



Topic	Explanation
<b>Overall</b>	<p>The constitution has been changed to reflect the Corporations Act rather than the Associations Incorporation Act.</p> <p>Terminology has changed to reflect the new structure:</p> <ul style="list-style-type: none"><li>• association → company</li><li>• executive committee member → director</li><li>• executive committee → board</li></ul> <p>The numbers below on the left hand column correspond to the rule numbers in the proposed constitution.</p>
<b>1 Name</b>	<p>The name will change from Australian and New Zealand Professional Association for Transgender Health Incorporated to Australian Professional Association for Trans Health.</p> <p>'Incorporated' signifies that the organisation is an incorporated association. As the new structure will be a company limited by guarantee, the Inc is not required. As the company will remain a registered charity, it does not need to use 'Ltd' in its name.</p>
<b>2 History</b>	<p>This provision has been added to make it clear that the company is a continuation of the current incorporated association.</p>
<b>3 Purposes</b>	<p>The purposes, which remain in rule 3, have been changed for greater simplicity and clarity, but capture and are consistent with the current objects.</p> <p>We note the organisation is registered as a health promotion charity, which means that its principal activity must be to prevent and control a disease, as identified in this fact sheet: <a href="https://www.acnc.gov.au/tools/factsheets/health-promotion-charities">https://www.acnc.gov.au/tools/factsheets/health-promotion-charities</a></p> <p>Though the purposes are broader, we understand the principal activity of the organisation is to prevent or control gender dysphoria, depression and anxiety.</p>
<b>4 Powers</b>	<p>The rule regarding powers, rule 4, has been updated to reflect the applicable legislation for companies, the Corporations Act. It also states that the powers can only be exercised to carry out the company's purposes.</p>
<b>5 Not for profit</b>	<p>The not for profit provision, which has moved from rule 12 to rule 5, continues to state that no funds may be transferred to any member or director in their capacity as a member, but we have also added a prohibition against payment of directors in their capacity as director.</p> <p>This does not prevent payments made for the provision of services from a member or director.</p>

<b>6 Membership</b>	<p>The membership rules, which remain in rule 6 have changed in the following way:</p> <ul style="list-style-type: none"> <li>• the only two types of membership in the proposed constitution are Full Membership and Associate Membership. This reflects the way the organisation currently operates. There are no honorary, emeritus or student members, and the organisation does not intend to use these categories.</li> <li>• We have removed some of the detail about which professions qualify for Full Membership, as this is not necessary, and can be maintained in a membership policy rather than the constitution. The directors decide who to admit to membership, and may make decisions about the contribution the professional has made to further the company's purposes.</li> <li>• The eligibility for Associate Membership has been simplified to those who do not otherwise qualify for Full Membership.</li> <li>• We have removed reference to lower fees for student membership, but you may continue to offer this as your subscription fee rule enables the directors to set varying amounts.</li> <li>• Membership ceases if the member's annual subscription fee is not received within two month of a written reminder notice.</li> </ul> <p>Similarly to your current rules:</p> <ul style="list-style-type: none"> <li>• Each Full Member will have one vote. Associate Members do not have the right to vote.</li> <li>• The company must maintain a register of members.</li> </ul>
<b>7 Guarantee</b>	<p>In becoming a company limited by guarantee, each member must guarantee to contribute up to a certain amount in the event the company is wound up and its liabilities exceed its assets. The amount of the guarantee under the constitution is \$100. This liability ceases one year after the person ceases to be a member.</p>
<b>8 Winding up</b>	<p>In the event that this company is wound up, any surplus assets (subject to the DGR rule in rule 9) must be transferred to an entity that is charitable at law, as decided by the directors. This rule reflects the legal requirements contained in rule 14 of your current constitution.</p>
<b>9 DGR status</b>	<p>Rule 9, the DGR rule, reflects the requirements contained in rule 14(c) of your current constitution.</p> <p>It requires the company to maintain a separate internal management account to identify gifts and deductible contributions. If AusPath's DGR status was revoked, any money in this management account would have to be distributed to another organisation with endorsement as a DGR on the basis of being a health promotion charity.</p>
<b>11 Accountability to members</b>	<p>Under the ACNC Act, charitable companies limited by guarantee are not required to hold annual general meetings. This is in contrast to incorporated associations, which are still required to hold AGMs within 5 months of the end of the financial year in the state of incorporation.</p> <p>As a company, AusPath must be accountable to its members but may choose how it does so. Because the organisation has a broad membership base, it may hold members briefings in each state or webinars to inform members and allow members an opportunity to make enquiries on strategy and governance.</p>

The constitution still provides for the mechanics and process to call and hold members' meetings in rule 11, replacing current rule 8. 21 days' notice must be given for general meetings. Quorum has been changed from half the membership to at least 5 members entitled to vote. General meetings can be conducted via technology. We have removed the right for the chairperson to cast a second or casting vote, as this is not considered best practice.

The existing rule giving 6 members a right to requisition a meeting has been amended to 5% of votes that may be cast at a general meeting.

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## 12 Directors

As identified above, the term 'executive committee members' has changed to 'directors' in accordance with the usual and current terminology for companies. Rule 12 replaces the requirements in current rule 5.

### **Appointing and removing directors (proposed rule 12.1)**

The minimum number of directors under the proposed constitution is 3, and the maximum is 9. We have removed the proscriptive requirements regarding titles, but the organisation may continue to operate with these titles as you wish (or chair and deputy chair, which is the more common term for companies). The board, rather than the members, will decide who holds those positions once the directors have been elected by the membership.

### **Nomination process**

We have removed the nomination process from the constitution, as this is not required. You may continue to call for nominations from the membership as required.

### **Retirement by rotation (proposed rule 12.2)**

Because AusPath will not be required to hold annual general meetings, elections may take place at any general meeting. Directors may be appointed by the board to fill a casual vacancy or as an addition to the current directors, but will hold office only until the conclusion of the next election following their appointment.

The maximum term is eight years, a maximum of two four-year terms. Each year, half the board will retire and may offer themselves for re-election subject to the maximum term of office. The term of office for current executive members will continue rather than restart under the proposed constitution.

You may adopt the constitution after you've elected the directors for the appropriate terms under your current constitution.

### **Meetings of directors**

Quorum for directors meetings remains half, directors may meet via technology and the chairperson does not have a casting vote.

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## Rules removed as not required

The current rules include:

- Rule 7 which requires the organisation to have a common seal; and
- Rule 11 which sets out the requirements for keeping financial records;

These particular rules are required under the legislation application to incorporated associations and are not required for companies. For this reason they have been removed.