



Constitution of Australian Federation of AIDS Organisations Limited

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1 Name of Corporation

The name of the company is **Australian Federation of AIDS Organisations Limited (AFAO)**.

2 Status of the Constitution

2.1 Constitution of AFAO

This is the constitution of AFAO.

2.2 Replaceable Rules

This Constitution displaces the Replaceable Rules, accordingly, none of the Replaceable Rules apply.

3 Interpretation

3.1 Definitions

In this Constitution these terms have the following meanings:

AFAO	Australian Federation of AIDS Organisations Limited.
Affiliate Member	An organisation that may participate in any general meeting of AFAO and may receive AFAO newsletters and other publications but that does not have voting rights.
Affiliate Membership	Being an Affiliate Member of AFAO.
Auditor	The person appointed for the time being as the auditor of AFAO.
Board	The Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present.
Chief Executive Officer	Any person appointed for the time being as the chief executive officer of AFAO.
Constitution	The constitution for the time being of AFAO as constituted by this document and any resolutions of AFAO modifying this document.
Co-opted Director	A person nominated by the Board that has a special interest or knowledge relevant to AFAO.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Director	A person who is a director for the time being of AFAO (including a Co-Opted Director) and Directors means more than one Director.

Member	An entity that is registered on the Register of Members.
Member's Guarantee Amount	An amount equal to \$10 .
Membership	Being a Member of AFAO.
Membership Year	Begins on 1 July in one year and ends on 30 June in the following year.
Objects	The objects of AFAO set out in clause 4.2.
President	The person appointed as president under clause 22.6(a).
Public Officer	The person appointed as public officer in accordance with the Tax Act.
Purpose	The purpose of AFAO set out in clause 4.1.
Register of Affiliate Members	The register of Affiliate Members maintained by AFAO in accordance with clause 11.2.
Register of Members	The register of Members maintained pursuant to the Corporations Act.
Replaceable Rules	The replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.
Secretary	Any person appointed for the time being as, or to perform the functions of, secretary of AFAO.
Tax Act	The <i>Income Tax Assessment Act 1997</i> (Cth) and the <i>Income Tax Assessment Act 1936</i> (Cth) as appropriate.
Vice President	The person appointed as vice president under clause 22.6(a).

3.2 Interpretation

In this Constitution:

- (a) the words 'including', 'include' and 'includes' are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (d) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act.

4 Purpose and Objects

4.1 Purpose

The purpose of AFAO is to pursue charitable purposes only and to apply the income and property of AFAO whensoever derived only to promote the objects in clause 4.2.

4.2 Objects

- (a) AFAO's objects and strengths are derived from its members and their communities and, accordingly, AFAO will provide leadership, be guided by, promote, coordinate and support the shared goals of its members and the communities they represent in all of its endeavours.

AFAO recognises the primacy of its national members to work with and represent their communities.

AFAO will represent the interests of its members in a way that reflects a meaningful and ongoing consultative partnership.

- (b) Without limiting clause 4.1, the objects for which AFAO is established are to:
- (i) end the transmission of HIV;
 - (ii) maximise the health and wellbeing of AFAO's communities;
 - (iii) oppose discrimination and violence and reduce stigma associated with HIV;
 - (iv) foster and advocate for strengthened community responses to HIV in Australia, Asia and the Pacific;
 - (v) contribute to the global effort to end HIV and AIDS and respond to issues affecting the Members and communities abroad;
 - (vi) recognise and respond to issues that intersect with HIV and that hinder the achievement of these objects, including sexually transmissible infections, drug and alcohol issues, viral hepatitis, and mental health;
 - (vii) promote sexual health and the enjoyment of sexual and reproductive health rights for all regardless of HIV status;
 - (viii) adopt a social view of health that recognises the social, economic and structural determinants of good health and that responds to these directly and through the promotion of human rights, social justice and equity of access;
 - (ix) advocate for, be informed by and remain embedded within communities living with and affected by HIV and the Members who represent them; and
 - (x) encourage, facilitate and maximise the participation of people with HIV in all activities of AFAO, whether as office bearers, delegates, representatives, employees, or in any other capacity.

