



**NATIONAL HERBALISTS ASSOCIATION OF AUSTRALIA**  
ACN 000 009 932

**CONSTITUTION**

A Company limited by guarantee and not having a share capital

Incorporated 21 August 1920

**UPDATED CHANGES ADOPTED: 21st October 2015**

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# CORPORATIONS ACT 2001

A COMPANY LIMITED BY GUARANTEE

## CONSTITUTION

of

### NATIONAL HERBALISTS ASSOCIATION OF AUSTRALIA (ACN 000 009 932)

#### INTRODUCTION

#### 1. NAME

The name of the company is National Herbalists Association of Australia (“NHAA”).

#### 2. DEFINITIONS AND INTERPRETATION

2.1. In this constitution unless the contrary intention appears:

**Aboriginal and Torres Strait Islander**” (ATSI) means an Aboriginal and Torres Strait Islander who as prescribed from time to time by the Board of Directors:

- (i) has successfully completed studies in bush medicine and Western herbal medicine or naturopathy to the minimum ATSI standard of competency; or
- (ii) has met the requirements for Full ATSI membership.

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

**“Annual General Meeting”** means the annual general meeting of the NHAA conducted in accordance with Clause 16.2.

**“Associate Member”** means a natural person interested in the application and use of western herbal medicine and naturopathic techniques in medicine, but who do not otherwise qualify for membership of NHAA.

**“Board of Directors”** means the body consisting of the Directors under Clause 24 and constituted in accordance with Clauses 25 and 26.

**“Board of Directors Meeting”** means a meeting of the Board of Directors, in person, by telephone or video conference or other electronic means.

**“By-Law”** means any by-law, regulation or policy made by the Board of Directors under Clause 36.2 (b)(v).

**“Company Secretary”** means any person appointed to perform the duties of the company secretary of NHAA in accordance with Clause 38.4.

**“Constitution”** means this Constitution of NHAA, except where otherwise provided.

**“Corporate Member”** means a firm or corporation engaged in western herbal medicine or naturopathic commerce or the western herbal medicine or naturopathic industry as the Board

of Directors may from time to time admit to membership.

**“Course of Approved Training”** means a course of training in naturopathy or western herbal medicine which is approved by any college or authority for the time being recognised by the Board of Directors as being appropriate to approve such a course.

**“Director(s)”** means an/the Elected Director(s) and Independent Director(s).

**“Elected Director”** means a Director elected under Clause 26 and includes the President, Vice-President and Honorary Treasurer.

**“Executive Officer”** means the Executive Officer or such other person or persons appointed by the Board of Directors having such functions as are set out under this Constitution.

**“Fellow”** means a Full Member elevated to fellowship under Clause 11.3 (ii).

**“Financial Year”** means the year ending 30 June in each year.

**“Full practicing member”** means a person who:

- (i) has successfully completed herbal or naturopathic studies to the minimum standard of competency for Western herbal medicine practice as set by the Board of Directors from time to time; and
- (ii) is currently in paid employment in clinical practice; and
- (iii) in the opinion of the Board of Directors have met the requirements for full membership as determined by the Board of Directors from time to time.

**“Full non-practicing member”** means a person who:

- (i) has successfully completed herbal or naturopathic studies to the minimum standard of competency for Western herbal medicine practice as set by the Board of Directors from time to time but is not currently in paid employment in clinical practice; or
- (ii) is not in clinical practice; and
- (iii) in the opinion of the Board of Directors have met the requirements for full membership as determined by the Board of Directors from time to time.

**“General Meeting”** means the Annual or any Special General Meeting, unless otherwise provided.

**“Independent Director”** means a Director appointed under Clause 27.

**“Intellectual Property”** means all rights subsisting in copyright, trade names, trademarks, logos, designs, equipment, images (including photographs, videos or films) or service marks (whether registered or registrable) relating to NHAA or any Course of Approved Training, product, publication, calendar of events or activity (including the International Conference and National Seminar Series and Chapter meetings) developed, conducted, promoted or administered by NHAA.

**“Life Member”** means a person appointed to Life membership under Clause 11.3 (i).

**“Member”** means a person, firm or organisation:

- a) Normally resident in Australia; and

- b) Who joins or renews in one of the following membership categories:
- (i) Associate;
  - (ii) Corporate;
  - (iii) Life;
  - (iv) Full practicing;
  - (v) Full non-practicing;
  - (vi) Student;
  - (vii) Aboriginal and Torres Strait Islander; and
  - (viii) such other categories as are created from time to time under Clause 11.2.

**“Objects”** mean the objects of NHAA in Clause 3.

**“President”** means the Elected Director for the time being of NHAA elected in accordance with Clause 29.

**“Special business”** is business of which a notice of motion has been submitted in accordance with Clause 18.1 (b).

**“Special General Meeting”** means a meeting of NHAA convened in accordance with Clause 20.

**“Special Resolution”** means a resolution passed in accordance with the Act.

- a) of which at least 21 days’ notice has been given; and
- b) by at least 75% of the votes cast by Voting Members on the resolution.

**“The Seal”** means the common seal (if any) of NHAA.

**“State”** means any State or Territory in Australia.

**“Student”** means a natural person who is pursuing a course of study in herbal medicine or naturopathy.

**“Treasurer”** means the Elected Director elected as Treasurer in accordance with Clause 31.

**“Vice-President”** means the Elected Director for the time being of NHAA elected in accordance with Clause 30.

**“Voting Member”** means a Full practicing, Full non-practicing or Life Member of the NHAA who is not prohibited from voting by any provision of this Constitution.

## 2.2. Interpretation

In this constitution:

- (i) Except in so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
- (ii) A reference to a function includes a reference to a power, authority and duty;
- (iii) A reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority or the performance of the duty;

- (iv) Words importing the singular include the plural and vice versa;
- (v) Words importing any gender include other genders and neuter;
- (vi) References to persons include corporations and bodies politic;
- (vii) References to a person include the legal personal representatives, successors and permitted assigns of that person;
- (viii) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- (ix) Expressions referring to “writing” shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages by electronic mail;
- (x) A reference to a “day” means any day of the week including public holidays, however where something is due to be done on a day and that day falls on a public holiday, the task to be done is to be done on the next business day of the person required to take action;
- (xi) If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Constitution or affecting the validity or enforceability of that provision in any other jurisdiction.
- (xii) The replaceable rules referred to in the Act are displaced by this Constitution.

