

# Constitution

Australian Association of Massage Therapists Limited

Trading as the brand Massage & Myotherapy Australia

**K&L Gates**  
Melbourne office  
Ref: CARNEGC.7373657.00030

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**Corporations Act**  
**A Company Limited by Guarantee**

**CONSTITUTION**  
**OF**  
**AUSTRALIAN ASSOCIATION OF MASSAGE THERAPISTS LIMITED**

**1. Nature of the Company**

- (a) This Company is a public company limited by guarantee.
- (b) The name of the Company is the Australian Association of Massage Therapists Limited.

**2. Definitions and Interpretation**

**2.1 Definitions**

In this Constitution unless the contrary intention appears:

**Academic Member** means a person admitted to membership of the Company under clause 6.7C;

**Affiliate Member** means a person admitted to membership of the Company under clause 6.7A;

**Associate Member** means a person admitted to membership of the Company under clause 6.7B;

**Auditor** means the Company's auditor;

**By-laws** means the by-laws of the Company passed under clause 17 from time to time;

**Chairperson** means the chairperson for the time being appointed to chair a general meeting under clause 10.3;

**Constitution** means this constitution as altered or added to from time to time;

**Board** means the board of Directors of the Company;

**Code of Ethics** means the Code of Ethics for Members prescribed by the Board from time to time;

**Company** means the Australian Association of Massage Therapists Limited;

**Corporations Act** means the *Corporations Act 2001 (Commonwealth)*;

**Direct Vote** means a vote lodged electronically;

**Director** means any person occupying the position of Director of the Company;

**Directors** means all or some of the Directors acting as a Board;

**Division** means a division of the Company under clause 6.4;

**Honorary Member** means a person admitted to membership of the Company under clause 6.8;

**Key Selection Criteria** means the selection criteria (as amended by the Board from time to time) that must be met by any candidate that nominates for a position on the Board in accordance with clause 13.1(g);

**Life Member** means a person admitted to membership of the Company under clause 6.7

**Massage Therapist** means an individual holding appropriate qualifications in respect of massage and massage therapies or myotherapy, as determined by the Board from time to time (which for the avoidance of doubt can include massage therapy and myotherapy students, former therapists and associated professionals);

**Member** means a member of the Company under clause 6.2;

**Office** means the Company's registered office;

**Ordinary Member** means a person admitted to membership of the Company under clause 6.6;

**President** means the Director for the time being elected to chair the Board;

**Register** means the register of Members;

**Registered Address** means the last known address of a Member as noted in the Register;

**Retiring Member** means a person admitted to membership of the Company under clause 6.7D;

**Seal** means the Company's common seal (if any);

**Secretary** means any person appointed by the Directors to perform any of the duties of a Secretary of the Company and if there are joint secretaries, any one or more of the joint secretaries;

**Special Resolution** means a resolution:

- (a) of which notice as required in accordance with the Corporations Act has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution; and

**Voting Member** means both Ordinary Members and Life Members.

## 2.2 Interpretation

- (a) In these clauses unless the contrary intention appears or the context otherwise requires:
  - (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (ii) the singular includes the plural and vice versa;
  - (iii) the word person includes a firm, body corporate, an unincorporated association or an authority;
  - (iv) words and expressions defined in the Act have the same meaning in this Constitution;
  - (v) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
  - (vi) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (vii) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
  - (viii) money amounts are stated in Australian currency unless otherwise specified; and
  - (ix) headings are for ease of reference only and do not affect the construction of this Constitution.
- (b) Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the clause.
  - (c) To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

### **3. Obligation of Members**

Every Member undertakes to:

- (a) promote and further the objects, interest, influence and standing of the Company; and
- (b) observe this Constitution and any rules, regulations and Code of Ethics of the Company in force from time to time;

to the best of their ability.

### **4. Objects**

The objects for which the Company is established are to:

- (a) organise and promote the profession of massage therapy and myotherapy;
- (b) encourage a high standard of knowledge and proficiency among Members;
- (c) encourage and disseminate research in the areas of massage therapy and myotherapy;
- (d) provide rules of conduct and fitness for practice that regulate Members and guide the profession. ;

- (e) seek the regulation of advertising of Massage Therapists and Myotherapists and monitor providers of massage and myotherapy education;
- (f) seek to develop and implement a uniform registration and disciplinary standard for the profession;
- (g) monitor and participate in mechanisms to ensure the quality of and delivery of massage and myotherapy training in Australia;
- (h) lobby Governments and regulators in pursuit of the objects of the Company;
- (i) provide education and training to Members and non-members;
- (j) publish newsletters and other publications;
- (k) co-operate, become members of, or affiliate with any incorporated or unincorporated association, company, educational institution, registration board or organisation which, in any way, assists to promote the objects of the Company;
- (l) watch over, improve, foster and protect the interests of its Members;
- (m) improve the social and economic position of Members;
- (n) make arrangements with any persons engaged in any trade, business, or profession for provision to the Members of any special benefits, privileges, and advantages and in particular in relation to goods and services; and
- (o) do all other such things as are necessary and conducive to or reasonably incidental to the carrying out of the objects of the Company.