4.3 Activities

- (a) AFAO is to pursue the Objects through activities including, without limitation:

- (i) leading national conversations on these issues and contributing to regional and global dialogue;
 - (ii) building political support through non-partisan engagement;
 - (iii) educating decision-makers and the public;
 - (iv) supporting community engagement and participation in national, regional and international advocacy with decision-makers and stakeholders;
 - (v) providing a public voice for these issues in the media and community;
 - (vi) coordinating issues and responses across the Members, Affiliate Members and other organisations;
 - (vii) bringing together community representatives to share, plan and respond to issues;
 - (viii) developing and implementing programs and responding to gaps;
 - (ix) promoting discussion among the Members and Affiliate Members on policy issues;
 - (x) formulating and documenting policy positions and supporting their implementation;
 - (xi) developing tools, materials and strategic information to support community advocacy and knowledge sharing;
 - (xii) influencing the planning and reporting of research and supporting its translation;
 - (xiii) strengthening the enabling environment including through systemic advocacy for the elimination of laws that impede the response and the promotion of enablers;
 - (xiv) developing workforce capability and sector capacity and supporting the Members and Affiliate Members;
 - (xv) promoting the success of AFAO and its Members and Affiliate Members and building awareness of successful community-based responses in Australia, regionally and internationally;
 - (xvi) fostering financial security and sustainability in the community-based responses of AFAO and its Members, Affiliate Members and partners.
- (b) AFAO may do other lawful things incidental or conducive to the attainment of the Objects or the exercise of any of the powers specified in clause 4.

4.4 Limitation of Powers

AFAO is prohibited from making distributions to Members and Directors.

4.5 Non-profit

The assets and income of AFAO must be applied solely in furtherance of the Objects, and to this end AFAO may:

- (a) apply any part of the income or capital of AFAO; and
 - (b) accumulate any part of the income or capital of AFAO,
- insofar as it is consistent with the Objects and AFAO's endorsement for concessions under the Tax Act (if any).

5 Modification or repeal of Constitution

5.1 Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of AFAO in a general meeting.

5.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

5.3 Non prejudicial

- (a) AFAO cannot modify the Constitution if it will impose a new or greater liability on or otherwise unfairly prejudice any Member, except with the consent of the relevant Member or Members.
- (b) Nothing in this clause 5.3 prevents AFAO modifying the Constitution to comply with law, provided that the approvals in clause 5.3(a) are obtained.

6 Member's liability

6.1 Liability to contribute

Subject to this Constitution, each entity that is a Member, and each entity that was a Member during the year ending on the day of the commencement of the winding up of AFAO, undertakes to contribute to the property of AFAO for:

- (a) payment of debts and liabilities of AFAO;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

6.2 Limited liability

The amount that each Member or past Member is liable to contribute is limited to the amount of the Member's Guarantee Amount.

7 Members

7.1 Number of Members

AFAO must have at least one Member.

7.2 Current Members

The entities named in the schedule are the first Members of AFAO under this Constitution.

7.3 Pre-conditions to Membership

- (a) An entity is entitled to become a Member if that entity:
 - (i) agrees to assume the liability to pay the Member's Guarantee Amount;
 - (ii) shares some or all of the Objects or Purpose of AFAO;
 - (iii) is endorsed or is eligible to be endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act, unless exempted by the Board;
 - (iv) agrees to affirm and promote the Objects; and
 - (v) meets the criteria for admittance as a Member set out in the policy as determined by the Board from time to time or the application for Membership is ratified by the Members.

7.4 Becoming a Member

Subject to the Corporations Act, an entity becomes a Member on the registration of that entity's name in the Register of Members.

7.5 Registration as Member

If AFAO, by special resolution passed at a general meeting, accepts an application for Membership, as soon as practicable, the Board must register the name of the entity in the Register of Members.

7.6 Annual fees

- (a) AFAO may in general meeting determine the amount of annual Membership fees for the Members.
- (b) Each Member must pay the annual Membership fee to AFAO no later than 30 days after receipt of a valid tax invoice from AFAO.

8 Affiliate Members

8.1 Number of Affiliate Members

The Board of AFAO may admit Affiliate Members.

8.2 No voting rights

Affiliate Members may attend general meetings of AFAO but have no right to vote at those meetings.

