



# CONSTITUTION OF ASSOCIATION

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# Part 1 Preliminary

## 1 Definitions

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### 1.1 Definitions

In this Constitution, unless a contrary intention appears:

- (a) **Ability Options** means Ability Options Ltd ACN 003 175 335;
- (b) **Ability Options Committee Member** means a Committee Member referred to in **rule 18.2(a)**;
- (c) **Ability Options Member** means:
  - (i) Ability Options in its capacity as a Member; or
  - (ii) a replacement Member Appointed by Ability Options pursuant to **rule 7.3**;
- (d) **ACNC Regulation** means the *Australian Charities and Not-for-profits Commission Amendment Regulation 2013* (Cth);
- (e) **Act** means the *Associations Incorporation Act 2009* (NSW) (as amended by the *Associations Incorporation Amendment (Review) Act 2016* (NSW) when it is enacted);
- (f) **Association** means Nambucca Valley disAbility Services Inc ABN 58 323 585 257;
- (g) **Committee** means the committee of the Association appointed in accordance with this Constitution;
- (h) **Committee Member** means a member of the Committee, and includes the Ability Options Committee Members, the Nambucca Committee Members and the Local Committee Member;
- (i) **Constitution** means this Constitution, and includes any annexure, appendix or schedule to it;
- (j) **Deed of Integration** means the deed of integration entered into between the Association, Ability Options, Rodney Allso, Richard Levy, Jim Rope, John Slade, Robert Thurston, Warner Young and Noel Howard;
- (k) **Department Secretary** means:
  - (i) prior to the commencement of the *Associations Incorporation Amendment (Review) Act 2016* (NSW) - the "Director-General"; or
  - (ii) on and from commencement of the *Associations Incorporation Amendment (Review) Act 2016* (NSW) - the "Secretary";as those terms are defined in the relevant legislation, and includes any person acting on behalf of or under delegation from those persons as set out in the relevant legislation;
- (l) **DGR** means a deductible gift recipient as defined by the law;
- (m) **Financial Year** means that period of time stated in **rule 43**;
- (n) **Local Committee Member** means the Committee Member referred to in **rule 18.3(b)**;
- (o) **Member(s)** means the Ability Options Member and all of the Ordinary Members;

- (p) **Nambucca Committee Member** means a Committee Member referred to in **rule 18.2(b)**;
- (q) **Objects** means the objects of the Association from time to time as set out in **rule 4**;
- (r) **Officer** means:
  - (i) a Committee Member;
  - (ii) an office-bearer of the Association; or
  - (iii) a person:
    - (A) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the Association; and
    - (B) who has the capacity to affect significantly the Association's financial standing;
- (s) **Ordinary Member** means any Member of the Association that is not the Ability Options Member;
- (t) **Public Officer** means the person holding office under this constitution as the public officer of the Association;
- (u) **Regulation** means the *Associations Incorporation Regulation 2010* (NSW);
- (v) **Representative** means a person described in **rule 16**;
- (w) **Secretary** means the person holding office under this Constitution as secretary of the Association; and
- (x) **Special General Meeting** means a general meeting of the Association other than an annual general meeting.

## 1.2 Interpretation

- (a) In the Constitution:
  - (i) a reference to a function includes a reference to a power, authority and duty; and
  - (ii) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.
- (b) The provisions of the *Interpretation Act 1987* (NSW) apply to and in respect of this Constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

## 2 Commencement of this Amended Constitution

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- 2.1 This Constitution as amended by a special resolution of the Association dated \_\_\_\_\_ 2016, will not commence operation until completion of the Deed of Integration. Until that time, the previous constitution will continue to operate.
- 2.2 Should the Deed of Integration be terminated or should the parties to the Deed of Integration otherwise mutually elect that the Deed of Integration is not to proceed to completion, then this Constitution will never become operative, and the previous constitution will continue to operate.

## 3 Nature of Association

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This is the Constitution of the Association, a not-for-profit charitable organisation.

## 4 Objects

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- 4.1 The objects of the Association are to assist and support people living with disabilities and the aged, including by:
- (a) developing and providing respite services for the families and carers of people with disabilities (on an arranged or crisis basis);
  - (b) developing and providing programs for people with disabilities, focusing upon real life skills and experiences as well as incorporating objectives directed toward vocational, domestic and leisure skills;
  - (c) developing and providing aged care services that facilitate dignified support for people who are frail and aged within the community;
  - (d) developing and providing accommodation support services for people with disabilities and other members of the community who are in need of care;
  - (e) providing advocacy services for people with disabilities;
  - (f) generally improving the quality of life for people with disabilities and promoting community awareness of disability issues;
  - (g) responding to the special needs of members of the community by way of programs funded by Federal or State Governments; and
  - (h) doing anything else ancillary to or in pursuit of those objects listed above.