## **OBJECTS**

### **3. OBJECTS**

The Objects are to:

- (i) Promote, protect and encourage the study and practice and knowledge of naturopathy and the plant kingdom with regard to medicine and public health (including industry and agriculture) and to disseminate such knowledge by talks, seminars, publications etc.
- (ii) Encourage and promote the highest standards of education from the teaching institutions.
- (iii) Encourage the highest ideals of professional and ethical standards in members.
- (iv) Be the national governing body in Australia for Western Herbal Medicine and Naturopathy and be recognized as such by the State and Australian Governments;
- (v) Contribute through literary and educational activities to the advancement of the practice

- of western herbal medicine and naturopathy and without in any way limiting the generality of the foregoing;
- (vi) Promote the highest possible standards of western herbal medicine and naturopathic practice in Australia;
  - (vii) Encourage and assist research by any persons (whether Members or not) into biological, scientific or other subjects, also the publication of books, monographs, articles and other writings by such persons upon such subjects;
  - (viii) Encourage and assist persons (whether Members or not) to arrange, take part in, undergo, undertake and carry out training courses, schools, seminars, symposia, conferences and other activities in relation to medical, biological, scientific or other fields of knowledge which NHAA considers are calculated to improve the knowledge and skill in those fields or any of them of the persons taking part in them or to extend knowledge and raise standards of learning generally in those fields or any of them;
  - (ix) Publish or cause to be published and acquire, buy, sell, exchange or dispose of books, periodicals, papers, pamphlets, memoranda and other written or printed material;
  - (x) Promote social intercourse and good fellowship amongst Members and amongst persons engaged in the practice and profession of western herbal medicine and naturopathy and to promote good relations between such Members and persons and the rest of the community or other sections of the community;
  - (xi) Advise government and statutory authorities on any aspect of the practice and profession of western herbal medicine and naturopathy;
  - (xii) Do all that is reasonably necessary to enable these Objects to be achieved and to enable the Members to receive the benefits which these Objects are intended to achieve;
  - (xiii) Pursue through itself (or other related entity) commercial arrangements, including sponsorship and marketing opportunities, as are appropriate to further these Objects;
  - (xiv) Undertake and or do all such acts as are necessary, incidental or conducive to the furtherance of these Objects;
  - (xv) Purchase, take on lease or in exchange, hire and otherwise acquire any lands, building, easement or property, real and personal, and any right or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the Objects;
  - (xvi) Enter into any arrangements with any Government or otherwise that may seem conducive to the NHAA's objects or any of them and to obtain from any such Government or authority any rights privileges and concessions which the NHAA may think it desirable to obtain and to carry out exercise and comply with any such arrangements rights privileges and concessions;

- (xvii) Sell, improve, manage, develop, exchange, lease, dispose of, turn to, account or otherwise deal with all or any part of the property and rights of the NHAA;
- (xviii) Draw, make, accept, endorse, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading warrants, debentures and other negotiable or transferable instruments;
- (xix) Take any gift of property whether subject to any special trust or not for any one or more of the Objects but subject always to the provisos in this Constitution.
- (xx) Print and publish any written matter that the NHAA may think desirable for the promotion of its Objects;
- (xxi) Make donations for patriotic or charitable or research purposes as deemed to be in accordance with the Objects;
- (xxii) Take such steps by personal or written or media appeals, public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the NHAA in the shape of donations, annual subscriptions or otherwise;
- (xxiii) Invest and deal with any of the monies of the NHAA not immediately required for the purposes thereof upon such securities and in such manner as may be deemed fit and from time to time to vary and realise such investments provided that all such monies shall be invested only in such forms of investments as are permitted by law for the investments of trust funds;
- (xxiv) Borrow or raise or secure the payment of money or otherwise raise finance in general in such manner as the NHAA shall think fit and without limiting the generality of the foregoing in any manner whatsoever by the issue of debentures or debenture stock perpetual or otherwise charged upon all or any of the NHAA's property and rights (both present and future) and to purchase redeem or pay off any such securities; and
- (xxv) The powers set forth in sub-section 67 (1) of the Act shall not apply to the NHAA except insofar as they are included in this clause 3.

## **POWERS**

### **4. CONSTITUTIONAL POWER**

- 4.1. NHAA is empowered to require the Members to uphold and comply with all of the provisions of this Constitution, to the extent permitted by laws governing the Members in the jurisdiction in which they reside, are formed or operate, as the case may be.

### **5. GENERAL POWERS**

- 5.1. Solely for furthering the Objects the NHAA has the legal capacity and powers set out under section 124 of the Act, except for the power to distribute any of the company's property to its

members, which is prohibited by Clause 6.2.

- 5.2.** Without limiting the powers of NHAA under Clause 5.1, it is expressly acknowledged that NHAA shall be empowered to publish, from time to time, such Clauses, By-laws and procedures as it may in its absolute discretion deem appropriate for the proper organisation and administration of western herbal medicine and naturopathy in Australia.
- 5.3.** As the governing body in Australia for western herbal medicine and naturopathy, NHAA will oversee, manage and control the operation of Australia's international representation in western herbal medicine and naturopathy and shall be empowered to ensure compliance by the Members with the Clauses, By-Laws and procedures established under this Constitution as amended from time to time.

## **6. APPLICATION OF INCOME AND PROPERTY**

- 6.1.** The income and property of the NHAA whencesoever derived must be applied solely towards the promotion of the Objects.
- 6.2.** No portion of the income and property of the NHAA may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever to any Member.
- 6.3.** The payment of directors' fees, in whatever form, is prohibited to Directors for serving in that capacity.
- 6.4.** Nothing contained in Clauses 6.2 or 6.3 prevents payments in good faith to a Director or a Member for:
- (i) Out-of-pocket expenses incurred on behalf of NHAA including, in the case of a Director, in:
    - (a) carrying out the duties of a director;
    - (b) attending Board of Director Meetings;
    - (c) attending any meetings of committees of the Board of Directors; or
    - (d) attending any General Meetingswhere the payments do not exceed an amount previously approved by the Board of Directors;
  - Any service rendered to the NHAA in a professional, technical or employed capacity, where the provision of that service has the prior approval of the Board of Directors and the amount payable is approved by a resolution of the Board of Directors and is on reasonable commercial terms;
  - (ii) Any amount expended on or in connection with the promotion of NHAA;
  - (iii) Consideration for goods supplied in the ordinary and usual way of business;
  - (iv) Interest on money lent to NHAA at a rate not exceeding the rate of interest charged by NHAA's principal bankers from time to time on its overdrawn account or, if NHAA's account with its principal bankers is not overdrawn at the relevant time, the rate of interest certified by NHAA's principal bankers as the rate which they would charge NHAA

if its account were overdrawn at that time; or

- (v) Reasonable and proper rent for premises leased to NHAA; provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

## **7. ADDITION, ALTERATION OR AMENDMENT**

No addition, alteration or amendment shall be made to this Constitution unless it has been approved by Special Resolution.

## **8. LIABILITY OF MEMBERS**

The liability of the Members is limited.

## **9. GUARANTEE BY MEMBERS**

Every Member undertakes to contribute to the property of NHAA, in the event of it being wound up while the Member is a Member or within one year after the Member ceases to be a Member, for payment of the debts and liabilities of NHAA contracted before the Member ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributors among themselves, such amount as may be required but not exceeding any amount unpaid by the Member in respect of membership and fees as required by Clause 12.

