by resolution of the Board.

5.5 Applying for membership

- (a) Every application for membership of the Association must be:
 - (i) in a written form approved by the Board for that purpose and signed by the applicant, and:
 - (A) signed by a nominating Member and a seconding Member or
 - (B) accompanied by a statement by the applicant supporting their application.
 - (ii) submitted to the Secretary or in any other way approved by the Board and
 - (iii) accompanied by payment of the Membership Fee.
- (b) The Board will consider membership applications and in its absolute discretion may approve or reject an application, without giving reasons. The Board may require the applicant to supply evidence of eligibility for membership.
- (c) The Secretary must inform applicants of the outcome of their application within a reasonable period.
- (d) If the Board approves the membership application, the Secretary must notify the applicant and within 28 days after the person becomes a Member, enter the Member's name in the Register.
- (e) An applicant whose membership application has been approved will not become a Member until the Association has:
 - (i) received payment of any required Membership Fee; and
 - (ii) the applicant's details are entered in the Register in accordance with clause 7.1.

5.6 Membership Fees

- (a) Membership Fees may consist of any fees determined by the Board from time to time for each class of membership, including (but not limited to) annual membership fees.
- (b) The Board may:
 - (i) set different Membership Fees for different Members, including (without limitation) reduced fees for Members who supply evidence that they are students, pensioners, or otherwise financially disadvantaged, with such reduced fees payable for such period as the Board determines; and
 - (ii) in its absolute discretion may waive all or part of a Membership Fee payable by any Member.
- (c) Membership Fees must be paid annually by 31 July or by such other date directed by the Board from time to time.
- (d) If a Member fails to pay their Membership Fee in accordance with clause 5.6(c) then the Member automatically and without further notice cease to be a Member, unless the Board resolves otherwise.
- (e) The Board may, in its absolute discretion, reinstate the Member on payment of all arrears of amounts owing.

5.7 Representatives of Organisational Members

- (a) An Organisational Member may by duly executed instrument appoint a natural person (who need not be a Member) to act as its Representative at General Meetings in all matters, subject to the Act and subject to any restrictions on the Representative's powers imposed by the Member. The instrument or a certified copy of it must be lodged with the Board.
- (b) The Board may in its discretion reject the appointment of a Representative at any time, if it believes on reasonable grounds that it is in the interests of the Association to do so.
- (c) Subject to this Constitution, a Representative is entitled to:
 - (i) exercise at a General Meeting all the powers which its appointing Member could exercise if it were a natural person; and
 - (ii) be counted towards a quorum at any General Meeting on the basis that the Member will be deemed Present at a General Meeting by its Representative.
- (d) Where:
 - (i) a Representative's appointment has been revoked; and
 - (ii) the Secretary has not received written notice of the revocation prior to a General Meeting,

any vote given at the relevant meeting in accordance with the terms of instrument appointing the Representative is valid.

- (e) If written notice of the appointment of a Representative has not been received in accordance with clause 5.7(a), the Chairperson of a General Meeting may allow a Representative to attend the meeting and vote on condition that they establish their status as a Representative to the satisfaction of the Chairperson of the General Meeting.

5.8 Liability of Members

- (a) The liability of Members is limited to payment of their applicable Membership Fees in accordance with clause 5.6.
- (b) A Member is not liable, by reason of their membership, for the liabilities of the Association or the cost of winding up the Association.

5.9 No transfer of membership

A right, privilege or obligation of a person by reason of their membership:

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

6. Ceasing to be a Member

6.1 When a Member ceases to be a Member

A Member will cease to be a Member:

- (a) if the Member resigns by notice in writing to the Secretary, on the date that the notice is received by the Secretary, or any later date specified in the notice;
- (b) if their membership is revoked in accordance with clauses 5.6(d) or 6.2;
- (c) where the Member is an individual, if the Member dies; or
- (d) where the Member is an organisation, if it is wound up, dissolved, deregistered or otherwise ceases to be an organisation.

6.2 Revocation of membership

- (a) Subject to this clause 6.2, the Board may at a Board meeting resolve to revoke a Member's membership if in its opinion:
 - (i) the Member's status or conduct is detrimental to the interests of the Association, including (without limitation) if the Member has brought the Association into disrepute or breached a confidentiality agreement referred to in clause 20;
 - (ii) the Member has failed to comply with this Constitution or any by-laws of the Association; or
 - (iii) the Member no longer meets the applicable criteria for membership in clause 5.4.

- (b) At least 30 days before the Board meeting referred to in clause 6.2(a) (**Revocation Meeting**), the Secretary must give written notice to the Member:
 - (i) of the proposed revocation of membership and the reasons for that proposed revocation;
 - (ii) of the date, time and place of the Revocation Meeting;
 - (iii) informing the Member that the Member or the Member's Representative (if applicable) may attend the Revocation Meeting and will be given a full and fair opportunity to make oral and written submissions to the Board.
- (c) At the Revocation Meeting, the Board must:
 - (i) give the Member or its Representative a full and fair opportunity to make oral submissions and must give reasonable consideration to any written submissions; and
 - (ii) determine whether the Member's membership should be revoked.

6.3 Consequences of ceasing to be a Member

- (a) Any person ceasing to be a Member:
 - (i) will have its name removed from the Register;
 - (ii) is not entitled to any refund (or part refund) of any Membership Fee paid, unless the Board resolves otherwise; and
 - (iii) will remain liable for and must pay to the Association all fees and any other amounts which were due to the Association at the date they cease to be a Member.
- (b) The Secretary must keep a record, for at least 1 year after a person ceases to be a Member, of:
 - (i) the date on which the person ceased to be a Member; and
 - (ii) the reason why the person ceased to be a Member.

7. Register of Members

7.1 Maintaining the Register of Members

- (a) The Secretary (or any other person authorised by the Board) must keep and maintain a Register at the Association's premises in accordance with section 53 of the Act, containing:
 - (i) the name and residential, postal or email address of each Member;
 - (ii) the class of membership of each Member (if applicable);
 - (iii) the date on which each Member's name was entered into the Register; and
 - (iv) the name and date of appointment of each Representative.

- (b) Any change in the membership of the Association must be recorded in the Register within 28 days.