## **5. Assets and Income of Company**

Subject to clause 14.2:

- (a) all assets and income of the Company from whatever source derived will be applied solely towards the promotion of the objects of the Company as set out in clause 4 and no portion thereof will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the Members or be paid as fees to the Board PROVIDED THAT nothing herein contained will prevent the payment in good faith of remuneration to any officers or employees of the Company or to any Member or any other person in return for any service actually rendered to the Company nor prevent payment of interest at a rate not exceeding interest at the rate for the time being charged by banks in Melbourne for overdrawn accounts on money lent or reasonable and proper rent, remuneration or return for the premises demised, let or licensed by any Member to the Company; and
- (b) all other payments by the Company to any Director will be approved by the Board.

## **6. Membership**

### **6.1 Number of Members**

The number of Members of the Company is unlimited, but subject to the Corporations Act, may be altered by the Board from time to time.

## 6.2 Admission

The Members of the Company will be:

- (a) the existing Members of the Company when this Constitution is adopted; and
- (b) any other persons whom the Board admits to membership in accordance with this Constitution from time to time,

including each category of Member referred to in clause 6.3.

## 6.3 Categories of Membership

- (a) The membership of the Company will consist of the following categories of Members:
  - (i) Ordinary Members;
  - (ii) Life Members;
  - (iii) Affiliate Members;
  - (iv) Associate Members;
  - (v) Academic Members;
  - (vi) Retiring Members; and
  - (vii) Honorary Members.
- (b) The Board may from time to time divide the membership of the Company into different categories of membership and determine the rights and obligations attaching to each category of membership in accordance with clause 6.14.

## 6.4 Divisions of Membership

- (a) Membership of the Company is divided into geographical regions based on the State or Territory in which a Member operates their principal place of business. These are as follows:
  - (i) Victoria;
  - (ii) New South Wales and Australian Capital Territory;
  - (iii) South Australia and Northern Territory;
  - (iv) Western Australia;
  - (v) Queensland; and
  - (vi) Tasmania.
- (b) A Member can only be a Member of one Division listed in clause 6.4(a) at any given time. For the purposes of this clause, if there is a dispute as to which Division a Member belongs, that Member will belong to the Division determined by the Board.
- (c) The Board may vary the geographical boundaries of any Division of membership as it thinks fit from time to time.

## 6.5 Application for Membership

- (a) Every application for membership of the Company must be lodged with the Secretary in writing (in the form prescribed by the Board from time to time) and must:
  - (i) specify the category of membership for which the applicant is applying;
  - (ii) be accompanied by the entrance fee and subscription payable in accordance with clause 6.9; and
  - (iii) signed by the applicant.
- (b) As soon as reasonably practicable after an application for membership is received the Board will in its absolute discretion (without being obliged to provide reasons):
  - (i) determine the admission or rejection of the applicant; or
  - (ii) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- (c) An applicant will be admitted to membership of the Company if 75% of the Directors present and entitled to vote at the Directors' meeting held under clause 6.5(b), vote by resolution to admit the applicant.
- (d) If the Board approves an application for membership, the Secretary must, as soon as practicable notify the applicant in writing of their approval for membership and that such membership will be effective from the date on which the applicant pays all money payable to the Company under clause 6.9 and their name is entered into the Register.
- (e) If the Board rejects an application for membership, the Secretary must as soon as practicable notify the applicant in writing that their application has been rejected.
- (f) A right, privilege or obligation of a person by reason of membership of the Company:
  - (i) is not capable of being transferred or transmitted to another person; and
  - (ii) terminates upon the cessation of membership whether by death or resignation or otherwise in accordance with this Constitution.

## 6.6 Ordinary Member

An Ordinary Member:

- (a) must be aged 18 years or over;
- (b) must be a Massage Therapist or Myotherapist;
- (c) will be entitled to attend and vote at any general meeting of the Company in accordance with clause 12; and
- (d) is eligible to be appointed to the Board.

## 6.7 Life Member

- (a) A Life Member may be appointed by the Board (in the Board's sole discretion) provided they:
  - (i) have been:
    - (A) an Ordinary Member for at least 7 years; or
    - (B) a Director of the Company for at least 5 years; and
  - (ii) have made a significant contribution to:
    - (A) the Company; or
    - (B) the occupation of massage therapy or myotherapy.
- (b) A Life Member is:
  - (i) exempt from the requirement to pay an annual subscription;
  - (ii) entitled to attend and vote at any general meeting of the Company in accordance with clause 12.1; and
  - (iii) is eligible to be appointed to the Board.