8.3 Becoming an Affiliate Member

An entity becomes an Affiliate Member on the registration of that entity's name in the Register of Affiliate Members.

8.4 Eligibility for Affiliate Membership

Any incorporated entity is eligible to become an Affiliate Member if that entity:

- (a) shares some or all of the Objects or Purpose of AFAO;
- (b) is endorsed or is eligible to be endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act, unless exempted by the Board;
- (c) agrees to affirm and promote the Objects; and
- (d) meets the criteria for admittance as a Member set out in the policy as determined by the Board from time to time or the application for Affiliate Membership is ratified by the Members.

8.5 Registration as Affiliate Member

If the Board accepts an application for Affiliate Membership, as soon as practicable, the Board must register the name of the entity in the Register of Affiliate Members.

8.6 Annual fees

- (a) AFAO may in general meeting determine the amount of annual Affiliate Membership fees for the Affiliate Members.
- (b) Each Affiliate Member must pay the annual Affiliate Membership fee to AFAO no later than 30 days after receipt of a valid tax invoice from AFAO.

9 Rights of Members and Affiliate Members are non-transferable

The rights and obligations of a Member and an Affiliate Member are not transferable.

10 Cessation of Membership

10.1 Cessation of Membership or Affiliate Membership

An entity ceases to be a Member or an Affiliate Member if that entity:

- (a) resigns as a Member or Affiliate Member in accordance with this Constitution;
- (b) ceases to satisfy the eligibility requirements for Membership under clauses 7.3(a)(i) to 7.3(a)(iv) or Affiliate Membership under clause 8.4 of this Constitution;
- (c) is expelled as a Member or Affiliate Member by the passing of a special resolution at a general meeting of AFAO at which the Member or Affiliate Member must have an opportunity to state why it should not be expelled;
- (d) in the case of an Affiliate Member, is expelled as an Affiliate Member in accordance with clause 10.3 of this Constitution;
- (e) fails to pay any amount payable to AFAO within 60 days of being required to and the Board resolves that the Membership or Affiliate Membership be terminated;

- (f) is uncontactable for more than 12 months and the Board resolves that the entity should cease to be a Member;
- (g) is placed under external administration or makes any composition or arrangement with its creditors;
- (h) is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up; or
- (i) becomes insolvent.

10.2 Resignation of Member or Affiliate Member

- (a) A Member or Affiliate Member may resign from AFAO by giving 30 days' written notice to the Secretary.
- (b) Any Member or Affiliate Member having given notice of its resignation in accordance with this Constitution must continue in Membership or Affiliate Membership in all respects until the expiration of the current Membership Year and is liable for all dues, assessments, expenses and other charges accruing to AFAO during that Membership Year or such portion thereof as may be determined by the Board in its absolute discretion.

10.3 Expulsion of Affiliate Member

- (a) Subject to clause 10.3(b), if the Board resolves by special resolution that it is not in the best interests of AFAO for an entity to remain as an Affiliate Member, that entity is automatically expelled as an Affiliate Member.
- (b) The Board must give notice to an Affiliate Member of a Board meeting at which the resolution for that entity's expulsion is proposed:
 - (i) setting out the place, date and time of the meeting;
 - (ii) setting out the proposed resolution and the grounds for the proposed expulsion; and
 - (iii) informing the Affiliate Member that it may submit written submissions to the Board before the resolution is put to vote.

10.4 Removal from Register of Members or Register of Affiliate Members

Once an entity ceases to be a Member or Affiliate Member of AFAO, it must be removed from the Register of Members or Register of Affiliate Members as appropriate.

11 Maintenance of Register of Members and Register of Affiliate Members

11.1 Register of Members

The Secretary must maintain a Register of Members in accordance with the Corporations Act.

11.2 Register of Affiliate Members

The Secretary must maintain a Register of Affiliate Members setting out:

- (a) the name and address of each Affiliate Member;
- (b) the date on which each entity became an Affiliate Member;
- (c) in respect of each entity who has ceased to be an Affiliate Member, the date on which that entity ceased to be an Affiliate Member; and
- (d) the details of a representative, if any, appointed under clause 15.

