

Constitution

Sleep Disorders Australia

ACN 075 427 459

First prepared	5 August 1996
Replaced	30 June 2023
Review date	To be determined by the Board.

MOORES

Level 1, 5 Burwood Road
HAWTHORN VIC 3122

Tel: (03) 9843 2100

Fax: (03) 9743 2102

Ref: RLS/SLE 200746

Moores Legal Pty Ltd

ACN 005 412 868

TABLE OF CONTENTS

1.	NAME	1
2.	PURPOSE	1
	2.1 Principal Purpose and powers	1
	2.2 Application of income and property	1
	2.3 Distribution of assets on revocation of endorsement or winding up	2
3.	MEMBERSHIP	2
	3.1 General.....	2
	3.2 Eligibility	2
	3.3 Application.....	3
	3.4 Admission	3
	3.5 Expulsion of Members	3
	3.6 Cessation of Membership.....	4
	3.7 Membership Fee	5
4.	MEETINGS AND RESOLUTIONS OF MEMBERS	5
	4.1 Annual Members Meeting	5
	4.2 Notice of Members meeting.....	5
	4.3 Cancellation of Members meeting	6
	4.4 Chairperson of Members meetings.....	6
	4.5 Role of chairperson of Members meeting	6
	4.6 Quorum for Members meetings	6
	4.7 Adjournment of Members meetings.....	6
	4.8 Method of Voting	7
	4.9 Voting rights	7
	4.10 Decisions of the Members	7
	4.11 Seconding	8
	4.12 Proxies	8
	4.13 Use of technology in meetings.....	8
5.	DIRECTORS	9
	5.1 Number of Directors.....	9
	5.2 Eligibility	9
	5.3 Appointment of Directors	9
	5.4 Term of office.....	9
	5.5 Nominations.....	10
	5.6 Election of Directors	10

5.7	Ceasing to be a Director	10
5.8	Effect of casual vacancy	11
5.9	Defects in appointment of Directors	11
5.10	Chief Executive Officer	11
5.11	Secretary.....	12
6.	PROCEEDINGS OF THE BOARD	12
6.1	Powers of the Board.....	12
6.2	By-laws.....	13
6.3	Meetings of the Board.....	13
6.4	Convening Board meetings	13
6.5	Entitlement to receive notice of Board meetings.....	13
6.6	Content of notice of Board meetings.....	13
6.7	Timing of notice of Board meetings.....	13
6.8	Chairperson of Board meetings	13
6.9	Quorum for Board meetings.....	14
6.10	Voting at Board meetings	14
6.11	Establishment of committees	14
6.12	Delegation of powers	14
6.13	Use of technology in Board meetings	14
6.14	Resolutions without meetings.....	15
7.	DIRECTORS' DUTIES AND INTERESTS.....	15
7.1	Duties of Directors	15
7.2	Disclosure of interests.....	15
7.3	Participation in decisions	15
7.4	Directors' interests.....	15
8.	ADMINISTRATION	16
8.1	Minutes.....	16
8.2	Accounts and other records of the Company	17
8.3	Members' access to Company records	17
8.4	Financial year	17
8.5	Audit.....	17
8.6	Common seal.....	17
8.7	Execution of documents	18
8.8	Alteration of Constitution	18
8.9	Notices	18
8.10	Officers: indemnities and insurance.....	18
8.11	Winding up.....	19
8.12	Liability of Members.....	19

8.13	Contribution of a Member on winding up	19
9.	INTERPRETATION	19
9.1	Exclusion of replaceable rules	19
9.2	Definitions	19
9.3	Interpretation	21
10.	TRANSITIONAL PROVISIONS	21
10.1	Members	21
10.2	Directors	21
	SCHEDULE 1	22

1. NAME

The name of the Company is Sleep Disorders Australia.