## Part 2 - Membership

### 5 Members

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- 5.1 The membership of the Association will consist of at least five (5) Members and a maximum of one hundred (100) Members, and will be comprised of:
- (a) the Ability Options Member; and
  - (b) at least four (4) Ordinary Members.

### 6 Admission of Ordinary Members

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- 6.1 The Ordinary Members of the Association will be those persons:
- (a) who at the date of commencement of this Constitution in accordance with **rule 2**, are recorded as being Members of the Association in the Members' register; and
  - (b) any other persons who are admitted to membership by the Ability Options Member from time to time in accordance with **rule 6.5(b)**.
- 6.2 The membership of each Ordinary Member is annual and expires on 30 June each year. An Ordinary Member will have to reapply for membership in accordance with **rule 6.3** if he or she wishes to remain an Ordinary Member beyond 30 June for another twelve (12) month period.
- 6.3 Any person who wishes to become an Ordinary Member of the Association, must complete, sign and lodge an application in the form set out in Appendix 1 to this Constitution with the Secretary, along with the admission fee (if any) payable in accordance with **rule 11.1**.
- 6.4 As soon as reasonably practicable after receiving an application lodged in accordance with **rule 6.2**, the Secretary must refer the application to the Committee.

- 6.5 As soon as reasonably practicable after the Committee receives the application for membership from the Secretary, the Committee must make its determination as to whether to reject or accept the application for membership, and must do the following:
- (a) notify the applicant in writing, whether the Committee has approved or rejected the application; and
  - (b) if the Committee has approved the application, the Secretary must enter the admitted Member's details in the register of Members.
- 6.6 The decision to approve or reject an application for membership is within the complete and unfettered discretion of the Committee, and no reasons need to be given should the Committee decide to reject an application for membership.

## **7 Cessation of Membership**

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- 7.1 An Ordinary Member's membership will cease on 30 June of each year, unless one or more of the following occurs before that date:
- (a) the Ordinary Member dies;
  - (b) the Ordinary Member resigns their membership in accordance with **rule 9**;
  - (c) the Ordinary Member is expelled from the Association in accordance with **rule 14.4**; or
  - (d) the Ordinary Member fails to pay the annual membership fee under **rule 11.1** within three (3) months after the fee is due.
- 7.2 The Ability Options Member's membership will cease in the event that the Ability Options Member resigns its membership in accordance with **rule 9**.
- 7.3 Despite **rule 8.1**, in the event that the Ability Options Member ceases to be a Member pursuant to **rule 7.2** or otherwise, the Ability Options Member has the power to appoint a new Ability Options Member to the Association.

## **8 Membership entitlements not transferable**

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- 8.1 A right, privilege or obligation which a person has by reason of being a Member:
- (a) is not capable of being transferred or transmitted to another person; and
  - (b) terminates on cessation of the person's Membership.
- 8.2 For the avoidance of doubt, **rule 8.1** does not vary the Ability Options Member's right to appoint a new Ability Options Member under **rule 7.3**.

## **9 Resignation of Membership**

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- 9.1 A Member may resign their membership by first giving to the Secretary written notice of at least one month (or such other period as the Committee may determine) of the Member's intention to resign and, on the expiration of the period of notice, the Member ceases to be a Member.
- 9.2 If a Member ceases to be a Member under **rule 9.1** and in every other case where a Member ceases to hold membership, the Secretary must make an appropriate entry in the register of Members recording the date on which the Member ceased to be a Member.

## 10 Register of Members

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- 10.1 The Secretary must establish and maintain a register of Members, specifying the following in relation to each Member:
- (a) the Member's name;
  - (b) the Member's postal or residential address;
  - (c) the date on which the Member became a Member; and
  - (d) the Member's class of membership.
- 10.2 The register of Members must be kept in New South Wales:
- (a) at the main premises of the Association; or
  - (b) if the Association has no premises, at the Association's official address.
- 10.3 The register of Members must be open for inspection, free of charge, by any Member at any reasonable hour.
- 10.4 A Member may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- 10.5 If a Member requests that any information contained on the register about the Member (other than the Member's name) not be available for inspection, that information must not be made available for inspection.
- 10.6 A Member must not use information about a person obtained from the register to contact or send material to the person, other than for:
- (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event or other material relating to the Association; or
  - (b) a purpose necessary to comply with a requirement of the Act or the Regulation.

## 11 Fees and subscriptions

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- 11.1 An Ordinary Member of the Association must pay to the Association any annual Membership fee as determined from time to time by the Committee:
- (a) except as provided by **rule 11.1(b)**, before 1 July in each calendar year; or
  - (b) if the Member becomes a Member on or after 1 July in any calendar year - on becoming a Member and before 1 July in each succeeding calendar year.