### 6.7A Affiliate Member:

An Affiliate Member:

- (a) must hold any qualifications deemed necessary by the Board from time to time of an Affiliate Member;
- (b) is entitled to attend any general meeting of the Company but will not be entitled to vote; and
- (c) will not be entitled to be appointed to the Board.

### 6.7B Associate Member

An Associate Member:

- (a) must be either an individual:
  - (i) studying a massage therapy or myotherapy course as approved by the Board from time to time; or
  - (ii) holding any qualifications deemed necessary by the Board from time to time for an Associate Member;
- (b) is entitled to attend any general meeting of the Company but will not be entitled to vote; and
- (c) will not be entitled to be appointed to the Board.

### **6.7C Academic Member**

An Academic Member:

- (a) must be either an individual:
  - (i) employed in the delivery or organisation of a massage or myotherapy course as approved by the Board from time to time; or
  - (ii) holding any qualifications deemed necessary by the Board from time to time for an Academic Member;
- (b) is entitled to attend any general meeting of the Company but will not be entitled to vote; and
- (c) will not be entitled to be appointed to the Board.

### **6.7D Retiring Member**

A Retiring Member:

- (a) must be a person who:
  - (i) is a retired Ordinary Member ; and
  - (ii) has been a Member of the Company for not less than 7 continuous years (in any other category of Membership) at the time they apply to be a Retiring Member;
- (b) is entitled to attend any general meeting of the Company but will not be entitled to vote; and
- (c) will not be entitled to be appointed to the Board.

### **6.8 Honorary Member:**

An Honorary Member:

- (a) must be an individual with knowledge of the massage or myotherapy industry and empathy for natural health, as determined by the Board;
- (b) must be a person that can demonstrate an interest in the objects of the Company;
- (c) must hold any qualifications deemed necessary by the Board from time to time of an Honorary Member;
- (d) is entitled to attend any general meeting of the Company but will not be entitled to vote; and
- (e) is eligible for appointment to the Board under clause 13.1(g).

### **6.9 Entrance Fee and Annual Subscription**

- (a) The entrance fee and annual subscription payable by Members (including each category of Member) will be determined by the Board from time to time.
- (b) All annual subscriptions will be due and payable on each anniversary of the Member's admission.

- (c) The Board may from time to time in its absolute discretion, give notice to Members:
  - (i) revoking fees;
  - (ii) postponing fees; or
  - (iii) allowing fees to be paid in instalments.

### **6.10 Register of Members**

Upon payment of any entrance fee applicable under clause 6.9, the Secretary will cause to be entered into the Register the name and address of the new Member, as supplied by the Member on their application for membership. The Secretary will hold all signed applications and produce them if required to verify the identity of any person voting at any election or meeting of the Company.

### **6.11 Disciplinary Procedures**

- (a) Notwithstanding clause 6.13 if any Member wilfully refuses or neglects to comply with the provisions of this Constitution or is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company, the Board will have the power by resolution to expel, censure, fine, or suspend the Member from the Company.
- (b) For the avoidance of doubt, conduct will be considered to be unbecoming if it
  - (i) causes a majority of the Board to think less of the person's professional integrity;
  - (ii) brings the Company into disrepute; or
  - (iii) was in breach of the Code of Ethics and standards of practice.
- (c) Any action taken by the Board in accordance with clause 6.11(a) is effective only after the Member has been given 14 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed.

### **6.12 Cessation of Membership**

- (a) A Member will cease to be a Member if:
  - (i) the Member resigns from the Company by giving written notice of their resignation, such resignation to take effect from the date of receipt of that notice by the Secretary;
  - (ii) 75% of the Directors present and entitled to vote at a meeting of the Directors expel a Member by resolution:
    - (A) whose status or conduct in their opinion renders it undesirable that the Member continue to be a Member; and
    - (B) if the Board in accordance with sub-clause 6.12(a)(ii)(A) gives the Member not less than 14 days' notice of the resolution and the opportunity to be heard at the meeting at which the resolution is proposed;
  - (iii) monies due under clause 6.9 remain unpaid for:

- (A) a period of 30 days after falling due; and
  - (B) a further 30 days after a notice requiring payment has been issued by the Secretary to the Member; or
- (iv) the Member:
- (A) dies;
  - (B) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
  - (C) is an undischarged bankrupt, or has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* (or a similar law of another country) and the terms of the deed have not been fully complied with, or the person's creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* (or a similar law of another country) and final payment has not been made under the composition;
  - (D) fails to notify the Company they have been charged with an indictable offence, within 10 business days of the date of any charge being laid;
  - (E) is convicted of an indictable offence; or
  - (F) ceases to hold the requisite qualifications for the relevant category of Membership.
- (b) Any Member ceasing to be a Member:
- (i) will not be entitled to any refund (or part refund) of their subscription; and
  - (ii) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

### 6.13 Right of Appeal against Discipline or Suspension

A Member has a right to appeal against their expulsion (or other disciplinary action) under clause 6.12(a)(ii) in accordance with the Company's 'Guidelines on Disciplinary and Dispute Resolution Procedures' established under clause 17.