11.3 Inspection of Register of Affiliate Members

The Register of Affiliate Members must be kept at AFAO's registered office. An Affiliate Member may inspect the Register of Affiliate Members between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

12 General meetings

12.1 Annual general meetings

AFAO must hold its first annual general meeting within 18 months after its incorporation.

12.2 Business at annual general meeting

Section 250R of the Corporations Act provides that the business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election of the directors;
- (c) the appointment of the auditor; and
- (d) determination of auditor's remuneration.

12.3 Board convening a general meeting

The Board may convene a general meeting.

12.4 Meetings requested by Members

- (a) If the Board receives a request from a Member or Members with at least five percent of the votes that may be cast at any general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must be in writing, detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.

- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

12.5 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any);
- (e) contain a statement informing the Members of the right to appoint a proxy; and
- (f) (in the case of annual general meeting) contain a statement informing the Members of the right to propose a resolution nominating a natural person for appointment as Director provided that such person complies with the requirements for a director set out in the *Corporations Act 2001* (Cth) and in accordance with this Constitution.

12.5A Further notice

In the case of an annual general meeting, at least 7 days' prior to the annual general meeting, a further notice must be given to the Members, Directors and Auditor. The further notice must:

- (a) state any proposed resolutions regarding the appointment of a Director; and
- (b) contain a statement informing the Members of the right to appoint a proxy, provided such resolutions or nominations will not require the removal of Directors, in which case 21 days' notice to Members of such resolution is required.

12.6 Shorter notice of general meeting

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting,

and accordingly, any such general meeting will be treated as having been duly convened.

12.7 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

12.8 Venue for general meetings

A general meeting may be held in more than one place. If a general meeting is held in more than one place, AFAO must use technology that gives Members a reasonable opportunity to participate at that general meeting.

12.9 Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

12.10 Notice of change, postponement or cancellation of meeting

- (a) If the Directors have convened a general meeting, the Board may change the place (or places) of the general meeting, postpone or cancel the general meeting. If a Director has convened a general meeting, only the Director who convened the general meeting may change the place (or places) of the general meeting, or postpone or cancel the general meeting.
- (b) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (c) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (d) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

12.11 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting including, the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

13 Proceedings at general meetings

13.1 Quorum

- (a) A quorum at a general meeting is 75% or more of Members present in person or by proxy. The quorum must be present at all times during the general meeting.

- (b) If a Member has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.

13.2 Lack of quorum

- (a) If a quorum is not present within one hour after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present or no Director present determines:
 - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

13.3 Chairing general meetings

- (a) The President, and in the President's absence the Vice President, is to be the chair of any general meeting of AFAO.
- (b) If the President or Vice President is not present within 15 minutes after the time appointed for any general meeting or if the President or Vice President is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

13.4 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

13.5 Adjournment

- (a) The chair of a general meeting may adjourn the meeting to another date, time and place (or places) if it appears to the chair that it is likely to be impracticable to hold or to continue to hold the meeting because of the number of Members who wish to attend but who are not present.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business referred to in the notice convening the adjourned or postponed general meeting.

14 Proxy

14.1 Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of AFAO may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may be, but does not have to be, a Member.
- (c) An appointment of a proxy may be a standing one.
- (d) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.

14.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) AFAO's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to AFAO.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy

must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.

- (d) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:
 - (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
 - (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

14.3 Proxy to be received by AFAO

An instrument purporting to appoint a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by AFAO at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office;
- (b) a facsimile number at the registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

14.4 Power to demand poll

A proxy may demand, or join in demanding, a poll in accordance with this Constitution.

14.5 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to AFAO from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

14.6 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) AFAO receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or

- (iii) the revocation of any power of attorney under which the proxy was appointed.

14.7 No liability

AFAO is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

15 Representatives

15.1 Appointment of representative

- (a) A Member may appoint up to two natural persons as its representatives to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of representatives may be a standing one.
- (c) In appointing a representative under this **clause 15.1**, a Member must be cognisant of the Objects and Purpose of AFAO and will seek to nominate a representative who is HIV positive.
- (d) Members must select representatives who are members of their organisation or of their Board or management committee or employees of their organisation.

15.2 Authority to act as representative

- (a) An appointment of a representative must be in writing and be signed by an authorised representative (such as the President, Chief Executive Officer or equivalent) of the organisation appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) AFAO's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the representative may restrict the exercise of any power.