## 12 Members' liabilities

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- 12.1 The liability of a Member to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the Member in respect of membership as required by **rule 11**.

## 13 Resolution of disputes

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- 13.1 A dispute between:
- (a) a Member and another Member (in their capacity as Members) of the Association;
  - (b) a Member or Members and the Association; or
- a dispute in relation to fundraising issues is to be referred to the Committee which must take steps to assist the parties to resolve the dispute.



- 13.2 If a dispute referred to the Committee is not resolved to the satisfaction of any of the parties to the dispute within fourteen (14) days of it being referred to the Committee, then the dispute must be referred to a community justice centre for mediation under the *Community Justice Centres Act 1983*.
- 13.3 If a dispute is not resolved by mediation within three (3) months of the referral to a community justice centre, the dispute is to be referred to arbitration.
- 13.4 The *Commercial Arbitration Act 1984* (NSW) applies to any such dispute referred to arbitration.

## 14 Disciplining of Members

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- 14.1 A complaint may be made to the Committee by any person that an Ordinary Member has:
- (a) refused or neglected to comply with a provision or provisions of the Constitution; or
  - (b) wilfully acted in a manner prejudicial to the interests of the Association.
- 14.2 The Committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- 14.3 If the Committee decides to deal with the complaint, the Committee:
- (a) must cause notice of the complaint to be served on the Ordinary Member concerned;
  - (b) must give the Ordinary Member at least fourteen (14) days from the time the notice is served within which to make submissions to the Committee in connection with the complaint; and
  - (c) must take into consideration any submissions made by the Ordinary Member in connection with the complaint.
- 14.4 The Committee may, by resolution, expel the Ordinary Member from the Association or suspend the Ordinary Member from Membership if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- 14.5 If the Committee expels or suspends an Ordinary Member, the Secretary must, within seven (7) days after the action is taken, cause written notice to be given to the Member of the action taken, of the reasons given by the Committee for having taken that action and of the Member's right of appeal under **rule 15**.
- 14.6 The expulsion or suspension does not take effect:
- (a) until the expiration of the period within which the Ordinary Member is entitled to appeal against the resolution concerned; or
  - (b) if within that period the Ordinary Member exercises the right of appeal, unless and until the Association confirms the resolution under **rule 15.5**;
- whichever is the later.

## 15 Right of appeal of disciplined Member

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- 15.1 An Ordinary Member may appeal to the Association in general meeting against a resolution of the Committee under **rule 14.4**, within seven (7) days after notice of the resolution is served on the Ordinary Member, by lodging with the Secretary a notice to that effect.

- 15.2 The notice may be accompanied by a statement of the grounds on which the Ordinary Member intends to rely for the purposes of the appeal.
- 15.3 On receipt of a notice from an Ordinary Member under **rule 15.1**, the Secretary must notify the Committee which is to convene a general meeting of the Association to be held within twenty eight (28) days after the date on which the Secretary received the notice.
- 15.4 At a general meeting of the Association convened under **rule 15.3**:
- (a) no business other than the question of the appeal is to be transacted;
  - (b) the Committee and the Ordinary Member must be given the opportunity to state their respective cases orally or in writing, or both; and
  - (c) the Members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- 15.5 The appeal is to be determined by a simple majority of votes cast by Members present at the meeting.

## **16 Representative**

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- 16.1 The Ability Options Member must appoint as its Representative a natural person. Normally (but not necessarily) the Representative will be the chief executive officer of the Ability Options Member, or another member of the Senior Leadership Team of the Ability Options Member.
- 16.2 The Ability Options Member may appoint more than one (1) Representative, but only one (1) Representative may exercise the Ability Options Member's powers at any one (1) time.
- 16.3 The name and address of the Representative will be entered in the Members' register as the representative of the Ability Options Member.
- 16.4 All correspondence and notices from the Association will be served on that Representative and any notice served on a Representative will be deemed to be served on the Ability Options Member.
- 16.5 If the appointment of a Representative by the Ability Options Member is made by reference to a position held, the appointment must identify the position.
- 16.6 The Ability Options Member may remove and replace a Representative where the Ability Options Member gives written notice to the Secretary.
- 16.7 A signature by a Representative of the Ability Options Member on behalf of the Ability Options Member is taken to be the signature of the Ability Options Member for the purposes of this Constitution.
- 16.8 Any power or right of the Ability Options Member as granted by this Constitution can be exercised by the Representative of the Ability Options Member.
- 16.9 The Ability Options Member is represented at meetings of Members by its Representative, subject to the right of a Representative to appoint a proxy pursuant to **rule 35**.
- 16.10 The actions of a Representative bind the Ability Options Member.
- 16.11 Each Representative will comply with the terms of this Constitution in all matters pertaining to the Association as if a Member himself or herself.