2. PURPOSE

2.1 Principal Purpose and powers

- (a) The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Charity.
- (b) The Company is established as a Health Promotion Charity. The Company's Principal Purpose is to encourage the prevention and treatment of sleep disorders, by:
 - (i) providing information to people and their families affected by sleep disorders;
 - (ii) advocating for the needs of people with sleep disorders; and
 - (iii) raising awareness of sleep disorders in the community.
- (c) The Company:
 - (i) may do all things incidental or conducive to furthering the Principal Purpose; and
 - (ii) has the capacity and powers of a company under the Act subject to the provisions of this Constitution. These must be used to further the Principal Purpose.

2.2 Application of income and property

- (a) The income and property of the Company must be applied solely towards the Principal Purpose.
- (b) No portion of the profits, income or property of the Company may be paid or transferred directly or indirectly to Members in their capacity as Members.
- (c) Clause 2.2(b) does not stop the Company from doing the following things, provided they are done in good faith:
 - (i) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or
 - (ii) making a payment to a Member in carrying out the Company's Principal Purpose.
- (d) The Company must not pay fees to a Director for acting as a Director.
- (e) The Company may:
 - (i) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done, or

- (ii) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- (f) Any payment made under clause 2.2(e) must be approved by the Board.
- (g) The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this Constitution.

2.3 Distribution of assets on revocation of endorsement or winding up

- (a) If the Company is a Deductible Gift Recipient any DGR gifts must be deposited in a separate bank account or otherwise identified so that they can be distinguished from other assets of the Company.
- (b) If the Company is a Deductible Gift Recipient and is wound up, or its endorsement as a Deductible Gift Recipient is revoked by the Commissioner of Taxation, any DGR gifts remaining after satisfying the Company's liabilities and expenses must be transferred to a Charity or Charities endorsed as a Deductible Gift Recipient.
- (c) Upon the winding up of the Company, any assets remaining after complying with clause 2.3(a) and 2.3(b):
 - (i) must not be paid or distributed to the Members in their capacity as Members, and
 - (ii) will be given or transferred to a Charity or Charities which:
 - (A) has a similar purpose to the Principal Purpose, and
 - (B) prohibits the distribution of income, profit or assets to its Members in their capacity as Members.
- (d) The Members must decide on or before the time of winding up or revocation by resolution which Charity or Charities will receive a distribution under clause 2.3(a) or 2.3(b). If the Members fail to decide, the matter must be determined by application to the Supreme Court in the State of New South Wales or any other appropriate jurisdiction.

3. MEMBERSHIP

3.1 General

- (a) The minimum number of Members is five.
- (b) The rights of any Member are not transferable.

3.2 Eligibility

To be eligible for Membership, a person must be committed to the Principal Purpose of the Company.

3.3 Application

- (a) An application for Membership must be made in writing in the form and manner (if any) approved by the Board.
- (b) An applicant must pay the Membership Fee determined by the Board (if any).
- (c) An applicant must agree in writing to contribute the Guaranteed Amount set out in clause 8.12, to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
 - (i) debts and liabilities of the Company incurred before the Member stopped being a Member, or
 - (ii) costs of winding up.

3.4 Admission

- (a) The Board must consider and resolve whether to accept or reject each application for Membership within a reasonable time.
- (b) The Board may accept or reject any application for Membership in its sole discretion, using such criteria as the Board alone may determine. The Board is not bound to give reasons for the acceptance or rejection of any application.
- (c) If the Board accepts an application, the Company must:
 - (i) enter the applicant's details into the Register as soon as practicable, subject to the payment of the Joining Fee (if any); and
 - (ii) send written notice of the acceptance to the Member.
- (d) A person is admitted as a Member of the Company when the person's application has been accepted by the Board and the person's name is entered into the Register.
- (e) If the Board rejects an application, the Company must send written notice of the rejection to the applicant as soon as practicable.

3.5 Expulsion of Members

- (a) The Board (in its absolute discretion) may expel a Member from the Company if it decides it is not in the interests of the Company for the person to continue or remain as a Member.
- (b) Grounds for expulsion include (without limitation) a breach of this Constitution or the management guidelines.
- (c) The Board may not pass a resolution to expel a Member outside of a Board meeting.