### 6.14 Variation of Membership

The Board may:

- (a) create a new category or Division of Member;
- (b) in accordance with the Corporations Act, vary or cancel rights of Members in a category; or
- (c) transfer a Member or category of members from one category or Division to another,

if:

- (d) 75% of the Directors present and entitled to vote at a Directors' meeting, vote by resolution in favour of such creation, variation, cancellation or transfer; and

- (e) such creation, variation, cancellation or transfer is not oppressive conduct or would not unfairly prejudice that category or Division of Members.

## **7. Contribution of Members**

- (a) The liability of Members of the Company is limited.
- (b) Every Member undertakes to contribute to the assets of the Company, in the event of the same being wound up while they are a Member or within one year after they cease to be a Member, for the payment of debts and liabilities of the Company incurred before the time at which the Member ceased to be a Member and for the costs charged and expenses of winding up and for the adjustment of rights of the contributories among themselves, such amount as may be required not exceeding \$1.00.

## **8. Powers of Attorney**

- (a) If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- (b) If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- (c) The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## **9. General Meetings**

### **9.1 Annual General Meeting**

If required to do so by the Corporations Act, the Company must hold an annual general meeting of the Company in accordance with the Corporations Act.

### **9.2 Power to convene general meeting**

Any three Directors may, whenever the Directors think fit, convene a general meeting of Members.

### **9.3 Notice period**

- (a) Subject to the Corporations Act and clause 9.3(b), the Company must give 21 days' notice of general meetings (including annual general meetings).
- (b) The Company may call, on shorter notice than that specified in clause 9.3(a):
  - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and
  - (ii) any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.

#### **9.4 Notice of general meetings**

Written notice of a general meeting must be given as provided in this Constitution to:

- (a) every Member;
- (b) every Director; and
- (c) the auditor (if any).

#### **9.5 Content of Notice**

- (a) A notice calling a general meeting:
  - (i) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
  - (ii) must state the general nature of the business to be transacted at the meeting; and
  - (iii) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- (b) A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
  - (i) the consideration of the annual financial report, Board report and the Auditor's report;
  - (ii) the election of members of the Board; or
  - (iii) the appointment and fixing of the remuneration of the Auditor.

#### **9.6 Nature of business**

All business will be special that is transacted at a general meeting, with the exception of:

- (a) the consideration of the accounts, balance sheets, and the reports of the Directors and auditors; and
- (b) the election of the Directors and auditors (if any).

#### **9.7 Failure to Give Notice**

The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings of or any resolution passed at a general meeting.

#### **9.8 Postponement or Cancellation of general meeting**

- (a) The Board may postpone or cancel any general meeting as it thinks fit subject to any requirements at law.
- (b) The Board must give notice of the postponement or cancellation to all persons referred to in clause 9.4 entitled to receive notice from the Company.

## 10. Proceedings at general meetings

### 10.1 Quorum

- (a) No business may be transacted at a meeting unless a quorum of Voting Members is present.
- (b) A quorum of Voting Members is 10 Voting Members (present in person, by proxy or direct vote).

### 10.2 Effect of No Quorum

Where a quorum is not present within 30 minutes after the time appointed for the general meeting:

- (a) if the general meeting was called on the requisition of Voting Members, it is automatically dissolved; or
- (b) in any other case:
  - (i) it will stand adjourned to the same time and place 7 days after the meeting, or to another day, time and place determined by the Director; and
  - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

### 10.3 Chairperson

- (a) The President, or in the President's absence the Vice-President, will be the Chairperson at every meeting of Members.
- (b) If:
  - (i) there is no President or Vice-President; or
  - (ii) neither the President nor Vice-President is present within 15 minutes after the time appointed for holding the general meeting; or
  - (iii) the President and Vice-President are unwilling to act as Chairperson of the general meeting,

the Directors present may elect a Chairperson of the general meeting.
- (c) If no election is made under clause 10.3(b), then:
  - (i) the Voting Members may elect one of the Directors present as Chairperson; or
  - (ii) if no Directors are present or willing to take the chair, the Voting Members may elect one of the Members present as Chairperson.
- (d) If there is a dispute at a general meeting about a question of procedure, the Chairperson may determine the question.

## 10.4 Adjournment

- (a) The Chairperson of a general meeting at which a quorum is present:
  - (i) may in their discretion adjourn the general meeting with the meeting's consent; or
  - (ii) must adjourn the general meeting if the meeting directs them to do so.
- (b) An adjourned general meeting may take place at a different venue to the initial general meeting.
- (c) The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- (d) Notice of an adjourned general meeting need only be given in accordance with clause 10.2 if a general meeting has been adjourned for more than 21 days.