## Part 3 - The Committee

### 17 Powers and general responsibilities of the Committee

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- 17.1 The Committee is to be called the Committee of the Association and subject to the Act, the Regulation, this Constitution and to any resolution passed by the Association in general meeting, the Committee:
- (a) is to control and manage the affairs of the Association;
  - (b) may exercise all such functions as may be exercised by the Association, other than those functions that are required by this Constitution, the Act or the Regulations to be exercised by a general meeting of Members; and
  - (c) has power to perform all such acts and do all such things as appear to the Committee to be necessary or desirable for the proper management of the affairs of the Association.
- 17.2 The Committee may agree upon and adopt a Charter of General Responsibilities of the Committee and its members, which it may amend from time to time. Each Committee Member must comply with the terms of any such Charter of General Responsibilities.
- 17.3 Each Committee Member is subject to, and must comply with:
- (a) any duties placed on committee members of an association, by Part 4, Division 1 of the Act or any further or other provision of that Act from time to time, which places duties on committee members of associations; and
  - (b) the duties set out in Governance Standard 5 in section 45.25 of the ACNC Regulation, if the Association is legally required to comply with that regulation.

### 18 Composition and Membership of Committee

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- 18.1 The Committee will consist of five (5) Committee Members.
- 18.2 During the first three (3) years after this Constitution is adopted in accordance with **rule 2**, the Committee will be comprised of:
- (a) three (3) Committee Members appointed by Ability Options (**Ability Options Committee Members**); and
  - (b) two (2) Nambucca Committee Members appointed by the Committee of the Association immediately prior to adoption of the Constitution in accordance with **rule 2 (Nambucca Committee Members)**.
- 18.3 After expiry of the first three (3) years after this Constitution is adopted in accordance with **rule 2**, the Board will from then on comprise of:
- (a) two (2) Ability Options Committee Members; and
  - (b) one (1) Local Committee Member.
- 18.4 All of the Ability Options Committee Members and the Local Committee Member will be appointed by Ability Options. Ability Options may appoint an Ability Options Committee Member or a Local Committee Member in writing.
- 18.5
- (a) Each Ability Options Committee Member and Local Committee Member will, subject to this Constitution, hold office for a term of three (3) years from the date of their appointment, but shall be eligible for reappointment in accordance with this Constitution.

- (b) There is no maximum consecutive term that a person may serve as an Ability Options Committee Member or Local Committee Member.
- 18.6 Each Nambucca Committee Member will, subject to this Constitution, hold office for a term of three (3) years from the date of the appointment, but will not be eligible for reappointment for any further terms. The three (3) year term will commence on the date that this Constitution is adopted in accordance with **rule 2** and will expire three (3) years thereafter.
- 18.7 The Committee shall, at the first Committee meeting held after this Constitution is adopted pursuant to **rule 2**, appoint from amongst the Committee Members sitting on that Committee at the time of that first Committee meeting, the following office-bearers:
  - (a) a president;
  - (b) a treasurer; and
  - (c) a Secretary.
- 18.8 A Committee Member may hold up to two (2) offices.
- 18.9 An office-bearer shall hold office for a term of one (1) year, but shall be eligible, if that person is still a Committee Member, for further terms of one (1) year each. There is no maximum consecutive term for holding an office-bearer position.
- 18.10 If an office-bearer is removed or vacates from their position prior to the expiry of their term under **rule 18.9**, the Committee will appoint a replacement office-bearer who will hold office until the expiration of the unexpired term of the original office-bearer.
- 18.11 In the event of a casual vacancy occurring in the office of:
  - (a) an Ability Options Committee Member or a Local Committee Member, Ability Options may appoint another person to fill that vacant office for a full three (3) year term; and
  - (b) a Nambucca Committee Member, the Committee will appoint another person who was a member of the Committee immediately prior to the adoption of this Constitution in accordance with **rule 2**, to fill that vacant office for the remainder of the vacating Nambucca Committee Member's term. If no person, who was a member of the Committee immediately prior to the adoption of this Constitution in accordance with **rule 2**, is willing or able to fill the casual vacancy created by the Nambucca Committee Member vacating early, the Ability Options Member will appoint a Local Committee Member for a full three (3) year term, notwithstanding that this will result in the Committee not reflecting the composition required by **rule 18.2** during the first three (3) year period following the adoption of this Constitution in accordance with **rule 2**.

## **19 Secretary**

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- 19.1 The Secretary must, as soon as practicable after being appointed as Secretary, lodge notice with the Association of his or her address.
- 19.2 It is the duty of the Secretary to keep minutes of:
  - (a) all appointments of Committee Members;
  - (b) the names of Committee Members present at a Committee meeting or a general meeting; and
  - (c) all proceedings at Committee meetings and general meetings.
- 19.3 Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

## 20 Treasurer

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It is the duty of the treasurer of the Association to ensure:

- (a) that all money due to the Association is collected and received and that all payments authorised by the Association are made; and
- (b) that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.

