



2021 Annual General Meeting Constitution Explanatory Statement

Resolution 1: Replacement of constitution

Section 136 of the Corporations Act provides that a company may modify or repeal its constitution or a provision of its constitution by special resolution of members.

Resolution 1 is a special resolution proposing to replace the Charity's existing Constitution with a constitution that reflects the current provisions of the Corporations Act 2001 (Cth) (**Corporations Act**) and the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (**ACNC Act**) (the **Proposed Constitution**).

The current Constitution was not prepared in light of the requirements under the ACNC Act and its related interaction with the Corporations Act. The Proposed Constitution will incorporate amendments to bring the governance rules in line with this legislative framework.

The Proposed Constitution has been prepared using the ACNC template constitution as a starting point.

In addition to addressing the legislative framework that applies to the Charity, the Proposed Constitution has been designed to modernise the governance of the Charity. In this regard, the Board has sought professional advice including advice from a corporate governance consultant. The Proposed Constitution has also been prepared so as to be consistent with certain key findings from the Royal Commission into Aged Care Quality and Safety.

The Directors believe that it is preferable in the circumstances to replace the existing Constitution with the Proposed Constitution rather than to amend a multitude of specific provisions.

The Proposed Constitution is broadly consistent with the provisions of the existing Constitution. Many of the proposed changes are administrative or minor in nature including but not limited to expressly providing for statutory rights by mirroring these rights in provisions of the Proposed Constitution.

The Directors believe these amendments will not have any significant impact on members. It is not practicable to list all of the changes to the Constitution in detail in this Explanatory Statement, however, a summary of the proposed material changes is set out below.

A copy of the Proposed Constitution is available for review by members at the Charity's website www.parkinsonsnsw.org.au/21meeting/ and at the office of the

Charity. A copy of the Proposed Constitution can also be sent to members upon request to the President president@parkinsonsnsw.org.au. Members are invited to contact the Charity if they have any queries or concerns.

Summary of material proposed changes

a) ACNC Act

The ACNC Act came into effect on 1 July 2013. The ACNC Act made changes to how registered charities are governed. One of its stated objectives is to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

Most notably, the ACNC Act 'turns off' the application of certain provisions under the Corporations Act for companies that are registered charities with the ACNC. In lieu of these 'turned off' provisions, registered charities are governed by certain rules under the ACNC Act described as governance standards. These governance standards are not as prescriptive as their Corporations Act counterparts. One of the rationales for these less prescriptive rules is to allow registered charities to be more flexibly run so that their resources can be better spent on their underlying purpose rather than being used in addressing some of the more cumbersome Corporations Act requirements.

Under this legislative framework, registered charities are subject to different rules including with respect to director and officer duties, members' meetings and reporting obligations.

The existing Constitution does not contemplate the application of the ACNC Act and the different regulatory landscape that applies while the Charity is registered with the ACNC. The Proposed Constitution has been prepared to address the ACNC Act regulatory overlay.

For example, clause 48 of the Proposed Constitution expressly requires that directors comply with their duties under the relevant ACNC governance standard.

Clause 72 of the Proposed Constitution expressly provides for how the rules in the Proposed Constitution are to be read with respect to inconsistencies with the ACNC Act and the Corporations Act. The existing Constitution was silent on this point which left ambiguity as to how these situations were to be dealt with.

b) Members' meetings

Due to the application of the ACNC Act, the existing Constitution contains a gap in relation to members' rights with respect to general meetings.

Clause 7 of the existing Constitution provides that general meetings may be initiated by members in accordance with the Corporations Act. Section 249D of the Corporations Act ordinarily allows for members to initiate general meetings in certain circumstances. Section 249N of the Corporations Act also ordinarily allows members to force the tabling of resolutions where certain support thresholds are met. Neither

of these provisions apply to the Charity as they are 'turned off' under the Corporations Act given the Charity is a registered charity.

The existing Constitution is therefore deficient with respect to the members' ability to provide input at general meetings given that the existing Constitution by reference only affords members their rights under the Corporations Act (which are effectively none, or at the very least limited, as the relevant provisions have been 'turned off' for the registered Charity).

In the interests of accountability and granting members the ability to formally raise concerns about the running of the Charity, clause 31 of the Proposed Constitution provides members with the right to table resolutions at general meetings where the members obtain support of at least 10% of the voting membership base and the relevant processes are followed.