7.2 Inspecting and copying the Register

- (a) The Register is available for inspection free of charge by any current Member upon written request to the Secretary.
- (b) A Member may make a copy of entries in the Register.
- (c) A Member may apply in writing to the Board for a copy of the Register. The Board may in its discretion require the Member to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Association.
- (d) The Board in its discretion may charge a reasonable fee for providing a copy of the Register.
- (e) A Member must not use or disclose any information in the Register for any purpose other than a purpose that:
 - (i) is directly connected with the affairs of the Association; or
 - (ii) relates to the administration of the Act.

8. General meetings

8.1 Annual General Meetings

- (a) The Association must hold an Annual General Meeting once in each calendar year and no later than 6 months after the end of each Financial Year, except where the Commissioner has allowed for a longer period under the Act.
- (b) The Board must determine the place, date and time of the Annual General Meeting.

8.2 Business at Annual General Meeting

Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:

- (a) reviewing the Association's activities and finances since the last preceding Annual General Meeting;
- (b) confirming the minutes of the last preceding Annual General Meeting and of any other General Meeting held since the last preceding Annual General Meeting;
- (c) receiving and considering:
 - (i) the Board's annual report on the Association's activities during the preceding Financial Year;
 - (ii) if the Association is a tier 1 association, the Financial Statements of the Association for the preceding Financial Year presented under Part 5 of the Act;

- (iii) if the Association is a tier 2 association or a tier 3 association, the Financial Report of the Association for the preceding Financial Year presented under Part 5 of the Act; and
- (iv) if required to be presented for consideration under Part 5 of the Act, a copy of the review report or the auditor's report on the Financial Statements or Financial Report (as applicable);
- (d) electing Board Members;
- (e) (where relevant) appointing an auditor or reviewer and fixing their remuneration; and
- (f) transacting any other business which under this Constitution or the Act may properly be brought before the meeting.

8.3 Special General Meetings

- (a) The Board may at any time convene a General Meeting of the Members, or of any class of Members.
- (b) The Board must convene a General Meeting of Members if it receives a request to do so and the following requirements are met:
 - (i) the request is made by Members with at least 20% of the votes that may be cast at a General Meeting;
 - (ii) the request is in writing, signed by all the Members making the request, and states the business to be conducted at the General Meeting; and
 - (iii) the request is lodged with the Secretary, or the Chairperson in the absence of the Secretary.
- (c) On receipt of a request from Members under clause 8.3(b), the Board must:
 - (i) give all Members 21 days' notice of the General Meeting;
 - (ii) hold the General Meeting within 2 months of the date of the request.
- (d) Subject to the Act, the Board may cancel or postpone any General Meeting or change its venue by giving notice to all persons to whom the notice of the original meeting was given, but may not cancel a General Meeting which was called or requested by Members, without the prior written consent of those Members.

8.4 Failure of Board to hold a General Meeting requested by Members

- (a) If the Board fails to convene a General Meeting within the time period specified in clause 8.3(c), the Members who made the request may call and arrange to hold a General Meeting within 3 months of the date of the request made under clause 8.3(b).
- (b) As far as reasonably practicable, a General Meeting under this clause 8.4 must be called and held in the same way in which General Meetings of the Association are called.
- (c) The Association must bear the reasonable expenses of calling and holding a General Meeting under this clause 8.4.

8.5 Notice of General Meetings

- (a) Notice of every General Meeting must be given in the manner authorised by clause 17.1 to every Member and Board Member; and to any reviewer or auditor of the Association.
- (b) No other person is entitled to receive notice of a General Meeting, except any person authorised by the Board.
- (c) Notice of General Meetings (including Annual General Meetings) must be provided to Members at least 21 days before any General Meeting.

8.6 Content of notice of General Meetings

The notice of General Meeting must:

- (a) specify the place, date and time for the General Meeting (and, if the meeting is to be held in two or more places in accordance with clause 8.8, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be transacted at the General Meeting;
- (c) if a Special Resolution is to be proposed at the General Meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) contain a statement of each Member's right to appoint a natural person who is also a Member as their proxy.

8.7 Failure to give notice

Any resolution passed at a General Meeting is not invalidated by:

- (a) the accidental omission to give notice of a General Meeting to any Member or non-receipt of that notice by a Member; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument by a Member.

8.8 Use of technology

- (a) The Association may hold a General Meeting (including an Annual General Meeting) at 2 or more venues using any technology that gives Members a reasonable opportunity to participate, provided that arrangements are made at each venue for the recording of all votes cast.
- (b) The General Meeting is taken to be held where the Chairperson of the General Meeting conducts the General Meeting. All proceedings conducted in accordance with this clause 8.8 are as valid as if conducted at a single gathering of a quorum of those entitled to be Present.

8.9 Quorum

- (a) No business may be transacted at a General Meeting unless a quorum of Members is Present at the time when the meeting proceeds to business.

- (b) Except as otherwise provided in this Constitution, a quorum constitutes the following number of Members Present and eligible to vote at the General Meeting:
 - (i) 15; or
 - (ii) where the total number of Members is less than 30, the lowest whole number that is more than half the number of Members.

8.10 If a quorum not Present

If a quorum is not Present within 30 minutes after the time appointed for the General Meeting in the notice:

- (a) where the meeting is convened on the requisition of Members, the meeting must be automatically dissolved; or
- (b) in any other case:
 - (i) the meeting stands adjourned to a day and at a time and place as the Board decides or, if no decision is made by the Board, to the same day in the next week at the same time and place; and
 - (ii) if no quorum is Present at the resumed meeting within 30 minutes after the time appointed for the meeting, provided at least 3 Members eligible to vote are Present at the resumed meeting, they will be taken to constitute a quorum.

8.11 Adjournments

- (a) The Chairperson may, and must if directed to do so by the General Meeting, adjourn a General Meeting from time to time and from place to place.
- (b) Only business left unfinished at a meeting which was adjourned may be transacted at a meeting resumed after an adjournment.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.
- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting. In all other cases it is not necessary to give notice of the adjourned meeting.