## 21 Casual vacancies

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21.1 A casual vacancy in the office of a Committee Member will occur if the Committee Member:

- (a) dies;
- (b) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Cth);
- (c) resigns office by notice in writing given to the Secretary;
- (d) becomes a mentally incapacitated person;
- (e) is absent without the consent of the Committee from three (3) consecutive meetings of the Committee;
- (f) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than three (3) months; or
- (g) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* (Cth);
- (h) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
- (i) in the case of an Ability Options Committee Member who is also an employee of Ability Options, the Ability Options Committee Member's employment with Ability Options ends; or
- (j) in the case of all Ability Options Committee Members and Local Committee Members, the Ability Options Committee Member or Local Committee Member is removed from the Committee by Ability Options (which Ability Options can do in its unfettered discretion at any time).

## 22 Committee meetings and quorum

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- 22.1 The Committee must meet at least four (4) times in each period of 12 months at such place and time as the Committee may determine.
- 22.2 Additional meetings of the Committee may be convened by the President or by the Secretary.
- 22.3 Oral or written notice of a meeting of the Committee must be given by the Secretary to each Committee Member at least 48 hours (or such other period as may be unanimously agreed by the Committee Members) before the time appointed for the holding of the meeting.
- 22.4 Notice of a meeting given under **rule 22.3** must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be

transacted at the meeting, except business which the Committee Members present at the meeting unanimously agree to treat as urgent business.

- 22.5 A majority of Committee Members constitute a quorum for the transaction of the business of a meeting of the Committee.
- 22.6 No business is to be transacted by the Committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- 22.7 If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- 22.8 At a meeting of the Committee, the following are to chair the meeting:
- (a) the president; or
  - (b) if the president is absent, unwilling or unable to act, such one of the remaining Committee Members as may be chosen by the Committee Members present at the meeting is to preside.

## **23 Delegation by Committee to sub-committee**

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- 23.1 The Committee may, by instrument in writing, delegate to one or more sub-committees (consisting of such Member or Members as the Committee thinks fit) the exercise of such of the functions of the Committee as are specified in the instrument, other than:
- (a) this power of delegation; and
  - (b) a function which is a duty imposed on the Committee by the Act or by any other law.
- 23.2 A function, the exercise of which has been delegated to a sub-committee under this rule may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- 23.3 A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- 23.4 Despite any delegation under this clause, the Committee may continue to exercise any function delegated.
- 23.5 Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Committee.
- 23.6 The Committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- 23.7 A sub-committee may meet and adjourn as it thinks proper.

## **24 Voting and decisions**

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- 24.1 Questions arising at a meeting of the Committee or of any sub-committee appointed by the Committee are to be determined by a majority of the votes of members of the Committee or sub-committee present at the meeting.
- 24.2 Each member present at a meeting of the Committee or of any sub-committee appointed by the Committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

- 24.3 Subject to **rule 22.5**, the Committee may act despite any vacancy on the Committee.
- 24.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the Committee or by a sub-committee appointed by the Committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Committee or sub-committee.

## **Part 4 – Committee for Local Community Input**

### **25 Friends of Nambucca disAbility Services**

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#### **25.1 Establishment of the Friends of Nambucca Committee**

- (a) The Committee will establish a committee called the *Friends of Nambucca disability Services* (or such other name as decided by the Committee from time to time), hereinafter referred to as the **Friends of Nambucca Committee**.
- (b) The purpose of the Friends of Nambucca Committee is to provide the local community with input into the operation of the Association and to assist the management of the Association with the achievement of the Objects.
- (c) The Committee can disband the Friends of Nambucca Committee at any time.
- (d) The Friends of Nambucca Committee has no power to do anything which would bind the Association to any arrangement with any third party.
- (e) The Committee has the power to veto any decision or resolution made by the Friends of Nambucca Committee in the event that the Committee is of the opinion that the decision or resolution would not be in the best interests of the Association.

#### **25.2 Composition of the Friends of Nambucca Committee**

- (a) The Friends of Nambucca Committee will be comprised of six (6) individuals on a voluntary basis, all of whom will be appointed by Ability Options. Ability Options will decide upon the term of service of each member of the Friends of Nambucca Committee.
- (b) In the event that more than six (6) individuals express an interest in joining the Friends of Nambucca Committee, Ability Options will consult with the Local Committee Member before deciding upon whom to appoint to the Friends of Nambucca Committee.
- (c) A member of the Friends of Nambucca Committee can resign from the Friends of Nambucca Committee at any time upon giving prior written notice of such resignation to Ability Options.
- (d) The Friends of Nambucca Committee will appoint from amongst its members a chair and a secretary for terms to be decided upon by the Friends of Nambucca Committee.