- (d) If the Board intends to consider a resolution to expel a Member, it must give the Member written notice:
- (i) stating the date, place and time of the meeting where the resolution will be considered;
 - (ii) setting out the intended resolution and the grounds on which it is based; and
 - (iii) informing the Member that they may attend the meeting and may give a written explanation or submission before the resolution is put to the vote.

The notice must be given at least one week before the meeting at which the resolution is to be considered.

- (e) After considering any written explanation or submission under clause 3.5(d)(iii), the Board may resolve at a Board meeting to:
- (i) take no further action;
 - (ii) warn the Member;
 - (iii) expel the Member; or
 - (iv) refer the decision to an unbiased, independent person on conditions that the Board consider appropriate (however, the person can only make a decision that the Board could have made under this clause).

3.6 Cessation of Membership

- (a) The Company does not have life Members.
- (b) A person ceases to be a Member on:
- (i) death,
 - (ii) resignation;
 - (iii) termination of the person's Membership in accordance with this Constitution;
 - (iv) deemed resignation in accordance with clause 3.7(d) below;
 - (v) the Board deeming, in their sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence sent to the contact details entered in the Register for that Member; or
 - (vi) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally.
- (c) A Member whose Membership is terminated will be liable for all moneys due by that Member to the Company in addition to any sum

not exceeding the Guaranteed Amount for which the Member is liable under this Constitution.

- (d) The Board may, in its sole discretion, refund all or part of any Membership Fee in the event of a person ceasing to be a Member, either on a pro rata basis or otherwise.
- (e) There will be no liability for any loss or injury suffered by a Member as a result of any decision made in good faith under this clause.
- (f) Any person who for any reason ceases to be a Member must not represent themselves in any manner as being a Member.

3.7 Membership Fee

- (a) The Board may determine the amount of the Membership Fee from time to time.
- (b) Membership Fees are due and payable in accordance with the requirements prescribed by the Board for a Member's chosen tier of Membership.
- (c) The rights of a Member (including the right to vote) who has not paid the Membership Fee by the due date are suspended until it is paid.
- (d) If a Member does not pay their Membership Fee by the due date, the Board may issue a notice of payment requiring the Member to pay the Membership Fee. If the Member does not pay the Membership Fee within 60 days of receiving the notice of payment, the Member is deemed to have resigned their Membership.

4. MEETINGS AND RESOLUTIONS OF MEMBERS

4.1 Annual Members Meeting

The Board may call and arrange to hold an Annual Members Meeting.

4.2 Notice of Members meeting

- (a) The Board must give 21 days' written notice of a Members meeting. The notice must specify the place, the day and the hour of meeting and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.
- (b) A notice of a Members meeting may be given by any form of communication permitted by the Act.
- (c) The accidental omission to give notice of any Members meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the Members meeting.

4.3 Cancellation of Members meeting

The Board may cancel a Members meeting by providing Members with written notice of the cancellation at least two days prior to the date of the meeting.

4.4 Chairperson of Members meetings

- (a) The Chair will preside as chairperson at every Members meeting.
- (b) If there is no Chair or the Chair is not present within 15 minutes after the time appointed for the holding of the Members meeting or the Chair is unwilling to act as chairperson for all or part of the meeting, the following, in order of precedence, may preside unless unable or unwilling to do so:
 - (i) a Deputy Chair (if any);
 - (ii) a Director chosen by a majority of the Directors present;
 - (iii) the only Director present; or
 - (iv) a Member chosen by a majority of the Members present.

4.5 Role of chairperson of Members meeting

The chairperson of a Members meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting; and
- (b) must give the Members as a whole reasonable opportunity to make comments and ask questions.

4.6 Quorum for Members meetings

- (a) No business may be transacted at any Members meeting, other than the election of a chairperson or adjournment of a meeting, unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) A quorum of Members for a Members meeting is 5 Members.
- (c) If a quorum is not present within 15 minutes from the time appointed for a Members meeting, then the meeting stands adjourned to such day, and at such time and place, as the Board determines or, if no determination is made by the Board, the meeting will dissolve.
- (d) A person attending as a proxy is deemed to be a Member present for the purpose of determining a quorum.