## **10. DISTRIBUTION OF PROPERTY ON WINDING UP**

If upon the winding up or dissolution of NHAA there remains after satisfaction of all its debts and liabilities any property whatsoever, that property may not be paid to or distributed amongst the Members but must be given or transferred to one or more other funds, authorities or institutions:

- (i) Which has objects similar to the Objects;
- (ii) The income of which or each of which is exempt (or entitled to be exempt) from income tax;
- (iii) Whose constitution or each of whose constitutions prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on NHAA under or by virtue of Clause 6; and
- (iv) Which is also not carried on for profit.

Such organisation to be determined by the Board of Directors at or before the time of dissolution and in default thereof by application for determination to the Supreme Court of New South Wales as may have or acquire jurisdiction in the matter.

# **NHAA MEMBERSHIP**

## **11. MEMBERS**

### 11.1. Categories of Members

(a) NHAA's membership is classified into the following categories:

- (i) Associate;
- (ii) Corporate and who is allowed to use and display the NHAA's name or acronym;
- (iii) Life Member.

A Life Member is allowed to use and display the NHAA's name or acronym and the initials MNHAA next to their name;

- (iv) Full practicing.
- (v) Full non-practicing.

A Full practicing and non-practicing Member is allowed to use and display the NHAA's name or acronym and the initials MNHAA next to their name and agrees to comply with such continuing education requirements as may be prescribed from time to time by the Board of Directors;

- (vi) Aboriginal and Torres Strait Islanders (ATSI).

An Aboriginal and Torres Strait Islander Member is allowed to use and display the NHAA's name or acronym displayed alongside the ATSI acronym and agrees to comply with such continuing education requirements as may be prescribed from time to time by the Board of Directors;

- (vii) Student; and

- (viii) such other categories as are created from time to time under Clause 11.2.

(b) The rights and privileges of every Member are personal to the Member. They are not transferable by the Member's own act or by operation of law, and no Member is entitled to exercise the rights and privileges of a Member unless all monies due by the Member to NHAA have been paid.

(c) Subject to subclauses (b) and (c), every applicant for membership shall be made in writing on the prescribed membership application forms as prescribed by the Board of Directors from time to time accompanied by payment in advance and considered by the Board of Directors or by their appointed representative who shall determine admission or rejection of the applicant. The prescribed membership fee is to be included with the application. The Board of Directors or the appointed representative shall not be required to give any reason for the rejection of the applicant.

(d) When an applicant has been accepted for membership, the Executive Officer or their nominated delegate must forthwith send to the applicant written notice of his, her or its acceptance.

(e) All membership fees become due and payable in advance on 1 January in every year or at such other dates as are created from time to time by the Board of Directors.

## **11.2. Creation of New Membership Categories**

- (a) Subject to Clause 11.2(b), the Board of Directors may create new, alter or delete existing categories of membership from time to time with such rights, privileges and obligations as the Board of Directors may determine, even if the effect of creating a new or altering an existing category is to alter rights, privileges or obligations of an existing category of Members.
- (b) Any new category of membership established by the Board of Directors under Clause 11.2(a) may not be granted voting rights at General Meetings.

## **11.3. Life Members and Fellows**

- (i) Subject to confirmation at an Annual General Meeting, the Board of Directors may appoint as a Life Member a Member:
  - (a) after having been a Full Member for no less than 10 years;
  - (b) who is in the opinion of the Board of Directors entitled to Life Membership for:
    - (i) outstanding contributions to NHAA over a number of years; or
    - (ii) such other reason as the Board of Directors considers warrants such appointment.
- (ii) The Board of Directors may elevate a Full Member to a Fellow:
  - (a) after having been a Full Member for no less than 10 years;
  - (b) who is in the opinion of the Board of Directors entitled to Fellowship for:
    - (i) outstanding or meritorious work in their profession over a number of years; or
    - (ii) for such other reason as the Board of Directors considers warrants such an elevation.

## **11.4. Membership Renewal**

In order to remain a Member, Members must:

- (a) Renew their membership according to this Clause 11.4; and
- (b) Pay the membership fees (if any) prescribed by NHAA from time to time to NHAA.

## **11.5. Operation of Clauses**

NHAA agrees:

- (a) That it is bound by this Constitution and that this Constitution operates to create confidence and uniformity in the way in which the Objects and western herbal medicine and naturopathy are to be conducted, encouraged, promoted and administered in Australia;

- (b) To act in good faith and loyalty to ensure the maintenance and enhancement of western herbal medicine and naturopathy, the standards, quality and reputation for the collective benefit of the Members and western herbal medicine and naturopathy;
- (c) Not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of western herbal medicine and naturopathy and their maintenance and enhancement;
- (d) To act for and on behalf of the interests of western herbal medicine and naturopathy in medicine, NHAA and the Members.

## **12. MEMBERSHIP AND FEES**

- 12.1.** The Board of Directors shall determine the membership fees payable by Members (or any category of Members) including the time for and manner of payment to NHAA.
- 12.2.** Any Member which or who has not paid all money due and payable by that Member to NHAA will (subject to the Board of Directors' discretion, which shall be exercised reasonably) have all rights under this Constitution (including the right to vote at General Meetings) immediately suspended from the expiry of the time prescribed for payment of that money. The Member's rights will be suspended until the money is fully paid or otherwise in the Board of Directors' discretion. In the meantime, the Member will have no automatic right to resign from NHAA, and will be dealt with in the Board of Directors' discretion, which includes the right to censure, expel, suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board of Directors considers appropriate.

## **13. EFFECT OF MEMBERSHIP**

- 13.1.** Members acknowledge and agree that:
  - (a) The Constitution constitutes a contract between each of them and NHAA and that they are bound by the Constitution and the By-Laws;
  - (b) They must comply with and observe the Constitution, the By-Laws, policies and any determination or resolution which may be made and passed by NHAA or by the Board of Directors;
  - (c) By submitting to the Constitution and the By-Laws they are subject to the jurisdiction of NHAA;
  - (d) The Constitution is made in the pursuit of a common object, namely the mutual and collective benefit of NHAA, the Members and western herbal medicine and naturopathy;
  - (e) The Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement of western herbal medicine and naturopathy; and

(f) They are entitled to all benefits, advantages, privileges and services of NHAA membership.

## **14. CESSATION OF MEMBERSHIP**

### **14.1. Failure to Renew**

If the membership fee of a Member remains unpaid for a period of two calendar months after it becomes due then the Member may after notice of the default has been sent to them or it be debarred by resolution of the Board of Directors from all privileges of membership, but the Board of Directors may reinstate the Member in accordance with Clause 14.5.

### **14.2. Notice of Resignation**

Subject to Clause 9, a Member or Fellow which has paid all (if any) money due and payable to NHAA and has no other liability (contingent or otherwise) to NHAA may at any time by giving notice in writing to the Executive Officer resign their or its NHAA membership.