In the interests of transparency, the Proposed Constitution does not, however, grant members the right to initiate a general meeting. This position under the Proposed Constitution is consistent with the position under the Corporations Act, as this section (s249D) has been 'turned off' while the Charity is a registered charity.

Convening general meetings is an expensive exercise. Where general meetings are unnecessarily convened, this can drain resources of the Charity which would be better spent on the Charity's actual purpose and objectives. The Board considers that clause 31 of the Proposed Constitution will provide members with ample opportunity to raise concerns about the running of the charity whilst balancing efficient resource allocation.

c) **Board tenure**

Clause 8.2(a) of the existing Constitution provides that directors elected by members are to be elected for a period of three years. Clause 40(a)(i) of the Proposed Constitution revises this period down to two years.

Clause 8.4(c) of the existing Constitution places a limit of four continuous years on the tenure of board appointed directors and six continuous years on the tenure of all directors (including member elected directors). Under clause 42 of the Proposed Constitution, directors will now generally be subject to a limit of eight continuous years (i.e., four, two-year terms) unless the members pass a special resolution otherwise.

Clause 41 of the Proposed Constitution also now places a two-year limit on the tenure of Chairpersons and Deputy Chairpersons.

The amendments to the tenure rules have been made with a view to simplifying the rules and encouraging board refreshment. A benefit of board refreshment is the fresh perspectives that new directors bring to a board through the way they view the Charity. Appointments will also be vetted appropriately by the Charity's nominations committee to ensure they are appointed in accordance with the Charity's board skills matrix and strategy. This will ultimately ensure that the board is made up of a diverse

range of members with different outlooks, expertise and viewpoints which will only improve the governance of the Charity.

d) Reservation of board seats

Under clause 8.3 of the existing Constitution, two thirds of the maximum permitted director positions are reserved for directors that have been elected by the members (with the balance of the board seats being able to be occupied by Board appointed directors).

Following advice from the Charity's corporate governance consultant, the Board intends for this rule to be amended so that under clause 40(b) of the Proposed Constitution, one third of the maximum permitted directors are reserved for directors elected by the members (rather than two thirds).

The rationale for this change is that the Board needs the right group of people, with an appropriate mix of skills, knowledge, and experience (e.g., professional backgrounds, industry experience, philanthropic support) that fits with the Charity's objectives and strategy.

In the context of the Charity, it is believed that the ratio of two thirds of member elected appointments may prove difficult to source without jeopardising Board cohesion or a collegiate approach to Board decision making and maintaining a well thought through and articulated strategy for Board renewal.

The Board's view is that this amendment will allow for an improved level of flexibility in the appointments, provide for continuity in Board knowledge and organisational experience while still maintaining an appropriate minimum of seats reserved for member elected directors.

In addition to the above changes, clause 8.6(b) of the existing Constitution contains a requirement for the directors to use reasonable endeavours to ensure that at least two directors are persons who have Parkinson's disease. Clause 40(d) of the Proposed Constitution slightly modifies this position and requires that directors use reasonable endeavours to ensure that at least two directors are persons with Parkinson's disease or are a carer of such a person.

The Board's view is that the previous test was difficult to satisfy and that this new test is more appropriate. The Board is also of the view that this new test provides due recognition to the role of carers and their valuable expertise in relation to Parkinson's disease, its effect on sufferers and their families, as well as the broader Parkinson's community.

e) Virtual meetings and electronic voting

The Proposed Constitution expressly permits the holding of virtual meetings and electronic voting mechanisms so that where the Board deems it appropriate these methods can legitimately be used (e.g., where health orders prevent the holding of physical meetings).

Board Recommendation

The Directors recommend that members vote to replace the Constitution with the Proposed Constitution. The Chair intends to exercise all undirected proxies in favour of Resolution 1.

*Voting recommendation: **In favour***

Resolution 1: Replacement of Constitution

To consider and, if thought fit, to pass the following resolution as a special resolution (effective immediately from the passing of this special resolution):

“That, for the purposes of section 136(2) of the Corporations Act and for all other purposes, approval is given for the Company to repeal its existing Constitution and adopt a new constitution in its place in the form as signed by the chairman of the meeting for identification purposes.”