4.7 Adjournment of Members meetings

- (a) The chairperson of a Members meeting may at any time, and must if so directed by a majority of the Members present and entitled to vote, adjourn the meeting or any business, motion, or discussion being considered or remaining to be considered.

- (b) Only unfinished business is to be transacted at a Members meeting resumed after an adjournment.
- (c) It is not necessary to give any notice of an adjournment, or of the business to be transacted at any adjourned meeting, unless a meeting is adjourned for one month or more.
- (d) A meeting adjourned under this clause is adjourned to such day, and at such time and place, as the Directors present decide.

4.8 Method of Voting

- (a) At a Members meeting, a motion put to vote will be decided show of hands or voices or such other method as the chairperson determines, unless a poll is demanded.
- (b) A poll can be demanded by the chairperson or by five Members at any time prior to a vote being taken, or immediately after the declaration of a result of a vote conducted by means other than a poll.
- (c) A demand for a poll may be withdrawn.
- (d) If a poll is duly demanded, it will be taken in such a manner as the chairperson directs.
- (e) A poll demanded on the election of the chairperson of the meeting or on a question of adjournment of a meeting must be taken immediately.
- (f) A Member may vote in person or by a proxy attending in person.

4.9 Voting rights

- (a) On a vote conducted at a Members meeting:
 - (i) by poll, each Member has one vote; and
 - (ii) by other means, each person present who is a Member or proxy for a Member has one vote. If a person present is both a Member and a proxy for another Member (or Members), that individual has one vote.
- (b) A Member whose Membership Fee is overdue is not entitled to vote.

4.10 Decisions of the Members

- (a) Resolutions arising for determination by the Members will be decided by a majority of votes cast, unless otherwise provided in this Constitution.

- (b) In a case of an equality of votes cast on a motion, the chairperson of the Members meeting will have a second or “casting” vote.
- (c) A declaration by the chairperson of the meeting that a resolution has been carried or lost, and an entry to that effect in the minutes is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution – unless a poll is demanded.
- (d) An objection may be raised to the qualification of a voter only at the meeting at which the vote objected to is given or tendered. Any such objection will be referred to the chairperson of the meeting whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

4.11 Seconding

It is not necessary for a motion to be seconded in order to be put to a vote.

4.12 Proxies

- (a) A Member may appoint a proxy to act on behalf of the Member at one or more Members meetings.
- (b) A proxy may exercise any and all of the rights of the Member who appointed it at a Members meeting, subject to the following:
 - (i) a proxy is subject to any directions or limitations specified in the proxy appointment; and
 - (ii) a proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- (c) A proxy does not need to be a Member of the Company.
- (d) The appointment of a proxy must be in writing and signed by the Member making the appointment and in a form as similar as possible to that in Schedule 1.
- (e) A vote given by proxy is valid even if the Member who appointed the proxy revokes the appointment, or ceases to be a Member, provided that the chairperson was not aware of the revocation or cessation of Membership at the time the proxy cast the vote.

4.13 Use of technology in meetings

- (a) The Board may decide to hold a Members meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) A person participating through the use of technology will be deemed to be present at the meeting in person.

5. DIRECTORS

5.1 Number of Directors

- (a) The minimum number of Directors is three.
- (b) The maximum number of Directors is twelve.

5.2 Eligibility

- (a) Any natural person committed to the Principal Purpose is eligible to be appointed or elected as a Director provided:
 - (i) the person is a Member,
 - (ii) the person has given written, signed consent to act as a Director;
 - (iii) the person has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board from time to time; and
 - (iv) the person is not ineligible to be a Director under:
 - (A) the Act; or
 - (B) the ACNC Legislation.
- (b) Rule 5.2(a)(iv)(B) will not apply to disqualify a person if an exemption is obtained from the ACNC Commissioner.

5.3 Appointment of Directors

- (a) The Members may elect a person to be a Director at a Members meeting pursuant to clause 5.6.
- (b) The Board may at any time by resolution appoint a person to be a Director, either to fill a casual vacancy or increase the number of directors on the Board (subject to the maximum of twelve Directors).
- (c) A Director appointed by the Board holds office only until the next Members meeting.