Upon receipt of the notice from the Member, an entry recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register of Members.

### **14.3. Member to Re-Apply**

A Member whose membership has ceased or has lapsed under Clause 14.1 must seek renewal or re-apply for membership in accordance with this Constitution.

### **14.4. Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon NHAA and its property including Intellectual Property. Any NHAA documents, records or other property in the possession, custody or control of that Member shall be returned to NHAA immediately.

### **14.5. Reinstatement of Membership**

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Board of Directors, which shall be exercised reasonably, on application and payment of all arrears in accordance with this Constitution and otherwise on such conditions as it sees fit.

### **14.6. Effect on Guarantee**

A Member who has ceased to be entitled to the privileges of membership in accordance with

Clause 14.1 will be expected to pay the guarantee under Clause 9 after the giving of the notice of default or passing of the resolution, unless the Member is reinstated in accordance with Clause 14.5.

## **15. DISCIPLINE OF MEMBERS**

- 15.1.** Subject to Clauses 15.2, 15.3 and 15.4, if any Member willfully refuses or neglects to comply with the provisions of this Constitution or is guilty of any conduct which in the opinion of the Board of Directors is unbecoming of a Member or prejudicial to the interests of NHAA, the Board of Directors may by resolution suspend, expel, retain or reinstate that Member as a Member or impose such other conditions or requirements as the Board of Directors considers appropriate. In the meantime the Member will have no automatic right to resign from NHAA.
- 15.2.** At least one week before the Board of Directors Meeting at which a resolution of the kind mentioned in Clause 15.1 is to be considered, the Member concerned must be given written notice of the meeting and of what is alleged against the Member and of the intended resolution, and the Member must at that meeting and before the passing of that resolution be given an opportunity to give orally or in writing any explanation which the Member may think fit.
- 15.3.** Any such Member may by notice in writing lodged with the Executive Officer at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board of Directors, elect to have the question dealt with by NHAA in a General Meeting.
- 15.4.** If any such Member elects to have the matter dealt with by NHAA in a General Meeting, a General Meeting of NHAA must be called for the purpose and, if at the General Meeting such a resolution is passed by two- thirds of those present and voting (such vote to be taken by ballot) the Member concerned will be dealt with in accordance with Clause 15.1.

## **MEETINGS OF MEMBERS**

### **16. GENERAL MEETINGS**

#### **16.1. Powers of General Meetings**

- (a) The Members in a General Meeting must act in accordance with the Objects and for the mutual and collective benefit of the Members and western herbal medicine and naturopathy throughout Australia. The Members in a General Meeting may in addition to its other powers and functions under the Act:
- (i) Dismiss the President in accordance with this Constitution and the Act;
  - (ii) Elect and dismiss Directors in accordance with this Constitution and the Act;
  - (iii) Consider and accept or reject the annual report;

- (iv) Consider and pass or reject any Special Resolutions including any Special Resolution to alter this Constitution; and
  - (v) Be the final arbiter on matters referred to it by the Board of Directors.
- 16.2.** An Annual General Meeting of NHAA must be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board of Directors.
- 16.3.** All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.
- 16.4.** NHAA may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 16.5.** Any three Directors may whenever they think fit convene a General Meeting. General Meetings may also be convened on such requisition or in default may be convened as provided by sections 249D or 249E of the Act.

## **17. NOTICE OF GENERAL MEETINGS**

- 17.1.** Subject to the provisions of the Act regarding agreements for shorter notice periods, not less than 21 days' written notice (exclusive of the day on which the notice is served or taken to be served and inclusive of the day for which notice is given) must be given of any General Meeting to such persons as are entitled to receive such notices from NHAA.
- 17.2.** A notice of a General Meeting must:
- (a) Be given to Members in accordance with Clause 50 at the address appearing in the register of Members. Except in the case of notices for Annual General Meetings (the requirements for which are dealt with under the Act), no other person is entitled as of right to receive notices of General Meetings.
  - (b) Set out the place (which may be within or outside Australia), date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (c) State the general nature of the business to be transacted at the meeting;
  - (d) Set out an intention to propose any Special Resolution and state the resolution if a Special Resolution is to be proposed at the meeting; and
  - (e) Contain a statement that a Member has the right to appoint a proxy who must be a Member.

### **17.3. Entitlement to Attend a General Meeting**

Notwithstanding any other Clause, a Member has no entitlement to be represented at, or take part in a General Meeting, unless all money then due and payable to NHAA by the

Member has been paid.

## **18. BUSINESS of GENERAL MEETINGS**

### **18.1. Business of General Meetings**

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts, reports of the Board of Directors (including in relation to the activities of NHAA during the preceding Financial Year) and auditors, appointment of the auditor and the election of the Elected Directors and Life Members (if any).
- (b) All business that is transacted at a General Meeting and also all that is transacted at the Annual General Meeting, with the exception of those matters set out in Clause 18.1(a) shall be Special Business.

### **18.2. Business Transacted**

No business other than that stated on the notice shall be transacted at that meeting.

## **19. NOTICES OF MOTION at GENERAL MEETINGS**

All notices of motion for inclusion as Special Business at a General Meeting must be submitted in writing (in the required form) to the Executive Officer not less than 45 days (excluding receiving date and meeting date) prior to the General Meeting.

## **20. SPECIAL GENERAL MEETINGS**

### **20.1. Special General Meetings May Be Held**

The Board of Directors may, whenever it thinks fit, convene a Special General Meeting of NHAA and, where, but for this Clause more than 15 months would lapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

### **20.2. Requisition of Special General Meetings**

- (a) The Board of Directors must call and arrange to hold a Special General Meeting on the requisition in writing of the lesser of:
  - (i) Members with at least 5% of the votes that may be cast at the Special General Meeting;  
or
  - (ii) At least 100 Voting Members.
- (b) If however, the Members want a General Meeting held they (the Members) with at least 5% of the votes that may be cast at a General Meeting may call, and arrange to hold, a

General Meeting.

- (c) The requisition for a Special General Meeting must state the object(s) of the meeting, must be signed by the Members making the requisition and be sent to NHAA. The requisition may consist of several documents in a like form, each signed by 1 or more of the Members making the requisition.
- (d) If the Board of Directors does not cause a Special General Meeting to be held within 3 months after the date on which the requisition is sent to NHAA, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than 3 months after that date. A Special General Meeting convened by the Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which General Meetings are convened by the Board of Directors.

## **21. PROCEEDINGS AT GENERAL MEETINGS**

### **21.1. Quorum**

- (a) No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) No resolution may be passed at any General Meeting unless a quorum of Members is present at the time when the resolution is put to the vote of the meeting.
- (c) Save as herein otherwise provided, 19 Voting Members constitute a quorum.
- (d) If a Member attending a General Meeting is also a proxy for a Member, he or she is to be counted only once in determining whether a quorum is present.