15.3 Instrument to be received by AFAO

- (a) An instrument purporting to appoint a representative is not valid unless it is received by AFAO at least 48 hours before the general meeting or, in the case

of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.

- (b) An instrument appointing a representative must be received by AFAO at any of the following:
 - (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

15.4 Revocation and appointment of representative

The appointment of a representative may be revoked by the Member who appointed the representative by notice to AFAO from the Member stating that the appointment of the representative is revoked or by appointing a new representative.

15.5 Validity of votes of representative

A vote cast by a representative will be valid unless before the start of the general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a representative votes:

- (a) the Member who appointed the representative ceases to be a Member; or
- (b) AFAO has received notice of:
 - (i) the revocation of the instrument appointing the representative; or
 - (ii) the appointment of a new representative.

15.6 No liability

AFAO is not responsible for ensuring that the terms of appointment of a representative are complied with, and accordingly is not liable if those terms are not complied with.

16 Voting

16.1 Entitlement to vote

- (a) Each Member entitled to vote at a general meeting may vote in person or by proxy. Each Member has two votes, whether on a show of hands, or on a poll and will determine, at the Member's sole discretion, how those two votes are exercised by its representative(s) that are appointed under clause 15 of this Constitution.
- (b) Affiliate Members are not entitled to vote at any meeting of AFAO.

16.2 Casting vote

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair has no casting vote.

16.3 Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

16.4 Voting on resolution

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.

16.5 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

16.6 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document or otherwise express consent in a document (which may be in the form of an email) containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.

16.7 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of AFAO signed by the chair is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (i) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.

- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

16.8 Disputes to be resolved by chair

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

17 Poll

17.1 Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

17.2 Right to demand poll

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least five percent of the votes that may be cast on the resolution on a poll; or
- (c) the chair.

17.3 Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) A demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) A demand for a poll does not prevent the general meeting continuing for the transaction of any business other than the question on which a poll has been duly demanded.

18 Appointment and removal of Directors

18.1 Number of Directors

- (a) The number of Directors must not be less than five and no more than 11.
- (b) Each of the following organisations may nominate one person to be appointed as a Director on the Board of AFAO:

- (i) National Association of People with HIV Australia (NAPWHA);
 - (ii) Australian Injecting and Illicit Drug Users' League (AIVL);
 - (iii) Scarlet Alliance, the Australian Sex Workers Association (Scarlet Alliance); and
 - (iv) Anwernekenhe National Aboriginal and Torres Strait Islander HIV/AIDS Alliance (ANA).
- (c) If the person nominated under clause 18.1(b):
- (i) is at least 18 years old;
 - (ii) is not disqualified from managing corporations under Part 2D.6 of the Corporations Act; and
 - (iii) has signed a written consent to act as a Director,
that person must be appointed to the Board of AFAO.
- (d) At least two Directors must reside ordinarily in Australia.

18.2 Appointment of Directors

- (a) Subject to this Constitution, AFAO may by resolution at a general meeting appoint a natural person as a Director. Such a resolution can only be put to the annual general meeting if the proposed resolution, including the name of any candidate for appointment as a Director, is:
- (i) communicated by a Member to the Secretary at least 8 days' prior to the annual general meeting;
 - (ii) has been included in the notice of meeting given to Members, Directors and Auditor in accordance with clause 12.5A; and
 - (iii) in compliance with this Constitution and the *Corporations Act 2001* (Cth).
- (b) Subject to this Constitution, the Board may by resolution at a Board meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.
- (c) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to AFAO. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which AFAO receives the signed consent.
- (d) If the office of a Director nominated by NAPWHA, AIVL, Scarlet Alliance, or ANA is vacated, the vacancy may be filled by a nominee from the relevant organisation and must be ratified by the Board.

18.3 Term of appointment

The term of appointment of each Director is two years, with the exception of any Co-opted Director whose term of appointment is one year.