5.4 Term of office

- (a) The term of office of a Director appointed by resolution of the Members:
 - (i) is the period specified in the resolution, being a term of up to five years;
 - (ii) commences on the date the appointment was confirmed by a resolution; and
 - (iii) expires at the end of the period specified in the resolution.

- (b) A person may be appointed by the members as a Director for two consecutive terms (unless the Members pass a Special Resolution to permit the re-appointment of the Director beyond that point).
- (c) The term of office of a Director appointed by the Board to fill a casual vacancy pursuant to clause 5.3(b):
 - (i) commences on the date of appointment; and
 - (ii) expires at the conclusion of the first Members meeting following the appointment.

5.5 Nominations

Nomination of candidates for election as a Director to fill a vacancy must be:

- (a) made in writing, signed by a Member and accompanied by written consent of the candidate; and
- (b) delivered to the Secretary at least 28 days before the date fixed for the holding of the Members meeting at which the election is fixed to take place.

5.6 Election of Directors

- (a) The election of Directors must take place at a Members meeting called by the Board for that purpose.
- (b) Candidates for election may only include individuals:
 - (i) nominated pursuant to clause 5.5; and
 - (ii) appointed by the Board pursuant to clause 5.3(b).
- (c) A candidate will only be successfully elected as a Director if a majority of Members present at the meeting pass a resolution in favour of the appointment.
- (d) If, following the election, there are still vacancies to be filled, those vacancies may be filled by the current Board until such time as suitable Directors are found and duly elected by the majority of members.

5.7 Ceasing to be a Director

- (a) A person stops being a Director, and a casual vacancy is created, if they:
 - (i) resign;
 - (ii) die;
 - (iii) cease to be a Member;
 - (iv) are removed by the Members under the Act;

- (v) are absent without the consent of the Board and without leave of absence, from:
 - (A) three consecutive Board meetings; or
 - (B) at least four Board meetings over 12 months.
 - (vi) become subject to a Court order to receive treatment or have their finances managed by another person due to the Director being of unsound mind or having a mental illness; or
 - (vii) becomes ineligible to be a Director under the Act or the ACNC Legislation.
- (b) Clause 5.7(a)(vii) will not create a casual vacancy if an exemption is obtained from the ACNC Commissioner.

5.8 Effect of casual vacancy

- (a) If the number of Directors at any time is not sufficient to constitute a quorum at a Board meeting, or is less than the minimum number of Directors fixed under this Constitution, the remaining Directors must act as soon as possible to:
 - (i) increase the number of Directors to three; or
 - (ii) convene a Members meeting of the Company for that purpose.
- (b) Until the remaining Directors have acted in accordance with the preceding clause, the Board may only act if and to the extent that there is an emergency requiring them to act.

5.9 Defects in appointment of Directors

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or Member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

5.10 Chief Executive Officer

- (a) The Board may appoint a Chief Executive Officer designated by whatever title the Board thinks fit.
- (b) The Chief Executive Officer may be a Director.
- (c) The appointment may be for the period, at the remuneration and on the conditions that the Board thinks fit.
- (d) The Board may remove the Chief Executive Officer at any time, subject to any contract between the Company and the Chief Executive Officer.

- (e) The Chief Executive Officer may attend and speak at all Board meetings and Members meetings, but may not vote, unless the Chief Executive Officer is also a Director.

5.11 Secretary

- (a) There must be at least one Secretary.
- (b) The Secretary is to be appointed by the Board on such terms and conditions as the Board thinks fit.
- (c) The Secretary may be, but is not required to be, a Director. If the Secretary is not a Director, they are entitled to attend and speak (but not vote) at Board meetings.
- (d) A person must not be appointed Secretary unless the person has given the Company a signed consent to act as Secretary.
- (e) The Board may suspend or remove a Secretary.
- (f) An act done by a person acting as a Secretary is not invalidated by reason only of:
 - (i) a defect in the person's appointment as a secretary; or
 - (ii) the person being disqualified to be a secretary,if that circumstance was not known by the person when the act was done.
- (g) The Secretary must identify whether a person is ineligible to be appointed as a Director or responsible person under this Constitution as a result of disqualification by the Act or the ACNC Legislation. The Secretary must:
 - (i) perform a search of the publicly available registers as soon as practicable after becoming aware that a person has been, or may be, appointed as a Director; and
 - (ii) obtain a declaration from each Director to the effect that they are not disqualified by the Act or the ACNC Legislation, and that they will notify the Secretary as soon as possible in the event that they become disqualified.