### **21.2. President to Preside**

- (a) The following Elected Directors (provided that they are present within 20 minutes after the time appointed for the holding of the meeting) are entitled in the following priority to preside as chair at every General Meeting of NHAA:
  - (i) the President, but if he or she is not present or unwilling to act or unable to preside then
  - (ii) the Vice President (if any), but if he or she is not present or unwilling to act or unable to preside then
  - (iii) the Directors must choose one of their number present who must, subject to this Constitution, preside as chair for that meeting only.

### **21.3. Adjournment of General Meeting**

- (a) If within half an hour from the time appointed for a General Meeting a quorum is not present, the meeting, if convened upon the requisition of Members, is dissolved; in any other case it stands adjourned to the same day in the next week at the same time and

place, or to such other day and at such other time and place as the Board of Directors may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present (being not less than ten) constitute a quorum.

- (b) The Chair may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place.
- (c) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting.
- (e) Except as provided in Clause 21.3(d) it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

#### **21.4. Voting Procedure**

At any General Meeting a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- (a) the Chair; or
- (b) at least ten Voting Members present in person and not by proxy.

#### **21.5. Recording of Determinations**

Unless a poll is so demanded under Clause 21.4 a declaration by the chair that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

#### **21.6. Where Poll Demanded**

If a poll is duly demanded under Clause 21.4 it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll is the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chair or on a question of adjournment must be taken forthwith.

#### **21.7. Resolutions at General Meetings**

Except where a Special Resolution is required, all questions at General Meetings must be determined by the majority of votes (as set out in Clause 22).

## **21.8. Minutes**

The Executive Officer must keep minutes of the resolutions and proceedings of each General Meeting in books provided for that purpose, together with a record of the names of persons present at all meetings.

## **22. VOTING AT GENERAL MEETINGS**

Subject to the Constitution, a Voting Member may vote in person or by proxy and on a show of hands or poll every person present who is a Voting Member has one vote.

### **22.1. Casting Vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

### **22.2. Disallowance of Vote**

A challenge to a right to vote at a General Meeting:

- (a) May only be made at the General Meeting; and
- (b) Must be determined by the Chair whose decision is final.

Every vote not so disallowed is valid for all purposes.

### **22.3. Proxy Voting**

Proxy voting shall be permitted at General Meetings in such manner as directed by the Board of Directors from time to time. Such proxy must be a Full Member or Life Member. No instrument appointing a proxy shall be effective unless it is received by the Company Secretary or an appointed delegate no less than 72 hours before the time for the meeting to be held. In default of this the instrument of the proxy shall not be valid.

### **22.4. Written Resolutions**

NHAA may pass a resolution (except a special resolution) without a General Meeting being held if all Directors sign a document containing a statement that they are in favour of the resolution set out in the document. The provisions of this Clause do not apply to a resolution to remove the auditor.

### **22.5. Separate Documents**

Separate copies of the document may be used for signing by Directors if the wording of the

resolution statement is identical on each copy. The resolution is passed when the last Director signs.

## **THE BOARD OF DIRECTORS**

### **23. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

#### **23.1. Powers and Duties of the Board of Directors**

Subject to the Act and this Constitution the business of NHAA will be managed, and the powers of NHAA will be exercised, by the Board of Directors. In particular, the Board of Directors as the controlling authority of NHAA will be responsible for acting on all national issues in accordance with the Objects and will operate for the collective benefit of NHAA and western herbal medicine and naturopathy throughout Australia and must:

- (a) Govern western herbal medicine and naturopathy in accordance with the Objects;
- (b) Enact NHAA's strategic direction of the time;
- (c) By itself or by delegation to a committee, formulate, approve, issue, adopt, interpret and amend such By- Laws, regulations and policies for the proper advancement, management and administration of NHAA, the advancement of the Objects and western herbal medicine and naturopathy as it thinks is necessary or desirable;
- (d) Review NHAA's performance in achieving its pre-determined aims, objectives, By-Laws and policies;
- (e) Manage NHAA's international responsibilities (if any).

### **24. COMPOSITION OF THE BOARD OF DIRECTORS**

Until otherwise determined by a general meeting of the NHAA the Board of Directors shall consist of not less than eight (8) and not more than ten (10) persons as follows:

- a) Eight (8) Directors; and
- b) Up to two (2) Independent Directors.

The Board of Directors may determine the interests of the NHAA are best served by the allocation of portfolios to Directors. The Board of Directors may vary the titles and portfolios of each of the Directors in accordance with the needs of the NHAA from time to time.

### **25. QUALIFICATIONS OF DIRECTORS**

- a) Nominations for Director positions on the Board of Directors must meet the qualifications as prescribed from time to time by the Board of Directors and set out in the By-Laws.

- b) The Independent Directors may have specific skills in commerce, finance, marketing, law, education or business generally or such other skills which complement the Board of Directors composition, but need not have experience in or exposure to western herbal medicine or naturopathy. They do not need to be NHAA members.

## **26. ELECTION OF DIRECTORS**

- a) The election of Directors shall take place in the following manner:
  - i. Not more than three months before each Annual General Meeting, the Company Secretary must by notice in writing to Voting Members call for nominations from amongst all Voting Members for successors to those Directors who are due to retire at the next Annual General Meeting.
  - ii. Each nomination must be signed:
    - 1. By not less than any two Full members of the NHAA having regard to the desire to achieve gender equity amongst the membership of the Board of Directors;
    - 2. On the prescribed form (if any) provided for that purpose;
    - 3. By the nominee (who shall be a Full member of the NHAA) as evidence of his or her willingness to serve as a Director;
    - 4. And received at the registered office of the NHAA not less than thirty (30) calendar days before the Annual General Meeting at which the election is to take place.
  - iii. Using any technology that gives Members as a whole a reasonable opportunity to participate, not more than fifteen (15) nor less than ten (10) days before each Annual General Meeting, the Company Secretary must send a list of the nominations in alphabetical order with the proposer's and seconder's names and state of residence to and conduct a ballot of all Voting Members from amongst the nominations received in accordance with Clause 26(a) (ii) 4 to elect successors to those Directors who are due to retire at the next Annual General Meeting.
  - iv. Balloting lists shall be prepared containing the names of the candidates only in alphabetical order and each eligible Voting Member present at the Annual General Meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies and the provisions relating to proxy votes shall be adhered to.
  - v. The election of the incoming Directors takes effect as from the conclusion of the next Annual General Meeting.

vi. If the number of nominations received for the election of Director positions is equal to the number of vacancies to be filled or if there are insufficient nominations to fill all Director vacancies on the Board of Directors, then those nominated will be automatically elected. If there are vacancies to be filled, further nominations shall be called for in accordance with Clause 35.

vii. If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as the chair directs.

viii. The voting shall be conducted by exhaustive ballot, the procedure for which will be detailed in the By-Laws.

b) Despite anything hereinbefore provided, the Board of Directors has the power to make By-Laws not inconsistent with this Constitution concerning the method of election of Directors, and in particular the procedure to be adopted in the event of an equality of votes.

c) Any person appointed to the Board of Directors under Clause 27 is taken for the purposes of Clause 27 to have been elected on the date of his or her appointment.