9. Voting at General Meetings

9.1 Voting rights

- (a) At General Meetings each Member entitled to attend and vote in accordance with this Constitution:
 - (i) has one vote on each resolution; and
 - (ii) may attend and vote in person or by proxy, or attorney and (where the Member is an organisation) by Representative.

- (b) A Member may appoint a natural person who is also a Member as their proxy to attend and vote at General Meetings on behalf of the Member.

9.2 Members' resolutions

- (a) A resolution put to the vote at a General Meeting must be decided by a majority of votes cast by the Members Present at the General Meeting, except where it is required by this Constitution or otherwise by law that the resolution be a Special Resolution.
- (b) A Special Resolution is a resolution passed by the Association at a General Meeting in accordance with section 51 of the Act by the votes of not less than three-fourths of the Members who validly cast a vote at the General Meeting.
- (c) A resolution put to the vote at a General Meeting must be decided in the manner determined by the Chairperson, which may be on a show of hands or a poll.
- (d) Any 3 Members Present at a General Meeting may demand a poll.
- (e) A poll is to be taken in the manner and at the time the Chairperson directs, except that any poll demanded on the election of a Chairperson or on a question of adjournment must be taken immediately. The Chairperson may determine the method of recording votes cast, including proxy votes, in any written form, which may be a written record of votes cast. Individual voting papers are not mandatory to record votes cast on a poll.
- (f) Before a vote is taken, the Chairperson must inform the General Meeting whether any proxy votes have been received and how the proxy votes are to be cast on the resolution.
- (g) In the case of an equality of votes on a show of hands or on a poll, the Chairperson of the relevant General Meeting has a casting vote in addition to the Chairperson's deliberative vote (if any).
- (h) A declaration by the Chairperson that a resolution has on a show of hands or on a poll been carried or lost and an entry to that effect in the minutes of the meeting is conclusive evidence of that fact. Neither the Chairperson nor the minutes of the meeting need to state the number or proportion of the votes recorded in favour or against the resolution.

9.3 Objection to qualification to vote

- (a) An objection to a person's right to vote at a General Meeting:
 - (i) may only be raised at the General Meeting or adjourned meeting at which the vote objected to is tendered; and
 - (ii) must be determined by the Chairman of the meeting, whose decision is final.
- (b) A vote allowed after an objection is valid for all purposes.

9.4 Direct voting

- (a) The Board may determine that, at any General Meeting or class meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to vote by

direct vote in respect of that resolution. A direct vote includes a vote delivered to the Association by post or any other means approved by the Board, subject to compliance with the Act.

- (b) Where clause 9.4(a) applies, the notice of meeting must indicate that direct voting is available at the relevant meeting or on particular resolutions.
- (c) The Board may prescribe procedures in relation to direct voting, including (without limitation):
 - (i) specifying the form, method and timing of casting a direct vote at a meeting for the vote to be valid; and
 - (ii) the circumstances in which a direct vote may be withdrawn by the Member or deemed withdrawn.

9.5 Votes counted in error

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same General Meeting; and
- (b) of sufficient magnitude, in the opinion of the Chairperson, as to invalidate the resolution.

10. Minutes

- (a) The Board must cause minutes to be made of:
 - (i) proceedings and resolutions of General Meetings of the Members and resolutions passed by Members without a meeting;
 - (ii) all appointments of Board Members; and
 - (iii) proceedings and resolutions of Board meetings and resolutions passed by the Board without a meeting,and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Act.
- (b) The Association must ensure that minutes are signed within a reasonable time after the date of the meeting or of the resolution being passed by:
 - (i) the Chairperson of the meeting;
 - (ii) the Chairperson of the next meeting; or
 - (iii) in the case of a resolution without a meeting, a Board Member.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 10 is evidence of the matters shown in the minute.

11. Board

11.1 The Board

The affairs of the Association will be managed exclusively by a board of management (**Board**) consisting of:

- (a) the following elected office holders (**Office Holders**):
 - (i) a Chairperson;
 - (ii) a Deputy Chairperson;
 - (iii) a Secretary;
 - (iv) a Chairperson of the Finance and Audit Sub-Committee; and
 - (v) an HIV Positive Representative; and
- (b) 4 co-opted Board Members appointed in accordance with clause 13.6 (**Co-opted Board Members**).

11.2 Powers of the Board

- (a) The Board is responsible for managing the business of the Association and may exercise all powers of the Association which are not required by the Act or this Constitution to be exercised by the Association in a General Meeting.
- (b) Without limiting the generality of clause 11.2(a), the Board may exercise all the powers of the Association to:
 - (i) acquire, hold, deal with, and dispose of any real or personal property;
 - (ii) open and operate bank accounts;
 - (iii) borrow money on terms and conditions as the Board thinks fit;
 - (iv) invest money not immediately required for the Objects as the Board thinks fit;
 - (v) grant security for the discharge of liabilities and obligations of the Association;
 - (vi) appoint agents to transact business on behalf of the Association; and
 - (vii) enter into any contract or arrangement.

11.3 Sub-Committees

- (a) The Board may create sub-committees as it sees fit, consisting of such Members, Board Members or other persons who are not Members as the Board thinks fit.
- (b) Unless the Board resolves otherwise, there will be a standing sub-committee of the Board created in accordance with this constitution known as the Finance and Audit Sub-Committee and chaired by the Chairperson of the Finance and Audit Sub-Committee.

- (c) The Board may delegate to any sub-committee the exercise of such functions of the Board as are specified in the delegation other than:
 - (i) the power of delegation; and
 - (ii) a function which is a duty imposed on the Board by the Act or any other law.
- (d) A sub-committee must exercise the powers granted to it in accordance with any direction of the Board. Any power exercised in accordance with this clause 11.3(d) is taken to be exercised by the Board.
- (e) Clauses 15.1, 15.2, 15.4 and 15.6 apply to any sub-committee as if each reference in those clauses to the Board Members was a reference to the members of the sub-committee and each reference to a Board meeting were to a sub-committee meeting.
- (f) Minutes of all the proceedings and decisions of every sub-committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act to be made, entered and signed.