## 11. Voting at general meetings

### 11.1 Circular resolutions

- (a) A resolution may be passed without a general meeting being held if all the 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 Members and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Member signs the document, and satisfies any requirement in this Constitution or the Corporations Act that the resolution be passed at a general meeting.

### 11.2 Use of technology

The Company may hold a meeting at 2 or more venues using any technology that gives Members entitled to vote, a reasonable opportunity to participate.

### 11.3 Voting

- (a) Subject to the Corporations Act an ordinary resolution is carried if a majority of the eligible votes cast on the resolution are in favour of the resolution.
- (b) Votes may be cast in person, by proxy by Direct Vote or by post if deemed acceptable by the Board, provided any postal votes are received by the Company, at least 48 hours (or such other time frame as specified by the Board in the notice of meeting) before the relevant meeting at which the vote is to be cast.
- (c) A resolution put to the vote at a general meeting is to be either:
  - (i) decided on a ballot (including attorney and Direct Votes); or
  - (ii) decided on a show of hands,
 as determined by the Chairperson, having regard to the nature of the proposed resolution.

- (d) Prior to putting a resolution to a general meeting, the Chairperson must advise the meeting as to the number of the Direct Votes and proxy votes held.
- (e) Unless a poll is demanded:
  - (i) a declaration by the Chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (ii) an entry to that effect in the minutes of the meeting,
 are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (f) The demand for a poll may be withdrawn.
- (g) A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

#### **11.4 Voting by Poll**

- (a) A poll will be taken when and in the manner that the Chairperson directs.
- (b) The result of the poll will be the resolution of the meeting at which the poll was demanded.
- (c) The Chairperson may determine any dispute about the admission or rejection of a vote.
- (d) The Chairperson's determination, if made in good faith, will be final and conclusive.
- (e) A poll demanded on the election of the Chairperson or the adjournment of a general meeting must be taken immediately.
- (f) After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **12. Votes of Members**

### **12.1 Entitlement to Vote**

- (a) Affiliate Members, Associate Members, Academic Members, Retiring Members, Honorary Members and any other category of Membership that is expressed not to have a right to vote at a general meeting (either under this Constitution or in accordance with the rights of the relevant Members determined under clause 6.14), will have no right to vote at any general meeting of the Company.
- (b) Every Voting Member present in person is entitled to one vote whether on a show of hands, by ballot or on a poll.
- (c) Every attorney, proxy or Direct Vote submitted subject to 11.3(b) is entitled to one vote.
- (d) A declaration by the Chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands, votes made and/or the proxies received. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

## 12.2 Objections

- (a) An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered their vote.
- (b) An objection must be referred to the Chairperson of the general meeting, whose decision is final.
- (c) A vote which the Chairperson has not disallowed because of an objection is valid for all purposes.

## 12.3 Casting Vote of Chairperson

In the case of an equality of votes (whether on a show of hands, by Direct Vote, by proxy, by ballot or on a poll), the Chairperson of the meeting has a casting vote (in addition to any vote that the Chairperson may have as a Member).

## 12.4 Votes by Proxy

- (a) A Voting Member may appoint a person as that Member's proxy to attend and vote for that Member at a meeting of the Company.
- (b) A proxy need not be a Member of the Company.
- (c) A proxy may demand or join in demanding a poll.
- (d) A proxy or attorney may vote on a poll.

## 12.5 Document Appointing Proxy

An instrument appointing a proxy:

- (a) may be contained in a facsimile or email;
- (b) must be in writing under the hand of the appointer or of an attorney duly authorised in writing;
- (c) may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument;
- (d) is deemed to confer authority to demand or join in demanding a poll; and
- (e) must (except in the case of proxies appointed under power of attorney), as nearly as the circumstances permit, be in the following form or in such other form as the Directors otherwise prescribe having regard to the requirements under the Corporations Act:

### **Australian Association of Massage Therapists Ltd**

**(Company)**

I,

of

being a Member of the Company appoint:

of

or if no person is named, the Chairperson of the general meeting as my proxy to vote and act for me and on my behalf at the general meeting of members of the Company to be held on *[date]* and any other day to which that general meeting is adjourned or postponed.

My proxy is authorised to exercise my voting rights and I direct my proxy to vote in the following manner:

No	Resolution <i>[list in sequence of ordinary and special business]</i>	For	Against	Abstain
1.				
2.				
3.				
4.				

If you have appointed the Chairperson as your proxy and you do not wish to direct the Chairperson how to vote, please place a mark in the box (below).

By marking this box, you acknowledge that the Chairperson may exercise your proxy even if they have an interest in the outcome of the resolution and votes cast by the Chairperson other than as proxy holder will be disregarded because of that interest.