18.4 Confirmation of appointment

- (a) If a person is appointed as a Director by the Board, AFAO must confirm the appointment at the next annual general meeting.
- (b) If the appointment is not confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

18.5 Removal of Director

- (a) AFAO may remove a Director by resolution at a general meeting.
- (b) At least two months' notice must be given by the Board to AFAO of the intention to move a resolution to remove a Director at a general meeting.
- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by AFAO, a Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed that the Director:
 - (i) may submit a written statement to AFAO for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) may speak to the motion to remove the Director at the general meeting at which the resolution is to be put to vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

18.6 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of AFAO at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act;
- (f) is absent from Board meetings for a continuous period of six months without leave of absence from the Board and the Board resolves that the Director's office should be vacated;
- (g) is suspended or removed from being a Responsible Entity of AFAO by the Australian Charities and Not-for-profit Commission; or
- (h) is disqualified from being a Responsible Entity by the Australian Charities and Not-for-profit Commission.

18.7 Rotation of Directors

- (a) At the first annual general meeting following incorporation of AFAO, five Directors of AFAO are subject to retirement.
- (b) At each subsequent annual general meeting, a Director is subject to retirement at the second general meeting following the date of his or her election or appointment.
- (c) A retiring Director is eligible for re-appointment.
- (d) Unless a resolution is passed to appoint another person to fill the office of Director to be vacated by the retiring Director, a retirement by rotation at a general meeting does not become effective until the end of the meeting.

18.8 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to AFAO at its registered office.

19 Powers and duties of Board

- (a) Subject to this Constitution and the Corporations Act, the activities of AFAO are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of AFAO that are not required to be exercised by AFAO in a general meeting.

20 Chief Executive Officer

- (a) The Board may confer on a Chief Executive Officer any of the powers that the Board may exercise.
- (b) The Board may vary or revoke a conferral of any power on the Chief Executive Officer.
- (c) The Board may at any time vary or revoke an appointment of a Chief Executive Officer.

21 Negotiable instruments

All negotiable instruments and all receipts for money paid to AFAO must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

22 Board meetings

22.1 Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

22.2 Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors entitled to receive notice (if any).
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

22.3 Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

22.4 Use of technology

- (a) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.

22.5 Quorum at meetings

A quorum at a Board meeting is 50% of the Directors.

22.6 Chair of meetings

- (a) The Directors must elect:
 - (i) a Director to hold the office of President; and
 - (ii) a separate Director to hold the office of Vice President.
- (b) The Board will determine the terms on which each person is to hold such office.
- (c) The President or, in the President's absence, the Vice President, will chair each Board meeting.
- (d) If the President, or in the President's absence, the Vice President, is not present within 30 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

22.7 Passing resolutions at meetings

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person is entitled to vote and has one vote.

22.8 Casting vote

If on any resolution an equal number of votes is cast for and against a resolution, the chair has no casting vote in addition to any vote cast by the chair as a Director.

22.9 Conduct of meetings

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

22.10 Written resolutions

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document or otherwise express consent in a document (which may be in the form of an email) containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document.

22.11 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes as soon as reasonably practicable after the meeting.
- (c) The minute books must be kept at the registered office.

- (d) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

23 Directors' interests

23.1 Declaration of interest

- (a) Any Director who has a material personal interest in a contract or proposed contract of AFAO, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of AFAO.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

23.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

24 Appointment of Secretary

- (a) AFAO must have at least one Secretary.
- (b) The Board has the power to appoint the Public Officer, Chief Executive Officer or a member of the Board as Secretary on the terms and for such period as the Board may determine.
- (c) Any Secretary appointed may be removed at any time by the Board.

25 Removal and remuneration of Auditor

25.1 Remuneration of Auditor

The remuneration of the Auditor may be determined by AFAO at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

25.2 Removal of Auditor

- (a) AFAO may remove an Auditor by resolution at a general meeting.

- (b) At least two months' notice must be given by the Board to AFAO of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by AFAO, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to AFAO within seven days after receiving the notice and that the Auditor may request AFAO to send a copy of the written representations to the Members before the resolution is voted upon; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is to be put to a vote.

25.3 Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

26 Financial records

26.1 Member's access to financial records

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other record of AFAO may be inspected by a Member or any person.

26.2 Directors' access to financial records

Any Director may at any time access and inspect any financial record of AFAO.

26.3 Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record of AFAO relating to the time during which the person was a Director.