## **27. APPOINTMENT OF INDEPENDENT DIRECTORS**

a) Independent Directors may be appointed by the Board of Directors in accordance with its requirement from time to time, however always in accordance with this Constitution.

b) A Director appointed under this Clause 27 cannot be a person who, within the previous twelve (12) months, was an unsuccessful nominee for the position of a Director.

c) In appointing Independent Directors under this Constitution, the Board of Directors shall have regard to the desire to achieve diversity and equity amongst the membership of the Board of Directors.

## **28. TERMS OF OFFICE**

a) Directors hold office until the conclusion of the second Annual General Meeting after their respective elections but are then eligible for re-election, provided that after three (3) successive terms in office as such, is not eligible for re-election or for appointment as an

Independent Director or to fill a casual vacancy until the next Annual General Meeting after the conclusion of his or her said three terms of office.

- b) Independent Directors shall hold office for such term as is determined by the Directors appointing them but in any event for a maximum duration of a continuous four (4) years after which is eligible for re-appointment in accordance with Clause 27 after the next Annual General Meeting after the conclusion of his or her said four (4) years.
- c) A minimum of one (1) and a maximum of four (4) Directors are to be elected each year.
- d) Should any adjustment to the term of Directors under this Constitution who have been in office for the same period, be necessary to ensure rotational terms in accordance with this Constitution, those to retire are to be selected by lot. Elections to subsequent Board of Directors shall then proceed in accordance with the procedures in this Constitution with the maximum of half of the Board of Directors retiring each year.

Subject to this Constitution, the Directors are not entitled to be paid remuneration.

## **29. PRESIDENT – TERM OF OFFICE**

- a) Subject to Clause 26(a), immediately after the Annual General Meeting where the President's office has become vacant, the Board of Directors must elect via Clause 26 a (vii) and (viii) from its own number an Director to become the President. The President will hold office until the conclusion of the second Annual General Meeting after the date of his or her election as President but is then eligible for re-election, provided that after two (2) successive terms in office as such, is not eligible for re-election.

The election shall be conducted by secret and exhaustive ballot, the procedure for which will be detailed in the By-Laws.

## **30. VICE-PRESIDENT – ELECTION AND TERM OF OFFICE**

- a) Subject to Clause 26(a), immediately after the Annual General Meeting where the Vice-President's office has become vacant, the Board of Directors must via elect Clause 26 a (vii) and (viii) from its own number an Director to become the Vice-President. The Vice-President will hold office until the conclusion of the second Annual General Meeting after the date of his or her election as Vice-President but is then eligible for re-election, provided that after two (2) successive terms in office as such, is not eligible for re-election.

The election shall be conducted by secret and exhaustive ballot, the procedure for which will be detailed in the By-Laws.

### **31. TREASURER – ELECTION AND TERM OF OFFICE**

- a) Subject to Clause 26(a), immediately after the Annual General Meeting where the Treasurer's office has become vacant, the Board of Directors must elect via Clause 26 a (vii) and (viii) from its own number the Director to become the Treasurer. The Treasurer will hold office until the conclusion of the second Annual General Meeting after the date of his or her election as Treasurer but is then eligible for re-election, provided that after two (2) successive terms in office as such, is not eligible for re-election.

The election shall be conducted by secret and exhaustive ballot, the procedure for which will be detailed in the By-Laws.

### **32. PRESIDENT, VICE-PRESIDENT, TREASURER NOT TO BE APPOINTED**

- a) After the conclusion of his or her two (2) successive terms of office, the:
- i. President is not eligible to be appointed as acting President;
  - ii. Vice-President is not eligible to be appointed as acting Vice-President; and
  - iii. Treasurer is not eligible to be appointed as acting Treasurer
- until the conclusion of the second Annual General Meeting after the date when his or her term of office came to an end but subject to Clause 26(a) will be eligible to continue or be re-elected as an Director.

### **33. VACATION OF OFFICE OF DIRECTOR**

#### **33.1. Grounds for termination of a Director**

- a) The office of a Director shall become immediately vacant if the Director:
- i. Becomes an insolvent under administration or makes any arrangement or composition with his or her creditors generally; or
  - ii. Becomes prohibited from being a director of a company by reason of any order made under the Act; or
  - iii. Ceases to be a Director by operation of section 203D of the Act; or
  - iv. Becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
  - v. Resigns his or her office by notice in writing to the NHAA at its registered office; or
  - vi. For more than six months is absent without permission of the NHAA from Board of Directors Meetings held during that period; or

- vii. Holds any office of profit under the NHAA or accepts payment or other benefits from the NHAA other than in accordance with this Constitution otherwise than as provided in Clause 6.4; or
- viii. Is suspended from being a Full Member by virtue of Clause 12.2; or
- ix. Ceases to be a Voting Member of the NHAA; or
- x. Is directly or indirectly interested in any contract or proposed contract with the NHAA otherwise than as provided by this Constitution and fails to declare the nature of the interest in the manner required by this Constitution; or
- xi. Is removed from office by Special Resolution under Clause 34; or
- xii. Dies.

#### **34. REMOVAL OF A DIRECTOR**

- (a) The Board of Directors may by resolution remove any Director before the expiration of their term of office, in accordance with the provisions of the Act and this Clause 34. The Board of Directors are to give thirty (30) days' notice in writing to the affected Director clearly stating the reasons for their resolution and allow an appeal to be made before the Board of Directors. If a Director is removed the office of the Director becomes vacant and shall be filled in accordance with Clause 35.
- (b) Where the Director to whom a proposed resolution referred to in Clause 33.1(a) makes representation in writing to the Company Secretary and requests that such representations be notified to the Members, the Company Secretary may send a copy of the representations to each Member or, if they are not so sent, the Director may require that they be read out at the General Meeting, and the representations shall be so read.

#### **35. CASUAL VACANCIES**

- a) If a casual vacancy occurs in the office of President, the Board of Directors must appoint the Vice-President, or if there is no Vice-President or the Vice-President is unwilling to fill the vacancy, one of its Directors to be acting President for the balance of the term of office which the President would otherwise have served.
- b) If a casual vacancy occurs in the office of Vice-President, the Board of Directors must appoint one of its Directors to be acting Vice-President for the balance of the term of office which the Vice-President would otherwise have served.
- c) If a casual vacancy occurs in the office of Treasurer, the Board of Directors must appoint one of its Directors to be acting Treasurer for the balance of the term of office which the Treasurer would otherwise have served.