11.4 Payments to Board Members

- (a) The Association must not pay fees to a Board Member for acting as a Board Member.
- (b) The Association may, by resolution of the Board:
 - (i) reimburse a Board Member for out-of-pocket travel and accommodation expenses incurred in connection with the performance of the Board Member's functions; and
 - (ii) pay premiums on insurance policies indemnifying Board Members and any other Officers of the Association against liabilities, damages, costs, charges and expenses of any kind incurred as a Board Member or Officer.

11.5 Indemnity

To the full extent permitted by law and without limiting the powers of the Association, the Association may indemnify any person who is or has been an Officer of the Association against all losses, liabilities, damages, costs, charges and expenses of any kind incurred by the Officer as an officer of the Association.

12. Responsibilities and roles of Board Members

12.1 Responsibilities of Board Members and declaring interests

- (a) Each Board Member must exercise their powers and discharge their duties as Board Member in accordance with the Act and all applicable laws.
- (b) A Board Member who has a material personal interest in a matter which is or will be considered at a Board meeting must:
 - (i) as soon as the Board Member becomes aware of the interest, disclose at the relevant Board meeting the nature and extent of the interest and how the interest relates to the activity of the Association;

- (ii) not be present while the matter is being considered at the Board meeting or vote on the matter; and
 - (iii) ensure the nature and extent of the interest and how the interest relates to the activity of the Association is disclosed at the next General Meeting to the extent required by Section 42 of the Act.
- (c) Clause 12.1(b) does not apply to any material personal interest that exists only because the Board Member:
- (i) is an employee of the Association;
 - (ii) is a member of a class of persons for whose benefit the Association is established; or
 - (iii) that the Board Member has in common with all, or a substantial proportion of, the Members.

12.2 Chairperson

- (a) The Chairperson will chair Board meetings and General Meetings.
- (b) Where a Board meeting is held and the Chairperson is not present or declines to act as chair, the Deputy Chairperson must chair the meeting. In the absence of both the Chairperson and the Deputy Chairperson, the Board Members present must elect one of their number to chair the meeting.
- (c) Where a General Meeting is held and the Chairperson is not present or declines to act as chair, the Deputy Chairperson must chair the General Meeting. In the absence of both the Chairperson and the Deputy Chairperson, the Members present must elect a Board Member present to chair the General Meeting.
- (d) Where a person chairs a meeting under clauses 12.2(b) or 12.2(c), in relation to that meeting, references to the Chairperson in this Constitution include a reference to that person.

12.3 Deputy Chairperson

- (a) The Deputy Chairperson will chair Board meetings and General Meetings in the absence of the Chairperson.
- (b) On request by the Chairperson, the Deputy Chairperson will undertake any other duties of the Chairperson during any period of absence of the Chairperson.

12.4 Secretary

The Secretary's responsibilities include ensuring the following tasks are carried out:

- (a) preparing notices of meeting for Board meetings and General Meetings;
- (b) keeping the minutes of Board meetings and General Meetings and recording any resolutions passed by the Board without a meeting;
- (c) maintaining the Register in accordance with section 53 of the Act and clause 7.1; and providing for Members to inspect the Register and take copies in accordance with the Act and clause 7.2;

- (d) recording in the relevant minutes disclosures of material personal interests of Board Members made at Board meetings and General Meetings;
- (e) maintaining records of Board Members, any other Officers and any appointed trustees in accordance with section 58 of the Act and clause 13.7 and providing for Members to inspect these records and take copies in accordance with the Act and clause 13.8;
- (f) maintaining an up-to-date copy of this Constitution in accordance with section 35 of the Act and providing for Members to inspect this Constitution and take copies in accordance with the Act;
- (g) ensuring that all notices of the Association are duly given in accordance with this Constitution or as required by law;
- (h) unless the Board resolves otherwise, being responsible for the secure custody of the books, records and documents of the Association at the Association's premises, other than those required by clause 12.5(d) to be maintained by the Chairperson of the Finance, Audit and Risk Committee; and
- (i) generally performing all duties incidental to the office of secretary and such other duties as may be assigned to the Secretary by the Board from time to time.

12.5 Chairperson of the Finance and Audit Sub-Committee

The Chairperson of the Finance and Audit Sub-Committee has the following responsibilities:

- (a) chairing the Finance and Audit Sub-Committee;
- (b) managing the preparation and submission to the Board of budgets, balance sheets, financial statements and reports on the financial status and performance of the Association;
- (c) ensuring the paying out and receipt of funds by the Association occurs in accordance with this Constitution and any directions of the Board;
- (d) ensuring the Association complies with all financial reporting obligations imposed on it under the Act, including (but not limited to):
 - (i) keeping and retaining Financial Records in accordance with Division 2 of Part 5 of the Act;
 - (ii) coordinating the preparation of the Association's Financial Report or Financial Statements in accordance with the applicable requirements of Division 3 of Part 5 of the Act, for submission to Members at the Annual General Meeting;
 - (iii) unless the Board resolves otherwise, being responsible for the secure custody at the Association's premises of the Association's Financial Records, Financial Reports and Financial Statements (as applicable), for at least 7 years after their creation; and
- (e) such other duties as may be assigned by the Board from time to time.

12.6 HIV Positive Representative

The HIV Positive Representative will:

- (a) liaise with the HIV positive community and regularly report to the Board on any feedback from the HIV positive community;
- (b) bring a HIV positive perspective to Board deliberations; and
- (c) perform any other duties as may be assigned by the Board from time to time, including serving on any sub-committees as requested by the Board.

13. Election or appointment of Board Members

13.1 Eligibility

- (a) A person is eligible for election or appointment to the Board only if they:
 - (i) are a Member who is a natural person. A Representative is not eligible for election or appointment to the Board;
 - (ii) are not disqualified under sections 39 and 40 of the Act or any other legislation which applies to the Association; and
 - (iii) satisfy any eligibility requirements set out in this Constitution or determined by the Board from time to time.
- (b) A person is eligible for election to the position of HIV Positive Representative if they identify as HIV positive and meet the requirements of clause 13.1(a).