The Chairperson intends to vote in favour of/against the resolutions *[insert details]*.

**Dated**

**Signed**

Signature of Member (note if the Member is a company, the proxy form should be signed in accordance with the Member company's constitution and with the *Corporations Act 2001 (Cth)*.)

## 12.6 Lodgement of Proxy

- (a) The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (i) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - (ii) the taking of a poll on which the appointee proposes to vote.

- (b) The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
  - (i) the Office;
  - (ii) a facsimile number or electronic address at the Office; or
  - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **12.7 Validity**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## **12.8 Life of proxy**

An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

## **12.9 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 meeting; and
- (b) of sufficient magnitude, in the opinion of the Chairperson, as to invalidate the resolution.

## **13. Board**

### **13.1 Number of Directors**

The total number of Directors of the Company will be such number (being not less than 3 and not more than 9) and will be comprised of the following:

- (a) 1 Director, that is a Member of the Victorian Division, as elected by the Voting Members of that division;
- (b) 1 Director, that is a Member of the New South Wales and Australian Capital Territory Division, as elected by the Voting Members of that division;
- (c) 1 Director, that is a Member of the South Australian and Northern Territory Division, as elected by the Voting Members of that division;

- (d) 1 Director, that is a Member of the Western Australian Division, as elected by the Voting Members of that division;
- (e) 1 Director, that is a Member of the Queensland Division, as elected by the Voting Members of that division;
- (f) 1 Director, that is a Member of the Tasmanian Division, as elected by the Voting Members of that division; and
- (g) up to 3 persons who are either Ordinary Members or Honorary Members, appointed by the Board that meet the Key Selection Criteria.

### **13.2 Director Qualifications**

A Director must:

- (a) be an Ordinary Member or Honorary Member of the Company.
- (b) be eligible for appointment in accordance with their category of membership
- (c) not have been subject to, or required by the company to undertake any remedial action, sanction or other similar disciplinary outcome as a result of their conduct or behaviour as a therapist (whether in breach of the Code of Ethics or otherwise) during their period as a Member; and
- (d) consent in writing before being appointed.

### **13.3 Election of Directors**

- (a) The Board will determine the process for the election of Directors by the Members of each Division.
- (b) The process of election must occur prior to the annual general meeting with the result to be announced at the annual general meeting and the elections to be effective from close of that annual general meeting.

### **13.4 Removal of Directors**

The Company may remove a Director from office in accordance with the Corporations Act from time to time.

### **13.5 Vacation of Office**

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer their affairs;
- (c) ceases to be a Member;
- (d) resigns by notice in writing to the Company; or
- (e) is absent from three or more Directors' meetings unless the Board agrees otherwise.

### **13.6 Appointment to fill casual vacancy**

- (a) The Board may expressly resolve not to fill a casual vacancy.
- (b) Subject to clause 13.6(a), if any Director appointed pursuant to clauses 13.1(a) to (f) ceases to hold office the Voting Members of the Division that appointed that Director, may at any time elect and appoint another Director to fill the casual vacancy on the Board until the end of the term of the vacating Director.

### **13.7 Appointment to fill vacancies**

- (a) At any general meeting at which a Director retires the Voting Members of the Division that appointed that Director (if applicable) must elect another Director to fill the vacated office in accordance with clause 13.3
- (b) Any Director appointed to fill a vacancy will hold office only until the end of the term of the Director they replaced but will be eligible to stand for re-appointment.

### **13.8 Rotation and term of office for Directors**

- (a) Each Director will hold office for a period of 3 years.
- (b) At each annual general meeting of the Company, one third of the Directors elected under clauses 13.1(a) to 13.1(f) (inclusive), being those longest in office, will retire.
- (c) Subject to the Corporations Act and clause 13.9, a retiring Director will be eligible for re-appointment by the Voting Members of the Division that appointed that Director.

### **13.9 Maximum Period of Office**

- (a) Subject to this clause 13.9, a person will not be eligible for re-appointment as a Director if that person would immediately prior to the proposed re-appointment have served as a Director of the Company consecutively throughout the immediately preceding nine years.
- (b) Notwithstanding Clause 13.9(a) a Director who has held office for nine consecutive years will be eligible for re-election or appointment from the following annual general meeting.

## **14. Powers and Duties of the Board**

### **14.1 Powers and Duties of the Board**

- (a) The business of the Company is managed by the Board who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- (b) Without limiting the generality of clause 14.1(a), the Board may exercise all the powers of the Company to:
  - (i) borrow money;
  - (ii) charge any property or business of the Company;
  - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and

- (iv) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

## 14.2 Payments to Directors

No payment will be made to any Director other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Board;
- (b) for services rendered in their capacity as a Director, provided such payments have been approved by the Voting Members;
- (c) for any service rendered to the Company by a Director in a professional or technical capacity, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board of and is not more than an amount which commercially would be reasonable payment for the service; and
- (d) relating to an indemnity in favour of the Director and permitted by the Corporations Act or a contract of insurance permitted by the Corporations Act.