- d) If a casual vacancy occurs in the office of a Director, the Board of Directors must appoint any eligible Voting Member to be an acting Director for the balance of the term of office which the Director would otherwise have served.
- e) In the event of a casual vacancy or vacancies in the office of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a Board of Directors meeting, they may act only for the purpose of ensuring the number of Directors are a number sufficient to constitute a quorum.

## **36. MEETINGS AND PROCEEDINGS OF THE BOARD OF DIRECTORS**

### **36.1. Board of Directors to Meet**

- (a) The Board of Directors may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Executive Officer shall on the requisition of a Director convene a Board of Directors Meeting within a reasonable time.
- (b) The Directors may participate in a Board of Directors Meeting by means of any technology allowing all persons participating in the meeting to hear each other at the same time. Any Director participating in such a meeting is for the purposes of this Constitution taken to be personally present at the meeting.
- (c) The consent of a Director to the use of technology may be a standing one.
- (d) Any consent of a Director to the use of technology may be withdrawn only within a reasonable period prior to a meeting at which the technology is to be used.

### **36.2. Notice of Board of Director Meetings**

- (a) Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than seven (7) days oral or written notice of the Board of Directors Meeting shall be given to each Director by the Executive Officer. The agenda shall be forwarded to each Director not less than three (3) days prior to such meeting.
- (b) Without limiting the generality of subclause (a), the Board of Directors may exercise all the powers of NHAA to:
  - (i) Borrow and raise money;
  - (ii) Charge any property or business of NHAA and to issue debentures or give any other security for a debt, liability or obligation of NHAA or of any other person;
  - (iii) Determine who is entitled on behalf of NHAA to sign, draw, accept, endorse or otherwise execute cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, receipts, acceptances, endorsements, releases, contracts

- and documents;
- (iv) Pay the costs, charges and expenses incidental to the promotion, management and regulation of NHAA; and
  - (v) Make, amend and repeal By-Laws, not being inconsistent with the Act or this Constitution, in relation to the affairs of NHAA.

Any By-Law for the time being in force is binding on the Members as if it were included in this Constitution.

### **36.3. Decisions of the Board of Directors**

Subject to this Constitution questions arising at any Board of Directors Meeting are to be decided by a majority of votes and a determination by a majority of the Directors present is for all purposes taken to be a determination of the Board of Directors. In case of an equality of votes the Chair of the meeting has a second or casting vote.

### **36.4. Chair of Board of Directors Meetings**

The procedure for the Chair of Board of Directors Meetings will be the same as that applicable to President to Preside under Clause 21.2.

### **36.5. Resolutions of the Board of Directors**

- (a) If all of the Directors have signed a document containing a statement that they are in favour of a resolution of the Board of Directors in terms set out in the document, a resolution in those terms is taken to have been passed at a Board of Directors Meeting held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
- (b) For the purpose of subclause (a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (c) A reference in subclause (a) to all of the Directors does not include a reference to a Director who, at a Board of Directors Meeting, would not be entitled to vote on the resolution.

### **36.6. Resolutions not in Meeting**

- (a) A resolution in writing, signed or assented to by radiogram, facsimile, telex, electronic

mail or other form of visible or other electronic communication by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Directors.

(b) Without limiting the power of the Board of Directors to regulate their meetings as they think fit, a Board of Directors Meeting may be held where one (1) or more of the Directors is not physically present at the meeting provided that:

- (i) All persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
- (ii) Notice of the meeting is given to all Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board of Directors and such notice specifies that Directors are not required to be present in person;
- (iii) In the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Clause to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated;
- (iv) Any meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there and present and if no Director is there and present the meeting shall be deemed to be held at the place with the chair is located.

### **36.7. Quorum**

The quorum necessary for the transaction of the business of the Board of Directors is a minimum of fifty per cent of Directors.

### **36.8. Validity of Decisions**

All acts done by any Board of Directors Meeting or of a committee or by any Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Board of Directors, committee or Director, or that the Directors or any of them were disqualified, valid as if every such person had been duly appointed and was qualified to be a Director or committee member.

### **36.9. Minutes**

The Board of Directors must cause minutes within one month of a Board of Directors Meeting to

be made of:

- (a) Appointments of officers and servants;
- (b) The names of the Directors present at all meetings of NHAA and of the Board of Directors;
- (c) Resolutions passed by Members without a Board of Directors Meeting;
- (d) Resolutions passed by the Board of Directors without a Board of Directors Meeting; and
- (e) All proceedings at all meetings including General and Board of Directors Meetings (and meetings of a committee of the Board of Directors).

Such minutes must be signed within a reasonable time after the meeting by the chair of the meeting at which the proceedings were held or by the chair of the next succeeding meeting. The Board of Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution was passed.

## **37. CONFLICTS OF INTEREST**

### **37.1. Director's Interests**

A Director is disqualified by holding any place of profit or position of employment in NHAA or in any company or incorporated NHAA in which NHAA is a shareholder or otherwise interested or from contracting with NHAA either as vendor, purchaser or otherwise except with express resolution of approval of the Board of Directors. Any such contract or any contract or arrangement entered into by or on behalf of NHAA in which any Director is in any way interested shall, to the extent permitted by law, be voided for such reason.

### **37.2. Conflict of Interest**

A Director shall declare his or her interest in any:

- (a) Contractual matter;
- (b) Disciplinary matter; or
- (c) Other financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board of Directors, absent himself from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes, the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent him or herself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board of Directors, or if this is not possible, the matter shall be adjourned or deferred.

### **37.3. Disclosure of Interests**

The nature of such interest of such Director must be declared by the Director at the Board of Directors Meeting at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first Board of Directors Meeting after the acquisition of the interest. If a Director becomes interested in a contract or other matter after it is made or entered into, the declaration of the interest must be made at the first Board of Directors Meeting held after the Director becomes so interested.

#### **37.4. General Disclosure**

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under Clause 37.3 as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

#### **37.5. Recording Disclosure**

It is the duty of the Company Secretary to record in the minutes any declaration made or any general notice given by a Director in accordance with Clauses 37.3 and 37.4.

## **MANAGEMENT**

### **38. EXECUTIVE OFFICER**

#### **38.1. Appointment of Executive Officer**

The Executive Officer shall be appointed by the Board of Directors for such term and on such conditions as it thinks fit. The Executive Officer, shall be entitled to notice of, attend and participate in and debate at, all Board of Directors Meetings, but shall have no entitlement to vote.

#### **38.2. Broad Power to Manage**

NHAA shall be managed by the Executive Officer who may exercise all powers of NHAA which are not, under the Act or these Clauses, required to be exercised by the Board of Directors or by NHAA in a General Meeting. The Executive Officer shall administer NHAA in Australia in accordance with this Constitution, the By-Laws and all policy directions of the Board of Directors.

#### **38.3. Executive Officer May Employ**

The Executive Officer, in consultation with and the approval of the Board of Directors, may employ and/or contract such office personnel as are deemed necessary from time to time. Such appointments shall be for such period and on such conditions as the Executive Officer and the Board of Directors determine.