13.2 Term of office and re-appointment or re-election

- (a) The term of office of a Board Member (**Term**):
 - (i) begins, as applicable, when the Board Member is:
 - (A) elected at an Annual General Meeting under clause 13.5,
 - (B) appointed as a Co-opted Board Member in accordance with clause 13.6; or
 - (C) appointed to fill a casual vacancy under clause 14.2(a); and
 - (ii) ends at the conclusion of the second Annual General Meeting after the Board Member's election or appointment, except for Board Members appointed under clause 14.2(a), in which case their Term ends in accordance with clause 14.2(b).
- (b) A retiring Board Member is eligible to stand for re-election as an Office Holder or re-appointment as a Co-opted Board Member, but in the case of re-election as an Office Holder, must comply with the nomination procedure in clause 13.4.
- (c) A Board Member who has held office for a continuous period of six years or more may only be:
 - (i) re-elected by a Special Resolution; or

- (ii) re-appointed as a Co-opted Board Member where the appointment has been ratified by a Special Resolution.

13.3 Appointment to the Board

- (a) The Office Holders referred to in clause 11.1(a) will be elected in accordance with clause 13.5, or appointed in accordance with clause 14.2.
- (b) The Co-opted Board Members referred to in clause 11.1(b) will be appointed in accordance with clause 13.6 or 14.2.
- (c) Subject to the Act, the Association in a General Meeting may by resolution remove a Board Member from the Board.

13.4 Nomination of Office Holders

- (a) A Member who wishes to be elected as an Office Holder must send a nomination to the Secretary at least 28 days before the Annual General Meeting, indicating which office the Member is nominating for. A Member may nominate for more than one office, but can only be elected to one office.
- (b) A nomination under clause 13.4(a) must be in writing in such form as is approved by the Board from time to time and signed by the nominee Member, a nominating Member and a seconding Member.
- (c) In the nomination form the Member must certify that they are eligible to be elected to the Board in accordance with clause 13.1. The Board may reject a nomination if in its reasonable opinion the Member is not eligible for election to the Board.

13.5 Election of Office Holders

- (a) The Board Members (if any) standing for election as Office Holders at the Annual General Meeting are any one or more of the following, as applicable:
 - (i) any Office Holder required to retire under clause 13.2(a)(ii) and standing for re-election;
 - (ii) any Office Holder required to retire under clause 14.2(b) and standing for election; or
 - (iii) a person standing for election as a new Office Holder who has nominated in accordance with clause 13.4.
- (b) There must be a separate election for each Office Holder position that is open for election. No person may be elected to more than one position on the Board.
- (c) If there is no nomination for any Office Holder position under clause 13.2, the Board may appoint a Board Member at any time to fill that vacancy in accordance with clause 14.2.
- (d) If only one person has nominated for any Office Holder position, the Chairperson must declare that person elected to the position.
- (e) If more than one person has nominated for an Office Holder position, an election may be held by either of the following methods, as determined by the Board:

- (i) a postal or electronic ballot conducted before the Annual General Meeting in accordance with the procedures set out in schedule 1, with the result of the ballot to be announced at the Annual General Meeting; or
- (ii) voting at the Annual General Meeting in accordance with clause 9 and this Constitution generally.

13.6 Co-opted Board members

- (a) Within 1 month of the Annual General Meeting, the Board must at a Board meeting appoint that number of Co-opted Board Members required to maintain the total number of Co-opted Board Members at 4, in accordance with clause 11.1(b). In appointing Co-opted Board Members, the Board must have regard to the expertise required on the Board and the need for community representation on the Board.
- (b) Each candidate for a position as a Co-opted Board Member must certify that they are eligible to be appointed to the Board in accordance with clause 13.1.
- (c) If the Board is unable to agree on the appointment of any Co-opted Board Members, it must determine the appointment by secret ballot, conducted by a returning officer who is not a Board Member.

13.7 Board Register

- (a) The Secretary (or any person authorised by the Board) must keep and maintain a Board Register in accordance with section 58 of the Act, including:
 - (i) the name; and
 - (ii) at least one of the residential address, business address, post office box address or email address,for each person identified in clause 13.7(b).
- (b) Clause 13.7(a) applies to:
 - (i) each Board Member;
 - (ii) any other person who holds any office in the Association;
 - (iii) every person who is authorised to use the seal of the Association (if any); and
 - (iv) any person who is appointed or who acts as trustee on behalf of the Association.

13.8 Inspecting and copying the Board Register

- (a) The Board Register is available for inspection free of charge by any Member upon written request to the Secretary.
- (b) A Member may make a copy of entries in the Board Register or take an extract but a Member does not have the right to remove the Board Register for that purpose.
- (c) A Member must not use or disclose any information in the Board Register for any purpose other than a purpose that:

- (i) is directly connected with the affairs of the Association; or
- (ii) relates to the administration of the Act.

14. Resignation and removal from office

14.1 Vacancy on the Board

A Board Member's Term ends and that office becomes vacant if the Board Member:

- (a) resigns by notice in writing delivered to the Secretary or, if the Board Member is the Secretary, to the Chairperson;
- (b) dies;
- (c) is or becomes ineligible to act as a Board Member under clause 13.1;
- (d) becomes physically or mentally incapable of performing the Board Member's duties and the Board resolves that the Board Member's office be vacated for that reason;
- (e) is absent from more than:
 - (i) 2 consecutive Board meetings without leave of absence granted from the Board; or
 - (ii) 3 Board meetings in the same Financial Year without tendering an apology to the relevant Chairperson of each meeting, which apology is accepted by the Chairperson,and the Board determines that the Board Member's office be vacated for that reason;
- (f) engages in conduct detrimental to the interests of the Association including (without limitation) if the Board Member has brought the Association into disrepute or breached a confidentiality agreement referred to in clause 20 and the Board resolves that the Board Member's office be vacated for that reason;
- (g) ceases to be a Member; or
- (h) is the subject of a resolution passed by Members terminating the Board Member's appointment as a Board Member.

14.2 Filling casual vacancies

- (a) The Board may appoint a Member (who is eligible under clause 13.1) at any time to fill a Board position:
 - (i) that has become vacant under clause 14.1; or
 - (ii) that was not filled in accordance with clauses 13.5 or 13.6.
- (b) A Board Member appointed under clause 14.2(a) holds office until the next Annual General Meeting, and is eligible for election or appointment to the Board in accordance with this Constitution.