6. PROCEEDINGS OF THE BOARD

6.1 Powers of the Board

The Board is responsible for the management of the business of the Company and may exercise all the powers of the Company (in accordance with the provisions of this Constitution) that are not, by the Act or by this Constitution, required to be exercised by the Members.

6.2 By-laws

- (a) The Board has power to make regulations or by-laws for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter such by-laws or regulations as it sees fit.

6.3 Meetings of the Board

The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

6.4 Convening Board meetings

A Director may convene or ask the Secretary to convene a Board meeting at any time, provided notice pursuant to clause 6.7 is given.

6.5 Entitlement to receive notice of Board meetings

- (a) Notice must be given to each Director entitled to vote at the meeting.
- (b) A Director may waive the requirement to receive notice of a Board meeting.

6.6 Content of notice of Board meetings

A notice of a Board meeting:

- (a) must specify the place, the day and the time of the meeting; and
- (b) if the meeting is to be held in two or more places, it must specify the technology that will be used to facilitate this; but
- (c) it does not need to specify the nature of the business to be transacted at the meeting.

6.7 Timing of notice of Board meetings

- (a) Subject to clause 6.7(b), at least 3 days written notice must be given of Board meetings to all Directors.
- (b) The Board may unanimously waive the requirement to give 3 days' notice of Board meetings.

6.8 Chairperson of Board meetings

- (a) The Chair will preside as chairperson at Board meetings.
- (b) If the Chair is not present within 15 minutes after the time appointed for the Board meeting or is unwilling to act as chairperson for all or part of the meeting then:
 - (i) if there is a Deputy Chair, the Deputy Chair will be the chairperson; and

- (ii) if there is not a Deputy Chair present, willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of the meeting or part of it.

6.9 Quorum for Board meetings

- (a) No business may be transacted at any Board meeting unless a quorum is present.
- (b) A quorum consists of a majority of the total number of Directors.
- (c) A Director on a leave of absence approved by the Board should not be included when calculating the total number of Directors for the purposes of this clause.

6.10 Voting at Board meetings

- (a) A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote, unless otherwise provided in this Constitution. Such a decision is for all purposes a decision of the Board.
- (b) Where the votes cast on a motion are equal, the chairperson of the meeting will have a second or "casting" vote.

6.11 Establishment of committees

- (a) The Board may establish one or more committees comprised of such persons as it thinks fit for such purposes as it sees fit. A committee may include, or be comprised of, non-Directors.
- (b) The meetings and proceedings of committees are:
 - (i) subject to any directions of the Board; and
 - (ii) otherwise governed by the provisions of this Constitution which regulate the proceedings of the Board, to the greatest extent practical.

6.12 Delegation of powers

- (a) The Board may delegate any of its powers to one or more Directors, a committee, an employee or any other person.
- (b) A delegation must be recorded in the Company's minute book.
- (c) The Board may revoke a delegation.
- (d) The Board may specify terms of the delegation (including the power to further delegate).

6.13 Use of technology in Board meetings

- (a) The Board may hold its meetings by using any technology that is agreed to by the Board.

- (b) The Board's agreement may be a standing one.
- (c) A Director may only withdraw his or her consent within a reasonable period before the meeting.
- (d) A Director who is present at a Board meeting through the use of technology is deemed to be present at the meeting.

6.14 Resolutions without meetings

- (a) A resolution of the Board may be passed without a meeting if a majority of the Directors entitled to vote on the resolution sign a notice stating that they are in favour of the resolution.
- (b) The resolution is passed at the time when the last Director necessary to constitute a majority signs.
- (c) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution;
 - (ii) the notice may be distributed by any means, including electronic communication;
 - (iii) separate copies of the notice may be signed; and
 - (iv) a resolution will be deemed to have failed to have been passed if it has not achieved majority consent within 48 hours after the notice was given.