## 14.3 Directors' Interests

- (a) No contract made by a Director and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Member holding office as a Director or because of the fiduciary obligations arising out of that office.
- (b) No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Member holding office as a Director or because of the fiduciary obligations arising out of that office.
- (c) A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- (d) Subject to clause 14.1, a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (i) enter into any agreement or arrangement with the Company;
  - (ii) hold any office or place of profit other than as auditor in the Company; and
  - (iii) act in a professional capacity other than as auditor for the Company,
 and a Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- (e) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote on the matter,

unless permitted by the Corporations Act to do so, in which case a Director may.

- (iii) be counted in determining whether or not a quorum is present at any meeting of the Board considering that contract or arrangement or proposed contract or arrangement;
  - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (f) A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by a Director as a director or officer of, or from having an interest in, that body corporate.

#### **14.4 Remaining Directors**

- (a) The Directors may act even if there are vacancies on the Board.
- (b) If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
  - (i) appoint a Director; or
  - (ii) call a general meeting.

#### **14.5 Validity of Acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a Director; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

#### **14.6 No alternates**

No Director has the power to appoint an alternate director.

### **15. Delegation to Committees**

- (a) The Directors may delegate any of their powers, other than those which by law or this Constitution, must be dealt with by the Directors as a Board, to a committee or committees.
- (b) The Directors may at any time revoke any delegation of power to a committee.
- (c) Each committee must have at least one Director as a member.

- (d) A committee must exercise its powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.
- (e) A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- (f) Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

## **16. Proceedings of the Board**

### **16.1 Directors' Meetings**

- (a) A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- (b) A Directors' meeting called under clause 16.1(a) must be called on at least two business days written notice of a meeting to each Director.
- (c) It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- (d) Subject to the Corporations Act:
  - (i) Directors meetings may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion and to which all Directors have consented.
  - (ii) the Directors need not all be physically present in the same place for a Directors meeting to be held.
  - (iii) a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- (e) The Directors may meet together, adjourn and regulate their meetings as they think fit.
- (f) A quorum of five Directors is required.
- (g) Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the President may call a general meeting of Members to deal with the matter.
- (h) Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

### **16.2 Voting at Directors' meetings**

Subject to this Constitution, questions arising at a Directors' meeting are to be decided by a majority of votes of the Directors present and voting and, subject to this clause 16.2 each Director has one vote.

### 16.3 President and Vice-President

- (a) The Directors may elect a Director as President, who will act as Chairperson of all Directors' meetings.
- (b) The President will hold office for an initial term of two years subject to clause 16.4 or until such time as they cease to be a Director of the Company, whichever first occurs.
- (c) Subject to this clause 16.3, a President shall not be eligible for election or re-election if that Director shall immediately prior to the proposed election or re-election have served as the President of the Board consecutively throughout the immediately preceding 4 years.
- (d) The Directors may elect from their number, a Vice-President, who will act as Chairperson of Directors meetings if the President is either unable or unwilling to act.
- (e) The Vice-President will hold office for an initial term of one year or until such time as they are no longer a Director of the Company, whichever first occurs.
- (f) If no President is elected or if the President and Vice-President are not present at any Directors meeting within fifteen minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be Chairperson of the meeting.

### 16.4 Performance of President

- (a) The Board may, acting reasonably, determine from time to time any performance criteria which the President must comply with in order to maintain their position.
- (b) If the Board determines that the President has failed to comply with any performance criteria required in accordance with clause 16.4(a), then the Board may resolve to remove the relevant Director from the position of President.

### 16.5 Circulating Resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors 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 Directors and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Director signs the document.

### 16.6 Minutes and Registers

- (a) The Directors must cause minutes to be made of:
  - (i) the names of the Directors present at all the Directors meetings and meetings of any committees and sub-committees;
  - (ii) all proceedings and resolutions of general meetings, the Directors' meetings and meetings of any committees and sub-committees;
  - (iii) all resolutions passed by the Directors in accordance with clause 16.4;

- (iv) all appointments of officers;
  - (v) all orders made by the Directors; and
  - (vi) all disclosures of interests made under clause 14.3
- (b) Minutes must be signed by the Chairperson of the meeting or by the Chairperson of the next meeting of the relevant body.
- (c) The Company must keep all registers required by this Constitution and the Corporations Act.

## 17. By-laws

The Board may by special resolution of the Board make, repeal and alter By-laws not inconsistent with this Constitution or any matter within the Board's power to regulate.