14.3 Return of books and records

- (a) As soon as practicable after a Board Member's term of office ends, that person (or if the Board Member has died, their personal representative) must deliver to the Board all books, records and documents of the Association in the Board Member's possession, whether in hard copy or electronic format.
- (b) The Board may require the outgoing Board Member to certify in writing that, having complied with clause 14.3(a), the Board Member has destroyed all remaining electronic copies of books, records and documents of the Association.

15. Board proceedings

15.1 Calling and holding Board meetings

- (a) The Board must meet at least **6** times per year, with a gap of no more than **3** months between each Board meeting.
- (b) The Chairperson may call a Board meeting by giving reasonable notice to each Board Member.
- (c) The Secretary (or any Board Member in the Secretary's absence) must call a Board meeting when requested to do so by any 2 Board Members.
- (d) The Board may adjourn and otherwise regulate its meetings as it thinks fit.

15.2 Meetings by telecommunications

Without limiting the Board's power to regulate its meetings as it thinks fit, the Board may hold a valid meeting using any medium by which each of the Board Members can simultaneously hear all the other participants (including telephone, video conferencing or any other means of instant communication), and in that case:

- (a) the participating Board Members are taken to be present at the meeting for the purposes of this Constitution;
- (b) the meeting is taken to be held where the Chairperson of the meeting is;
- (c) if a failure in communications prevents any Board Member present at the meeting from participating in the meeting, then the meeting will be suspended until communications are restored, unless communications cannot be restored within 15 minutes, in which case the meeting will be deemed to have terminated; and
- (d) all proceedings of the Board conducted in accordance with this clause 15.2 are as valid and effective as if conducted at a meeting at which all of the Board Members were present in person.

15.3 Quorum

- (a) At a Board meeting, the number of Board Members whose presence is necessary to constitute a quorum is the greater of:
 - (i) three; and

- (ii) the lowest whole number that is more than half the number of serving Board Members.
- (b) If any office on the Board becomes vacant, the remaining Board Members may act but, if the total number of remaining Board Members is not sufficient to constitute a quorum at a Board meeting, the Board Members may act only for the purpose of (i) approving new Member applications for the purpose of appointing those new Members as additional Board Members (ii) increasing the number of Board Members to a number sufficient to constitute a quorum or (iii) for the purpose of convening a General Meeting of the Association.

15.4 Guests at Board meetings

- (a) The Board may invite a Member or any other person who is not a Board Member to attend a Board meeting or any part thereof.
- (b) A person invited to attend a Board meeting under clause 15.4(a) has no right to vote and no right to do any of the following without the Board's consent:
 - (i) receive any agendas, notices or papers relating to the Board meeting; and
 - (ii) comment on any matters discussed at the Board meeting.

15.5 Board resolutions

- (a) Subject to this Constitution, a resolution of the Board must be passed by a majority of the votes of Board Members present and entitled to vote on the resolution.
- (b) Subject to clause 15.5(c), each Board Member has one vote on any resolution on which the Board Member is entitled to vote.
- (c) In the case of an equality of votes, the Chairperson has a second or casting vote in addition to the Chairperson's deliberative vote (if any).

15.6 Written Board resolutions

- (a) The Board may pass a resolution without a Board meeting being held if a majority of the Board Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Identical copies of the document may be distributed for signing by different Board Members and taken together will constitute the same document.
- (c) A Board Member may sign an electronic copy of a document by typing their name in the signature block of the electronic copy, or otherwise indicating their approval by any means approved by the Board.
- (d) The resolution is passed when the last Board Member signs the document.

15.7 By-laws

- (a) The Board has the power to make by-laws regulating the establishment, organisation and conduct of the Association, provided such by-laws are not inconsistent with this Constitution or the Act.

- (b) All by-laws made and in force from time to time are binding on the Members.

15.8 Acts valid despite defective appointment

Subject to the Act, any act done at any Board meeting by any person acting as a Board Member, even if it is later discovered that there was some defect in the appointment or election of any such Board Member or that the Board member was not eligible for election under clause 13.1, is valid as if the Board Member had been duly appointed and was qualified to be a Board Member.

16. Execution of documents

16.1 Execution generally

- (a) The Association may validly execute a document (including a deed) if the document is signed by a Board Member and countersigned by another Board Member or another person appointed by the Board to countersign that document or a class of documents in which that document is included.
- (b) Clause 16.1(a) does not limit the Board's ability to authorise a person who is not a Board Member to execute a document for and on behalf of the Association.

16.2 Common seal

- (a) The Association need not have or use a common seal to execute documents or deeds. The Board may resolve whether or not the Association is to have or use a common seal.
- (b) Where the Association has a common seal, it must only be used with the authority of the Board. The Secretary or any other Board Member authorised by the Board must ensure the safe custody of the seal.
- (c) The Secretary must record in a seal register details of every document to which the common seal of the Authority is fixed.

17. Notices

17.1 How notice to be given

- (a) All notices, including notices of meeting and ballot papers, may be given by the Association to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member's nominated address;
 - (iii) sending it by email to an email address nominated by the Member, or by any other electronic means nominated by the Member; (except in the case of ballot papers for a written ballot) or
 - (iv) giving it by any other means permitted or contemplated by the Act.

17.2 When notice is given

A notice is deemed to be given by the Association and received by the Member:

- (a) if delivered in person, when delivered to the Member;
- (b) if posted, on the day after the date of posting to the Member, whether delivered or not;
- (c) if sent by facsimile transmission, on the day after the date of its transmission; or
- (d) if sent by email or other electronic means, on the day after the date of its transmission,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

17.3 No notice of no valid address

If:

- (a) any Member has not provided to the Association an address for registration in the Register; or
- (b) the Association believes that a Member is not known at the address registered in the Register,

unless and until the Member provides a valid address to the Association, all notices to be sent to that Member are taken to be given to the Member if the notice is displayed at the Association's address or website for 48 hours, and are taken to be served at the commencement of that period.