7. DIRECTORS' DUTIES AND INTERESTS

7.1 Duties of Directors

Directors must comply with any duties imposed on them by the Act and with the duties described in governance standard 5 of the ACNC Legislation.

7.2 Disclosure of interests

A Director must disclose the nature and extent of any perceived or actual material conflict of interest to the other Directors (or the Members if the other Directors share that conflict).

7.3 Participation in decisions

A Director who has a material personal interest in a matter that is being considered by the Board must not be present while the matter is being considered at a Board meeting or vote on the matter, unless permitted by section 191 of the Act.

7.4 Directors' interests

Provided a Director complies with clauses 7.2 and 7.3, they may:

- (a) hold any other position in the Company, except that of auditor;

- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) sign or participate in the execution of a document by or on behalf of the Company; and
- (g) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

8. ADMINISTRATION

8.1 Minutes

- (a) The Board must cause minutes of:
 - (i) all proceedings and resolutions of Members meetings;
 - (ii) all proceedings and resolutions of Board meetings, including meetings of a committee established by the Board; and
 - (iii) resolutions passed by the Board without a meeting,to be duly entered into the books kept for that purpose, within one month.
- (b) The Company must ensure that:
 - (i) minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
 - (A) the chairperson of the meeting; or
 - (B) the chairperson of the next meeting; and
 - (ii) minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- (c) A minute recorded and signed as required by this clause is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

- (d) The Company must keep its minute books at its registered office or its principal place of business in Australia.

8.2 Accounts and other records of the Company

- (a) The Company must make and keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance;
 - (ii) enable true and fair financial statements to be prepared and, if required, to be audited; and
 - (iii) are prepared in accordance with ACNC requirements.
- (b) The accounts will be held at the registered office or any other place as the Board thinks fit.
- (c) A Director has a right of access to the financial records at all reasonable times.
- (d) The Company must retain its financial records for at least seven years.
- (e) The Board must take reasonable steps to ensure that the Company's records are kept safe.

8.3 Members' access to Company records

The Board must give a Member access to the records set out in clauses 8.1(a)(i) and 8.1(a)(iii).

8.4 Financial year

The financial year will begin on the first day of July and end on the thirtieth day of June, unless the Board passes a resolution to change the financial year.

8.5 Audit

- (a) If required by law, the Company must appoint and remunerate an auditor.
- (b) Any auditor may attend any Members meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The Company must give any auditor all communications relating to the Members meeting that the Members of the Company are entitled to receive.

8.6 Common seal

The Company does not have a common seal.

8.7 Execution of documents

The Company may execute a document by the signature of:

- (a) two Directors;
- (b) one Director and one Secretary; or
- (c) one Director and another person appointed by the Board for that purpose.

8.8 Alteration of Constitution

- (a) The Company may only alter this Constitution by Special Resolution in accordance with the Act.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.

8.9 Notices

- (a) Notices can be served on Members or Directors personally, by post, electronic mail, or such other means as may be generally accepted in business from time to time.
- (b) Notices directed to the last known address (including any virtual or electronic address) of a Member or Director are to be treated as duly served in such time as it would usually take for such notice to be delivered.
- (c) The non-receipt of notice of a Members meeting or Board meeting, including notice of postponement or change of venue, does not invalidate anything done or any resolution passed at the meeting if the non-receipt of notice occurred by accident or inadvertent error.
- (d) A person who attends a Members meeting or Board meeting waives any objection that person may have to non-receipt of notice of the meeting.
- (e) In calculating a period of notice to be given under this Constitution, both the days on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.10 Officers: indemnities and insurance

- (a) The Company indemnifies every person that is or has been an Officer of the Company, or of a wholly-owned subsidiary, against any liability (including without limitation liability for legal costs) incurred as a result of their position as Officer (other than to the Company or a Related Body Corporate) to the full extent permitted by law.
- (b) The Company may pay, or agree to pay, a premium in respect of a contract insuring its Officers, to the extent permitted by law.