#### **25.3 Meetings**

- (a) The Friends of Nambucca Committee will meet at least four (4) times a year. All of the members of the Friends of Nambucca Committee are expected to attend each meeting.
- (b) Ability Options is responsible for:
  - (i) the cost of the arrangement and holding of; and

- (ii) providing reasonable administrative support at its own cost for the operations of;  
the meetings of the Friends of Nambucca Committee.
- (c) The management of the Association will prepare the agendas for the meetings of the Friends of Nambucca Committee, upon having consulted with the Committee.
- (d) A quorum for meetings of the Friends of Nambucca Committee is four (4) members.
- (e) The president of the Committee (or his or her nominee) will be entitled to attend each meeting of the Friends of Nambucca Committee as a guest. The president is not officially a member of the Friends of Nambucca Committee and cannot vote on any decisions or resolutions which are made by the Friends of Nambucca Committee.
- (f) The Friends of Nambucca Committee will provide the Committee with copies of the minutes of each meeting within one (1) month of the meeting having occurred.

#### **25.4 Additional Responsibilities**

- (a) In between meetings, each member of the Friends of Nambucca Committee is expected to make himself or herself reasonably available, on an individual basis, to discuss issues with the management of the Association at the request of management.
- (b) The Friends of Nambucca Committee is expected to act as an ambassador for the Association, and may additionally be required to assist with promotional activities on behalf of the Association.

## **Part 5 - General meetings**

### **26 Annual general meetings**

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- 26.1 The Association must hold its annual general meetings:
  - (a) within six (6) months after the close of the Association's Financial Year; or
  - (b) within such later time as may be allowed by the Department Secretary or prescribed by the Regulation.
- 26.2 The annual general meeting of the Association is, subject to the Act and to this rule, to be convened on such date and at such place and time as the Committee thinks fit.
- 26.3 In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
  - (b) to receive from the Committee reports on the activities of the Association during the last preceding Financial Year; and
  - (c) to receive and consider any financial statement or report required to be submitted to Members under the Act.



## **27 Special General Meetings**

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- 27.1 The Committee may, whenever it thinks fit, convene a Special General Meeting of the Association.
- 27.2 The Committee must convene a Special General Meeting of the Association, upon receiving the requisition of:
- (a) the Ability Options Member; or
  - (b) 25% of the Ordinary Members from time to time;
- (referred to as the **Requisitioning Members**).
- 27.3 A requisition of the Requisitioning Members of a Special General Meeting:
- (a) must state the purpose or purposes of the meeting;
  - (b) must be signed by the Requisitioning Members;
  - (c) must be lodged with the Secretary; and
  - (d) may consist of several documents in a similar form, each signed by one or more of the Requisitioning Members making the requisition.
- 27.4 If the Committee fails to convene a Special General Meeting to be held within two (2) months after the date on which a requisition of the Requisitioning Members is lodged with the Secretary, any one or more of the Requisitioning Members who made the requisition may convene a Special General Meeting to be held not later than one (1) month after that date.
- 27.5 A Special General Meeting convened by a Member or Members as referred to in **rule 27.4** must be convened as nearly as is practicable in the same manner as general meetings are convened by the Committee.
- 27.6 If the Requisitioning Members convene a Special General Meeting in accordance with **rule 27.4**, then those Requisitioning Members will be entitled to recover their reasonable costs of convening a Special General Meeting of the Association.

## **28 Notice of meetings**

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- 28.1 Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution, the Secretary must, at least fourteen (14) days before the date fixed for the holding of the general meeting, give a notice to each Member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- 28.2 If the nature of the business proposed to be dealt with at a general meeting requires a special resolution, the Secretary must, at least twenty one (21) days before the date fixed for the holding of the general meeting, cause notice to be received by each Member specifying, in addition to the matters required under **rule 28.1**, the intention to propose the resolution as a special resolution.
- 28.3 No business other than that listed in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under **rule 26.3**.
- 28.4 A Member desiring to bring any business before a general meeting may give notice in writing of that business to the Secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the Member.

## **29 Quorum for general meetings**

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- 29.1 No item of business is to be transacted at a general meeting unless a quorum of Members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- 29.2 The Ability Options Member, present by Representative or by proxy, constitutes a quorum for the transaction of the business of a general meeting.
- 29.3 If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
- (a) if convened on the requisition of Members, is to be dissolved; and
  - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to Members given before the day to which the meeting is adjourned) at the same place.
- 29.4 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the meeting is to be dissolved.

## **30 Presiding Member**

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- 30.1 The president will preside as chairperson at each general meeting of the Association.
- 30.2 If the president is absent, unable or unwilling to act, the Members present must elect one of their numbers to preside as chairperson at the meeting.