18. Funds and accounts

18.1 Control of funds

- (a) The funds of the Association must be kept in an account or accounts in the name of the Association in a financial institution determined by the Board.
- (b) The Board is responsible for expenditure of the funds of the Association and may authorise the Chairperson of the Finance, Audit and Risk Committee or any other person or persons to expend the funds of the Association within specified limits and any expenditure above those limits must be approved or ratified by the Board.
- (c) The funds of the Association are to be used to do:
 - (i) anything which it considers will advance or achieve the Objects; and
 - (ii) all other things that are incidental to carrying out the Objects.
- (d) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association are to be executed by:
 - (i) any two Board Members; or
 - (ii) any person or persons authorised by the Board, within the expenditure limits specified by the Board.

- (e) All electronic payments by the Association are to be made or authorised by:
 - (i) the Chairperson of the Finance, Audit and Risk Committee; or
 - (ii) any person or persons authorised by the Board,within the expenditure limits specified by the Board.

18.2 Source of funds

- (a) The Association may derive funds in any way permitted by the Act.

18.3 Financial Records

- (a) The Association must keep Financial Records that:
 - (i) correctly record and explain its transactions, financial position and performance; and
 - (ii) enable true and fair Financial Statements to be prepared in accordance with Part 5 of the Act.
- (b) The Association must retain its Financial Records for at least 7 years after the transactions covered by the records are completed.
- (c) The Association must allow the Board Members and the auditor to inspect those accounts at all reasonable times.

18.4 Financial reporting, audit and review

- (a) The Board must cause the Association to comply with all financial reporting obligations imposed on it under the Act or any other applicable legislation.
- (b) Without limiting clause 18.4(a), the Board must cause the Association to:
 - (i) if it is a tier 1 association, prepare annual Financial Statements, presented under Part 5 of the Act;
 - (ii) if it is a tier 2 association or tier 3 association, prepare an annual Financial Report, presented under Part 5 of the Act;
 - (iii) have its Financial Statements or Financial Report reviewed or audited (as applicable) if:
 - (A) it is required under the Act;
 - (B) it is directed by the Commissioner;
 - (C) the Members pass a resolution requiring it; or
 - (D) it is required as a condition of a funding arrangement; holding of a charitable collections licence or otherwise at law; and
 - (iv) if required to be presented for consideration under Part 5 of the Act, present a copy of the report of the review or the auditor's report on the Financial

Statements or Financial Report (as applicable) to the Annual General Meeting.

18.5 Financial Year

The Financial Year of the Association is the 12 month period starting on 1 July.

18.6 Inspection of records

- (a) Subject to the Act and to this Constitution, the Board must determine whether and on what terms the books, records and other documents of the Association will be open to the inspection of Members other than Board Members.
- (b) A Member other than a Board Member does not have the right to inspect any document of the Association except as provided by the Act, or otherwise as authorised by the Board.

19. Resolving disputes

19.1 Application of disputes procedure

The disputes procedure set out in this clause applies to disputes under or relating to this Constitution between:

- (a) a Member and another Member or Members; and
- (b) a Member or Members and the Association.

19.2 Disputes procedure

- (a) The parties to the dispute must attempt to resolve the dispute (in person or by telephone, email, or any other means of communication) within 14 days after the dispute comes to the attention of all of the parties. In the case of a dispute involving the Association, the Chairperson (or any Committee Member appointed by the Chairperson) will represent the Association.
- (b) If the parties are unable to resolve the dispute within the 14 day period specified in clause 19.2(a), either party may initiate the dispute resolution procedure by giving a written notice to the Secretary identifying the parties to the dispute and the subject of the dispute.
- (c) Within 21 days of receipt of a notice under clause 19.2(b), a Board meeting must be convened to determine the dispute.
- (d) The Secretary must give the parties to the dispute at least 7 days' prior written notice of the Board meeting, informing them that they may attend the meeting (in person or via telephone, video conferencing or any other available means of instant communication) and make oral or written submissions (or both).
- (e) At the Board meeting, the Board must:
 - (i) give each party to the dispute a full and fair opportunity to make oral or written submissions and must give reasonable consideration to any submissions; and
 - (ii) determine the dispute.

- (f) Written notice of the Board's decision regarding the dispute must be given to all parties to the dispute within 7 days after the Board meeting.
- (g) If any party to the dispute is not satisfied with the Board's decision, the Board may refer the matter to an external dispute resolution procedure in accordance with by-laws made by the Board for that purpose.

20. Confidentiality

Due to the nature of the activities of the Association, Members and Board Members may from time to time become aware of the identity or personal details of persons who have been tested as HIV positive. Any Member or Board Member who may come into possession of such information:

- (a) will be required to sign confidentiality agreement;
- (b) any breach of confidentiality will be conduct detrimental to the interests of the Association for the purposes of clauses 6.2(a)(i) and 14.1(f); and
- (c) notwithstanding clauses 20(a) and 20(b), must keep the information confidential.

21. Affiliation and membership of other similar organisations

The Board may determine that the Association will affiliate with or become a member of, or accept affiliation with or membership of, any organisation (including any regional or international association) having similar or like interests to the Association.

22. Gift fund

22.1 Gift Fund

The Association may establish a Gift Fund:

- (a) to which gifts of money or property for the Objects are to be made;
- (b) to which contributions that are not gifts but which:
 - (i) are described in items 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for the Association's objects; or
 - (ii) can be made to the Gift Fund without adversely affecting the Association's deductible gift recipient status,are to be made;
- (c) to which any money received by the Association because of gifts or contributions referred to in clauses 22.1(a) or 22.1(b) is to be credited; and
- (d) that does not receive any other money or property.

22.2 Limit on use of Gift Fund

The Association must use the assets of the Gift Fund only for its Objects.

22.3 Bank accounts

- (a) Contributions to the Gift Fund must be kept separate from other funds and property of the Association.
- (b) A separate bank account must be opened with an authorised deposit-taking institution selected by the Board, in the name of the WA AIDS Council (Inc) Gift Fund, to deposit money donated to the Gift Fund and money from the realisation of property donated to the Gift Fund and interest accruing on such monies.