8.11 Winding up

Subject to clause 2.3, the Company may be dissolved by a Special Resolution of Members.

8.12 Liability of Members

The liability of a Member is limited to the Guaranteed Amount, being \$10.

8.13 Contribution of a Member on winding up

Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while they are a Member, or within one year of ceasing to be a Member such amount as may be required not exceeding the Guaranteed Amount, for the:

- (a) payment of the debts and liabilities of the Company contracted while the Member or past Member was a Member; or
- (b) costs, charges and expenses of winding up.

9. INTERPRETATION

9.1 Exclusion of replaceable rules

The replaceable rules contained in the Act do not apply to the Company.

9.2 Definitions

In this Constitution:

“**ACNC**” means the Australian Charities and Not-for-profits Commission.

“**ACNC Legislation**” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

“**Act**” means the *Corporations Act 2001* (Cth).

“**Annual Members Meeting**” means a meeting held once in every calendar year at such time and place as may be determined by the Board.

“**auditor**” may mean a reviewer, if permitted by the Act or ACNC Legislation.

“**Board**” means the Board of Directors for the time being of the Company.

“**chairperson**” means the person chairing a meeting.

“**Charity**” has the same meaning as under the *Charities Act 2013* (Cth).

“**Chief Executive Officer**” means the person employed as the Chief Executive Officer in accordance with clause 5.10.

“**Company**” means Sleep Disorders Australia.

“**Deductible Gift Recipient**” means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

“DGR Gifts” means:

- (a) gifts of money or property for the Principal Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
- (c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.

“Directors” means the Directors for the time being of the Company and **“Director”** has a corresponding meaning.

“Guaranteed Amount” means the amount set out in clause 8.12.

“Holding Company” means a body corporate of which the Company is a subsidiary.

“ITAA 97” means the *Income Tax Assessment Act 1997* (Cth).

“Member” means a person whose name is entered in the Register as a Member of the Company in accordance with clause 3.4(c) **Error! Reference source not found.** and **“Membership”** has the corresponding meaning.

“Members meeting” is a general meeting for the purpose of the Act.

“Membership Fee” means the amount determined by the Board under clause 3.7(a).

“Officer” has the meaning given under the Act.

“person” includes a natural person and a corporation within the meaning of s57A of the Act.

“poll” means a method of voting where votes are cast in writing. It includes (but is not limited to) a vote conducted by secret ballot.

“Principal Purpose” means the purpose set out in clause 2.1.

“Register” means the register of Members of the Company under the Act.

“Related Body Corporate” means a body corporate that is a Holding Company, a subsidiary of the Company, or a subsidiary of a Holding Company.

“Secretary” means the Secretary for the time being of the Company and if there are joint secretaries, any one or more of such joint secretaries.

“Special Resolution” means a resolution passed at a Members meeting:

- (i) of which notice has been given in accordance with clause 4.2; and

- (ii) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

9.3 Interpretation

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression - except where a contrary intention appears in this Constitution.
- (b) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

10. TRANSITIONAL PROVISIONS

The following clauses apply notwithstanding anything to the contrary in this Constitution.

10.1 Members

The Members immediately following the adoption of this Constitution will be those Members listed on the Register at the time of adoption.

10.2 Directors

- (a) The Directors immediately following the adoption of this Constitution will be those in office at the time of adoption.
- (b) Time served by Directors prior to the adoption of this Constitution will not be taken into account for the purposes of clause 5.4.

SCHEDULE 1

APPOINTMENT OF PROXY – SLEEP DISORDERS AUSTRALIA

I, _____
(Member)

of _____
(Address)

appoint _____
(Proxy)

as my proxy for the Members meeting of Sleep Disorders Australia be held on

(Date)

and at any adjournment.

CHOOSE

My proxy can vote on my behalf for all resolutions at the above Members meeting.

OR

My proxy can vote for the resolutions listed below as indicated:

in favour of / against	detail of proposed resolution

Signed _____
(Member)

Date: