

# Summary of constitution and governance matters

## Australian, New Zealand and Asian Creative Arts Therapies Association Ltd

Item	Old Rule	New Rule	Key Consideration
Name	1	-	The proposed name of the company will be ' <b>Australian, New Zealand and Asian Creative Arts Therapies Association Ltd</b> ', which is currently available on ASIC's register and under the <i>Corporations Act 2001</i> (Cth) ( <b>Corporations Act</b> ). The company may subsequently obtain a separate business name, e.g. ANZACATA, etc. Unlike incorporated associations, company constitutions are not required to include the name within a specific rule.
Objects	3	2	The objects have been drafted to align with the Australian Charities and Not-for Profits Commission ( <b>ACNC</b> ) requirements for a charity, which may understand may be pursued in due course. The objects have also been refined and, to the extent they are better characterised as activities (rather than objects), are included under rule 2.1(b) instead.
Not-for-profit	3.2	3	Both constitutions include standard provisions for not-for-profit entities, namely that the income and assets must only be applied towards promoting its objects. However, the proposed new constitution reflects modern provisions, including meeting the requirements of the ACNC (again, to assist if that option is later pursued). It also provides that no income or property of the company may be paid or transferred, directly or indirectly to the member unless, for example, in carrying out the company's purpose or in return for services or goods, etc. The proposed new constitution contemplates that any payments to directors must be approved by the directors.
Membership	5	4	There is only one class of membership for the purposes of the constitution, which is 'Governing Membership', which will be the only group that is formally entitled to receive notices, attend, and vote at general meetings. The number of Governing Members is unlimited. Admission to membership is at the complete discretion of the board and may be refined based on board policy.
Associate Members	5	4.3	Outside of the constitutional and Corporations Act framework, the company may also recognise individuals or body corporates as 'Associate Members'. The board of directors may determine separate designations of Associate Membership, including the initial and ongoing eligibility, rights, privileges, and other obligations within each designation.

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			<p>The proposed constitution makes it clear that Associate Members are not 'members' under the constitution or the Corporations Act.</p> <p>The Associate Members will be subject to the terms and conditions of their recognition, including any specific eligibility criteria, annual fees, and renewal and termination process, etc. – as determined by the board.</p>
Membership fee	7	4.7	<p>Although both constitutions provide that the amount of an application, membership or 'subscription' fee will be determined by the board, the company constitution simplifies the approach with a specific delegation that the board will determine the level of any fees, along with the process of payment.</p>
Resignation and termination of membership	9 - 10	4.8	<p>The new constitution reflects many of the principles in the rules of the incorporated association involving resignation and termination of membership. The new constitution clarifies that that the board may terminate a member's membership if, for example, the member:</p> <ul style="list-style-type: none"> <li>(a) is convicted of a crime, which, in the view of the relevant sub-committee of the directors, has a bearing on their fitness to practice as an Arts Therapist;</li> <li>(b) fails to meet the Continuing Professional Development and supervision requirements in accordance with rule 4.10 (see below);</li> <li>(c) becomes bankrupt or insolvent;</li> <li>(d) has membership fees in arrears; and</li> <li>(e) has conducted itself, himself or herself in a way the board consider to be injurious or prejudicial to the character or interests of the company.</li> </ul> <p>The constitution provides that the board must first give the member written notice of its intention to terminate and the reason to terminate. This framework will only apply to Governing Members.</p> <p>A member may otherwise resign by giving notice to the company.</p>
Continuing Professional Development	8	4.10	<p>A similar provision on the Continuing Professional Development requirements was adopted. The term 'Continuing Professional Development' is defined in the definitions section in rule 1.1.</p> <p>The new constitution also clarifies the board may develop, adopt, and publish a 'Continuing Professional Development' policy, which it may amend from time to time.</p> <p>The new constitution contemplates that the policy will apply to Governing Members (being those recognised as professional level members) and those individuals recognised as Associate Members by the board from time to time.</p>
Member guarantee	-	5.1(b)	<p>Unlike incorporated associations, a company limited by guarantee structure requires that each Governing Member agrees to contribute a guaranteed amount if the company is wound up and unable to pay its debts with the existing capital.</p>

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			The constitution provides that the guarantee amount is \$10, which is a standard guarantee amount for this type of company. The guarantee amount is separate from the application or annual membership fee.
Winding up	26	5.2	The winding up provision in the proposed constitution is largely the same as the current constitution, but reflects modern drafting to meet the ACNC and ATO requirements (if applicable).
Quorum at general meetings	19	7.6	The current incorporated association rules provide that quorum at general meetings will be satisfied where either 10 or 25% of the voting members are present. The company constitution clarifies that quorum will be satisfied where 10 members are present.
Directors	11	8.1	The Corporations Act requires a minimum of 3 directors for a public company limited by guarantee. The proposed constitution requires a minimum of three, but no more than nine directors with up to seven elected by the members and up to two appointed by the board. Rule 8.3 describes the election process. The executive roles of 'President', 'Vice-president', and 'Treasurer' are concepts that are specific to incorporated associations. The board may adopt similar roles of the chair, acting-chair, chair of the finance committee (or a particular director delegated by the board with certain responsibilities in relation to the company's accounts), etc.
Qualification	11.4	8.3	The current rules of the incorporated association require a board member to be a member. The only qualification in the proposed constitution is that an individual must be supportive of the company's objects.
Appointment of Chair	12	8.5	The company constitution provides that the Chair of the board is appointed by the directors, rather than by election of the members (as would be the case for the President in the context of an incorporated association).
Term of directorship	11.2 – 11.3	8.6	The new constitution provides for a term directorship of three years and, if eligible and nominated, be elected for two consecutive terms. In contrast, the existing rules contemplate a maximum term of 4 years for the 'committee of management' (i.e. the executive management committee members, and three years for all other committee members). This change will set all directors on an equal basis for terms.
Removal and vacating office	11	8.7-8.9	A company director may be removed from office by a resolution of members of the company or otherwise under the provisions set out in the constitution, Corporations Act, and (if applicable) the ACNC Act, or other applicable legislation.
Remuneration	-	-	The constitution contemplates that the directors will not be remunerated for their services as directors, but may be reimbursed for reasonable expenses incurred when fulfilling their obligations.
Quorum of directors	17.2	10.4	Under the current constitution the quorum required for a directors' meeting is half of the elected directors. Under the proposed constitution, <i>more</i> than half of the directors constitute a quorum.

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Directors' decisions	17.3	10.6	The proposed constitution contemplates that the directors must aim to make decisions by consensus of the board in the first instance. However, if a consensus on a particular decision is not met, then any questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present and entitled to vote on the matter. If the votes are equal on a resolution, the chair of the meeting has a casting vote in addition to a deliberative vote. This is similar to the existing provisions under the incorporated association rules.
Sub-committees	-	10.8	The proposed company constitution includes a specific provision on the establishment of sub-committees and the delegation of decision making powers to it to assist with the governance of the board, e.g. sub committees on finance, audit and risk or Professional Registration Membership sub-committee, etc.
Advisory groups	-	10.9	The proposed company constitution introduces a new rule to give the board the power to establish advisory groups to advise the board on technical or strategic issues. Advisory groups do not usually have any decision making power.
Secretary	14	11	The company must have a company secretary who may also be a director. The board may appoint, suspend or remove the secretary from that position. The members will not be required to elect an individual to fulfil this role specifically.
Indemnity and insurance	-	12	The company constitution contemplates that the company will indemnify its officers and directors. It provides that the company will maintain adequate insurance.
Common seal	24	N/A	Under the proposed constitution the company will not have a common seal.