## **31 Adjournment**

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- 31.1 The chairperson of a general meeting at which a quorum is present may, with the consent of the Ability Options Member, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the decision to adjourn was made.
- 31.2 If a general meeting is adjourned for fourteen (14) days or more and the date, place and time of the adjourned meeting is not fixed at the original meeting, the Secretary must give written or oral notice of the adjourned meeting to each Member of the Association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 31.3 Except as provided in **rules 31.1 and 31.2**, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## **32 Making of decisions**

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- 32.1 A question arising at a general meeting of the Association is to be determined by either:
- (a) a show of hands; or
  - (b) a written ballot, if demanded by:
    - (i) the chairperson;
    - (ii) five (5) or more Ordinary Members present at the meeting; or
    - (iii) the Ability Options Member.
- 32.2 A written ballot may be demanded in accordance with **rule 32.1(b)**:
- (a) before a vote on a question is taken;

- (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.
- 32.3 If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- 32.4 If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

### **33 Special resolutions**

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A special resolution may only be passed by the Association in accordance with section 39 of the Act.

### **34 Voting**

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- 34.1 On any question arising at a general meeting of the Association:
- (a) the Ability Options Member has three hundred (300) votes; and
  - (b) an Ordinary Member has one (1) vote only.
- 34.2 In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- 34.3 A Member is not entitled to vote at any general meeting of the Association unless all money due and payable by the Member to the Association has been paid.
- 34.4 An Ordinary Member is not entitled to vote at any general meeting of the Association if the Member is under eighteen (18) years of age.

### **35 Proxy votes permitted**

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- 35.1 Any Member as well as the Representative is entitled to appoint another person as proxy by notice given to the Secretary no later than twenty four (24) hours before the time of the meeting in respect of which the proxy is appointed.
- 35.2 The notice appointing the proxy is to be in the form set out in Appendix 2 to this Constitution.

### **36 Postal ballots**

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- 36.1 The Association may hold a postal ballot to determine any issue or proposal (other than an appeal under **rule 15**).
- 36.2 A postal ballot is to be conducted in accordance with Schedule 3 of the Regulation.

## **Part 6 - Miscellaneous**

### **37 Insurance**

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The Association may effect and maintain insurance.

## **38 Funds**

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- 38.1 The funds of the Association are to be derived from entrance fees and annual subscriptions of Members, grants from State or Federal Governments, any other funding granted after application by the Association, donations and, subject to any resolution passed by the Association in general meeting, such other sources as the Committee determines.
- 38.2 All money received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank or other authorised deposit-taking institution account.
- 38.3 The Association must, as soon as practicable after receiving any money, issue an appropriate receipt.
- 38.4 Subject to any resolution passed by the Association in general meeting, the funds of the Association are to be used in pursuance of the Objects of the Association in such manner as the Committee determines.
- 38.5 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any two (2) Committee Members or employees of the Association, being Committee Members or employees authorised to do so by the Committee.

## **39 Change of name, objects and Constitution**

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- 39.1 The Objects, this Constitution and the Association's name may be altered, rescinded or added to only by a special resolution of the Association.
- 39.2 An application to the Department Secretary for registration of a change in the Association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer on behalf of the Committee.

## **40 Custody of books and common seal**

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- 40.1 Except as otherwise provided by this Constitution, the Secretary must keep in his or her custody or under his or her control all records, books and other documents relating to the Association.
- 40.2 The common seal of the Association must be kept in the custody of the Secretary.
- 40.3 The common seal must not be affixed to any instrument except by the authority of the Committee and the affixing of the common seal must be attested by the signature either of two Committee Members or of one Committee Member of the Committee and the Secretary.

## **41 Inspection of books etc.**

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- 41.1 The following documents must be open to inspection, free of charge, by a Member at any reasonable hour:
- (a) records, books and other financial documents of the Association; and
  - (b) this Constitution.
- 41.2 A Member may obtain a copy of any of the documents referred to in **rule 41.1** on payment of a fee of not more than \$1 for each page copied.

## **42 Service of notices**

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- 42.1 A notice to which this Constitution refers may be served on or given to a person:

- (a) by delivering it to the person personally;
  - (b) by sending it by pre-paid post to the address of the person; or
  - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- 42.2 A notice to which the constitution refers is taken, unless the contrary is proved, to have been given or served:
- (a) in the case of a notice given or served personally, on the date on which it is received by the addressee;
  - (b) in the case of a notice sent by pre-paid post, on the date two (2) working days after its date of posting; and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

### **43 Financial year**

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The financial year of the Association commences on 1 July of each year and concludes on 30 June of the following year.