22.4 Maintaining the Gift Fund

In maintaining the Gift Fund the Association must:

- (a) ensure that the Gift Fund is operated on a not-for-profit basis;
- (b) ensure that at all times the Gift Fund is maintained and used for the Objects;
- (c) ensure that the Gift Fund is operated separately and maintained with separate books of account from the Association's general accounts;
- (d) have in place appropriate procedures to ensure only and all proper amounts of money and property are credited to the Gift Fund;
- (e) ensure that money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Gift Fund;
- (f) issue receipts in the name of the fund to donors which contain the elements required for donations to the Gift Fund to be deductible under the Tax Act;
- (g) ensure any money or property that is incorrectly received into the Gift Fund will be removed from the Gift Fund as soon as practicable with the accounts for the Gift Fund adjusted and noted accordingly;
- (h) keep records which:
 - (i) record and explain all transactions and other acts the Gift Fund or the Association engages in which is relevant to the Association's status as a deductible gift recipient; and
 - (ii) show that the each of the following assets of the Gift Fund is used by the Gift Fund or the Association only for its Objects:
 - (A) gifts of money or property for the Objects;
 - (B) contributions (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for its Objects;
 - (C) contributions (that are not gifts) but which can be made to the Gift Fund without adversely affecting the Association's deductible gift recipient status; and
 - (D) money received by the Gift Fund because of such gifts or contributions;

- (i) keep the records referred in clause 22.4(h) for at least 5 years after the completion of such transactions or acts to which they relate;
- (j) ensure that any allocation of funds or property to other persons or organisations will be made in accordance with the Objects and not be influenced by the preference of the donor; and
- (k) at all times ensure it complies with all laws and regulations in existence from time to time or any guidelines issued by the Australian Taxation Office or the Australian Charities and Not-for-profits Commission in relation to gift funds or any other government authority overseeing the administration of gift funds.

22.5 Distribution of surplus assets on winding up or revocation of DGR endorsement

- (a) If the Association is wound up, any Gift Funds included in the Association's Surplus Property must be dealt with in accordance with clause 23.
- (b) If the Association 's deductible gift recipient endorsement is revoked (whether or not the Association is to be wound up), any surplus Gift Funds must be transferred to one or more organisations that meet the requirements set out in clause 23(c).

23. Winding up, cancellation and distribution of surplus property

- (a) For the purposes of this clause **Surplus Property** has the meaning given in section 3 of the Act.
- (b) Subject to the Act, the Association may cease its activities and be wound up or cancelled in accordance with a Special Resolution.
- (c) If upon the winding up or dissolution of the Association there remains any Surplus Property, such property will not be paid to or distributed among the Members but, in accordance with clause 23(d) will be given or transferred to another organisation or organisations:
 - (i) with objects similar to the Objects;
 - (ii) which are endorsed as deductible gift recipients under Division 30 of the Tax Act; and
 - (iii) which prohibit the distribution of its income and property amongst its members to an extent at least as great as that imposed on the Association under clause 4.
- (d) The organisation or organisations selected for the purpose of clause 23(c) will be determined by a Special Resolution of Members or if it not practicable to obtain such a Special Resolution, by a Judge of the Supreme Court of Western Australia who has jurisdiction in the matter.

24. Variation or amendment of Constitution

This Constitution may be varied, amended or rescinded from time to time by Special Resolution in accordance with Division 2 of Part 3 of the Act.

Schedule 1 – Ballot

Clause 13.5(e)

1. Ballot

- (a) If a ballot is required for the election of an Office Holder, the Board must:
 - (i) appoint a returning officer (who is not a candidate for any elected position on the Board) to conduct the ballot; and
 - (ii) fix the deadlines for (a) the distribution of ballot papers to Members; and (b) the closing of the ballot.
- (b) At the Board's discretion, the ballot may be conducted by post (**Postal Ballot**) or by any electronic means available, including voting via email or accessing a website (**Electronic Ballot**).
- (c) Every ballot must be conducted by the appointed returning officer.

2. Postal Ballot

- (a) For a Postal Ballot, the returning officer must ensure that each Member eligible to vote is sent the following:
 - (i) a ballot paper listing the candidates, and any information about the candidates, with space for the Member's vote to be recorded;
 - (ii) instructions about how to vote, and the deadline for voting; and
 - (iii) a returning envelope addressed to the returning officer which includes on the reverse side a space for the Member to write their name and address, and an envelope marked "Vote".
- (b) Each Member may vote by:
 - (i) marking the ballot paper in accordance with the instructions;
 - (ii) enclosing and sealing the ballot paper in the envelope marked "Vote" and enclosing and sealing the "Vote" envelope in the returning envelope addressed to the returning office; and
 - (iii) completing their details on the returning envelope and giving or sending the returning envelope to the returning officer so that it is received by the deadline.
- (c) On receipt of each returning envelope, the returning officer must:
 - (i) confirm that the Member whose details are written on the returning envelope is eligible to vote; and
 - (ii) keep the returning envelope secure and unopened until the counting of votes.
- (d) As soon as practicable after the close of the ballot, the returning officer must open the "Vote" envelopes and ascertain the result of the ballots by counting all votes validly cast.

- (e) The returning officer must certify the results of the ballot. If two or more candidates receive the same number of votes, the result will be determined by lot, unless otherwise agreed between the candidates.

3. Electronic Ballot

- (a) For an Electronic Ballot, the returning officer must ensure that each Member eligible to vote is given access to:
 - (i) an electronic ballot paper listing the candidates, and any information about the candidates; and
 - (ii) instructions about how to vote, including any required email addresses, passwords or other information required, and the deadline for voting.
- (b) Each Member must vote in accordance with the instructions and by the deadline.
- (c) The returning officer must ensure that all completed electronic ballot papers are stored securely until the counting of votes begins.
- (d) As soon as practicable after the close of the ballot, the returning officer must review all electronic ballots papers or records relating to electronic voting (as applicable) and ascertain the results of the ballot by counting all votes validly cast.
- (e) The returning officer must certify the results of the ballot. If two or more candidates receive the same number of votes, the result will be determined by lot, unless otherwise agreed between the candidates.

4. Retention of ballot papers

The returning officer must retain for at least 8 weeks (or any longer period directed by the Board) from the date fixed for the closing of the ballot:

- (a) all ballot papers, in written or electronic format as applicable;
- (b) all rejected returning envelopes relating to a Postal Ballot;
- (c) all records relating to electronic voting; and
- (d) all voting rolls and records used to determine eligibility to vote.