27 Notices

27.1 General

Any notice, statement or other communication under this Constitution must be in writing.

27.2 How to give a communication

- (a) In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:
 - (i) personally delivered;

- (ii) left at the person's current address as recorded in the Register of Members or Register of Affiliate Members;
- (iii) sent to the person's address as recorded in the Register of Members or Register of Affiliate Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (iv) sent by fax to the person's current fax number for notices; or
- (v) sent by email to the person's current email address for notices.

27.3 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

27.4 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

27.5 Communications by email

A communication is given if sent by email unless the sender receives a delivery failure notification indicating that the email has not been delivered to the information system of the recipient.

27.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

28 Indemnity and Insurance

28.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, AFAO may indemnify each officer, Director and Secretary or any person who has been an officer, Director or Secretary of AFAO out of the assets of AFAO against any liability, loss, damage, cost or expense incurred or to be incurred by the officer, Director or Secretary in or arising out of the conduct of any activity of AFAO or in or arising out of the proper performance of the officer's, Director's or Secretary's duties including any liability, loss, damage, cost, charge and expense incurred by that officer, Director or

Secretary in defending any proceedings, whether civil or criminal, which relate to anything done or omitted to be done or alleged to have been done or omitted to be done by the officer, Director or Secretary, in which judgment is given in the officer's, Director's or Secretary's favour or in which the officer, Director or Secretary is acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the court to the officer, Director or Secretary.

- (b) This indemnity is not intended to indemnify any officer, Director or Secretary in respect of any liability in respect of which AFAO must not give an indemnity, and should be construed and, if necessary, read down accordingly.

28.2 Documenting indemnity

AFAO may enter into an agreement containing an indemnity in favour of any officer, Director or Secretary. The Board will determine the terms of the indemnity contained in the agreement.

28.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, AFAO may pay any premium in respect of a contract of insurance between an insurer and an officer, Director or Secretary or any person who has been an officer, Director or Secretary of AFAO in respect of the liability suffered or incurred in or arising out of the conduct of any activity of AFAO and the proper performance by the officer, Director or Secretary of any duty.
- (b) If the Board determines, AFAO may execute a document containing rules under which AFAO agrees to pay any premium in relation to such a contract of insurance.

29 Winding up

29.1 Liabilities and surplus assets

- (a) At the first occurrence of:
 - (i) the winding up of AFAO; or
 - (ii) if AFAO is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, the revocation of that endorsement or AFAO ceasing to be so endorsed,

AFAO must, subject to clause 29.2, apply its assets to satisfaction of all debts and liabilities of AFAO, the payment of the costs and charges and expenses of winding up.

- (b) Any surplus assets of AFAO remaining after payment of the amounts referred to in clause 29.1(a) must be transferred to another organisation in Australia which:
 - (i) if AFAO is or was previously endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, is endorsed as a deductible gift

recipient under Subdivision 30-BA of the Tax Act or equivalent provisions; and

- (ii) has similar objects to the objects of AFAO and whose constitution prohibits the distribution of its income and property among members.

29.2 Revocation of ATO endorsement

AFAO's endorsement (if any) under Subdivision 30-BA of the Tax Act is not considered "revoked" for the purposes of clause 29.1 until the later of:

- (a) 60 days have elapsed since receiving written notice of revocation from the ATO; or
- (b) the finalisation of all objection processes or court proceedings, if any, in relation to the revocation.

Schedule

Initial Members

The following entities are the first Members of AFAO under this Constitution:

- AIDS Action Council of the Australian Capital Territory (AACACT);
- ACON Health Ltd (ACON);
- Northern Territory AIDS and Hepatitis Council (NTAHC);
- Queensland AIDS Council (QuAC);
- Tasmanian Council on AIDS, Hepatitis and Related Diseases (TasCAHRD);
- Victorian AIDS Council Inc (VAC);
- Western Australian AIDS Council Inc (WAAC);
- Australian Injecting & Illicit Drug Users League (AIVL);
- Scarlet Alliance, Australian Sex Workers Association (Scarlet Alliance);
- National Association of People with HIV Australia (NAPWHA); and
- Anwernekenhe National Aboriginal & Torres Strait Islander HIV/AIDS Alliance (ANA).