## 18. Appointment of Attorneys and Agents

- (a) The Board may from time to time by resolution or power of attorney executed in accordance with the Corporations Act, appoint any person to be the attorney or agent of the Company:
- (i) for the purposes;
  - (ii) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);
  - (iii) for the period, and
  - (iv) subject to the conditions,
- determined by the Board.
- (b) An appointment by the Board of an attorney or agent of the Company may be made in favour of:
- (i) any Company;
  - (ii) the members, directors, nominees or managers of any Company or firm; or
  - (iii) any fluctuating body of persons whether nominated directly or indirectly by the Board.
- (c) A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Board think fit.
- (d) The Board may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- (e) An attorney or agent appointed under this clause 18 may be authorised by the Board to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## **19. Chief Executive Officer**

- (a) The Board may appoint a Chief Executive Officer for any period it so determines and at such remuneration as the Board from time to time determines.
- (b) In accordance with the Corporations Act and this Constitution the Board may delegate any or all of its powers to the Chief Executive Officer from time to time.

## **20. Secretary**

- (a) If required by the Corporations Act, there must be at least one Secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- (b) The Secretary is entitled to attend and be heard on any matter at all Board and general meetings.

## **21. Seals**

### **21.1 Common Seal**

If the Company has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Board or a Committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Member of the Board and be countersigned by another Member of the Board, the Chief Executive Officer, Secretary or another person appointed by the Board to countersign the document.

### **21.2 Duplicate Seal**

If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:

- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal';
- (b) must not be used except with the authority of the Board.

## **22. Inspection of Records**

### **22.1 Inspection of Records**

- (a) Except as otherwise required by the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors of the Board.
- (b) A Member other than a Director of the Board does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.

## **23. Notices**

### **23.1 Service of Notices**

- (a) Notice may be given by the Company to any person who is entitled to notice under this Constitution:
  - (i) by serving it on the person; or
  - (ii) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- (b) A notice sent by post is taken to be served:
  - (i) by properly addressing, prepaying and posting a letter containing the notice; and
  - (ii) in Australia to an Australian address, on the second day after posting; or
  - (iii) in any other case, on the tenth day after posting; or
- (c) A notice sent by facsimile transmission or electronic notification is taken to be served:
  - (i) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (ii) on the day after its despatch.
- (d) If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice Board at the Office.
- (e) A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this clause.
- (f) A certificate in writing signed by a Member of the Board, Chief Executive Officer or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- (g) Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- (h) All notices sent by post outside Australia must be sent by prepaid airmail post.

### **23.2 Persons Entitled to Notice**

- (a) Notice of every general meeting must be given to:
  - (i) every Member,
  - (ii) every Director of the Board; and
  - (iii) any Auditor.
- (b) No other person is entitled to receive notice of a general meeting.

## **24. Audit and Accounts**

### **24.1 Company Must Keep Accounts**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited;

and must allow a Director of the Board and the auditor to inspect those records at all reasonable times.

### **24.2 Audit**

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report in accordance with the requirements of the Corporations Act. The eligibility, removal, remuneration, rights and duties of the auditor are regulated by the Corporations Act.

### **24.3 Financial Reporting**

The Board must cause the Company to prepare a financial report and a Board report that comply with the Corporations Act and must report to the Members in accordance with the Corporations Act no later than the deadline set by the Corporations Act.

### **24.4 Conclusive Reports**

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within three months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

## **25. Winding up**

If upon the winding up or dissolution of the Company, there remains after satisfaction of all its debts and liabilities any property whatsoever, the same will not be paid to or distributed among the Members of the Company but will be given or transferred to some other not-for-profit institution or institutions, organisation or organisations having objects similar to the objects of the Company, and which prohibits the distribution of its income and property amongst its Members to an extent at least as great as imposed on the Company under or by virtue of this clause, determined by a Special Resolution of Members passed at a general meeting or in default thereof by such Judge of the Supreme Court of Victoria as may have or acquires jurisdiction in the matter.

## **26. Indemnity**

- (a) To the extent permitted by law and subject to the restrictions contained in the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

- (b) To the extent permitted by law and subject to the restrictions contained in the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- (c) The amount of any indemnity payable under clauses 26(a) or 26(b) will include an additional amount (GST Amount) equal to any GST payable by the officer being indemnified (Indemnified Officer) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- (d) For the purposes of this clause 26, officer means:
  - (i) a Director of the Board; or
  - (ii) an Officer of the Company as determined by the Corporations Act.

## **27. Insurance**

The Company may, in respect of each Director of the Board and Chief Executive Officer of the Company (and any other officer or former officer of the Company or its related bodies corporate) to the extent permitted by law, purchase and maintain insurance or pay or agree to pay a premium for insurance against any liability incurred by that person as an officer of the Company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever outcome.

## **28. Variation Or Amendment Of Constitution**

This Constitution may be varied or amended from time to time in accordance with the Corporations Act.