### **44 Not-for-profit clause**

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- 44.1 The assets and income of the Association shall be applied solely to further its Objects.
- 44.2 No income or property of the Association will be paid, transferred or distributed, directly or indirectly to any Member of the Association. However, subject to the Act and the Regulations, nothing in this Constitution will prevent:
- (a) a bona fide payment being made by the Association to a Member in return for any services rendered or goods supplied to the Association in the ordinary and usual course of business; or
  - (b) a payment in good faith of any surpluses or profits to the Ability Options Member, so long as the Ability Options Member is charitable and has objects similar to the Objects.

### **45 Dissolution/Revocation**

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- 45.1 Despite any other rule of this Constitution, upon winding up of the Association, all remaining community housing assets in a participating jurisdiction must be transferred to another registered community housing provider or to a housing agency in the jurisdiction in which the asset is located.
- 45.2 Subject to any requirements of the Act or the Regulation, if any surplus remains upon winding up of the Association and after compliance with **rule 45.1**, the surplus will be paid or distributed to the Ability Options Member, so long as the Ability Options Member:
- (a) is charitable;
  - (b) has objects similar to the Objects;
  - (c) has a constitution which requires its income and property to be applied in promoting its objects;

- (d) has a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Association by **rule 44**; and
  - (e) is endorsed as a DGR.
- 45.3 If **rule 45.2** does not apply, any surplus which remains following winding up of the Association and after compliance with **rule 45.1**, will not be paid to or distributed among Members, but will be given or transferred to one or more organisations or corporations which have:
- (a) objects which are similar to the Objects;
  - (b) a constitution which requires its income and property to be applied in promoting its objects;
  - (c) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Association by **rule 44**; and
  - (d) which is endorsed as a DGR.
- 45.4 The identity of the organisations or corporations referred to in **rules 45.1** and **45.3** are to be determined by special resolution passed at a general meeting of the Association or as otherwise required or permitted by the Act or Regulations.
- 45.5 In the event that the Association has its endorsement as a DGR revoked, the Association must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to:
- (a) the Ability Options Member, provided that the Ability Options Member is a DGR; or
  - (b) another DGR, such other DGR to be determined by the Ability Options Member, and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

## **46 Indemnity**

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- 46.1 To the extent permitted by law, every Officer (and former Officer) of the Association will be indemnified out of the funds of the Association against all costs, expenses and liabilities incurred as such an Officer. However, no such Officer will be indemnified out of the funds of the Association under this **rule 46** unless:
- (a) it is in respect of a liability to another person (other than the Association) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
  - (b) it is in respect of a liability for costs and expenses incurred in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted.

## **47 Payment of Indemnity Policy Premium**

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- 47.1 To the extent permitted by law the Association may at the discretion of the Committee enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for a liability arising out of conduct involving a wilful breach of duty in relation to the Association.

- 47.2 The terms of the policy of insurance will be within the complete discretion of the Committee.
- 47.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Association shall not be required to indemnify the Officer under **rule 46** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

## **48 Indemnity to Continue**

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The indemnity granted by the Association contained in **rules 46** and **47** will continue in full force and effect notwithstanding the deletion or modification of that rule, in respect of acts and omissions occurring prior to the date of the deletion or modification.

## **49 Interests of Ability Options Member**

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- 49.1 Subject to the Act, the Regulations and the law generally, a Committee Member in carrying out his or her duties, is authorised to act in the best interests of the Ability Options Member, provided that:
- (a) the Committee Member acts in good faith in the best interests of the Ability Options Member; and
  - (b) the Association is not insolvent at the time when the Committee Member acts and does not become insolvent because of the Committee Member's actions.

**Appendix 1 – Application for membership**  
**APPLICATION FOR MEMBERSHIP OF**  
**NAMBUCCA VALLEY DISABILITY SERVICES INCORPORATED**  
**(Nambucca)**

I, .....

*[full name of applicant]*

Of .....

*[address]*

hereby apply to become an Ordinary Member of Nambucca. In the event of my admission as an Ordinary Member, I agree to be bound by the constitution of Nambucca as amended from time to time.

**SIGNED** by the **Applicant**:

.....  
Name of Applicant

.....  
Signature of Applicant

.....  
Date



**Appendix 2 – Proxy Form**  
**PROXY FORM**  
**NAMBUCCA VALLEY DISABILITY SERVICES INCORPORATED**  
**(Nambucca)**

**1. Your details**

*(Please print your name and address)*

Name of Member/Representative: \_\_\_\_\_  
ACN/ABN (if applicable): \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**2. Appoints**

Name: \_\_\_\_\_  
*(Please print name of proxy)*

or failing the person so named, or if no person is named, the **Chairperson of the Meeting** to act generally on their behalf and to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the *[Annual General Meeting / Special General Meeting]* of Nambucca to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

**3. Directions**

**4. Signature**

**5. Date**