#### **38.4. Company Secretary**

The Board of Directors may in accordance with section 204D of the Act appoint and remove the person appointed as Company Secretary for such term, and upon such conditions as it thinks fit, and the person so appointed shall act as and carry out the duties of the Company Secretary.

## **DELEGATED BODIES**

### **39. COMMITTEES & DELEGATES**

#### **39.1. Board of Directors may Delegate Functions to Committees**

The Board of Directors may delegate any of its powers and/or functions to one or more committees or advisory committees (such advisory committees to act in an advisory capacity only) consisting of such Member or Members as the Board of Directors thinks fit. Any committee so formed must conform to any regulations that may be given by the Board of Directors and subject thereto has power to co-opt any Member or Members and all Members of such committees have one vote.

#### **39.2. Delegation by Instrument**

The Board of Directors may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) This power of delegation; and
- (b) A function imposed on the Board of Directors by the Act or any other law, or this Constitution.

#### **39.3. Delegated Function Exercised in Accordance With Terms**

A function, the exercise of which has been delegated under this Clause, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of this delegation.

#### **39.4. Procedure of Committee**

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to Board of Directors Meetings under Clause

36. The quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.

(b) Every committee or advisory committee may meet and adjourn as it thinks proper.

(c) Questions arising at any meeting are to be determined by a majority of votes of the members present, and in the case of an equality of votes the chair has a second or casting vote.

(d) A Director or the Executive Officer shall be ex-officio members of any committee so appointed.

(e) Within seven (7) days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the Executive Officer and Board of Directors.

### **39.5. Delegation may be Conditional**

A delegation under this Clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

### **39.6. Revocation of Delegation**

The Board of Directors may by instrument in writing, revoke wholly or in part any delegation made under this Clause, and may amend, repeal or veto any decision made by such committee under this Clause where such decision is contrary to this Constitution, the By-Laws, the Act, the Objects or the committee's delegation.

## **BY-LAWS**

### **40. BY-LAWS**

#### **40.1. Board of Directors to Formulate By-Laws**

The Board of Directors may from time to time as circumstances dictate, formulate, interpret, adopt, make, alter or amend the By-Laws for the proper advancement, management and administration of NHAA, the advancement of the Objects and western herbal medicine and naturopathy as it thinks necessary or desirable. The By-Laws must (as far as practicable) be in conformity and consistent with this Constitution and all policy directives of NHAA. The By-Laws are binding on all Members.

#### **40.2. By-Laws Deemed Applicable**

All By-Laws and regulations of NHAA in force at the date of the approval of these Clauses

(including existing By-Laws) insofar as such By-Laws and regulations are not inconsistent with, or have been replaced by this Constitution, shall continue in force under this Constitution.

#### **40.3. Notices Binding**

The Executive Officer must bring to the notice of the Board of Directors and Members all By-Laws and any formulation, interpretation, amendment, alteration and repeal of them. Notices are binding upon all Members.

## **NHAA CHAPTERS**

### **41. NHAA CHAPTERS**

- 41.1.** The Board of Directors may from time to time establish and maintain a chapter of Members and non-members within NHAA for the purpose, directly or indirectly, of furthering the Objects as set forth in this Constitution. The chapter so formed shall not in any way make decisions that will not be in accordance with this Constitution or not be in accordance with the regulations and procedures of the Board of Directors.
- 41.2.** A Director or their nominated delegate shall preside as Chairman at the Chapter meetings.
- 41.3.** A record of the meeting will be minuted and lodged with the NHAA's Company Secretary within twenty days after the date of the meeting.
- 41.4.** The Chapters consist of:
- (i) Sydney;
  - (ii) Vic Herbs;
  - (iii) Newcastle; and
  - (iv) such other Chapters as may from time to time be established by the Board of Directors pursuant to Clause 55.1.
- 41.5.** Any By-Laws made by the Board of Directors in relation to a Chapter pursuant to Clause 55.1 must specify the members or categories of members of NHAA entitled to be members of it, and must provide, inter alia, that:
- (a) it must hold an Annual General Meeting of its members in accordance with this Constitution;
  - (b) it must at its Annual General Meeting in each year elect a president and secretary, and their names must be notified to the Executive Officer forthwith thereafter;
  - (c) the Honorary Treasurer of NHAA is ex officio its treasurer;
  - (d) if it fails to hold its Annual General Meeting in any year, it is thereupon taken to have been dissolved; and
  - (e) its members must in all respects conform with the provisions of this Constitution.

#### **41.6. Obligations of Chapters**

Each Chapter must:

- (a) Apply its property and capacity in pursuit of the Objects and western herbal medicine and naturopathy;
- (b) Remit all and any income received and requests for expenditure to NHAA within 30 days of the income or expenditure being received;
- (c) Remit any annual budget request to NHAA for Chapter activities by 1 April in any calendar year for the next financial year;
- (d) Act in good faith and with loyalty to ensure the maintenance and enhancement of NHAA and western herbal medicine and naturopathy, its standards, quality and reputation for the collective and mutual benefit of the Members and western herbal medicine and naturopathy;
- (e) Act at all times with all requirements that may be imposed on it by applicable State or Commonwealth law;
- (f) At all times act on behalf of and in the interests of the Members and western herbal medicine and naturopathy; and
- (g) Maintain, in a form and with such details as are reasonably acceptable to NHAA, a register of attendees at any Chapter meetings.

### **MISCELLANEOUS**

#### **42. COMMON SEAL**

- (a) If NHAA has a Common Seal, the Board of Directors must provide for its safe custody.
- (b) The Seal must comply with the Act.

#### **43. EXECUTION UNDER THE SEAL**

The Board of Directors may execute a document if The Seal is fixed to the document and the fixing of The Seal is witnessed by:

- (a) The President and Company Secretary; or
- (b) Other persons as appointed by the Board of Directors.

#### **44. EXECUTION WITHOUT THE SEAL**

The Board of Directors may execute a document without using The Seal if the document is signed by:

- (a) Two (2) Elected Directors; or

(b) An Elected Director and the Company Secretary.

#### **45. DIRECTOR'S INTERESTS**

A Director may NOT sign a document to which The Seal of NHAA is fixed where the Director is interested in the contract or arrangement to which the document relates.

#### **46. NEGOTIABLE INSTRUMENT**

Any two (2) Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument. This provision is subject to the Board of Directors determining that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

#### **47. REGISTERS**

Subject to the Act, the Board of Directors will cause the following company registers to be kept:

(a) A register of Members; and

(b) Where debentures are issued, a register of debenture holders.

Having regard to privacy and confidentiality considerations, an extract of the register of Members, excluding the address of a Member or Director shall be available for inspection and copying by Members, upon reasonable request.

#### **48. FINANCIAL REPORT**

Financial records must be kept by NHAA in accordance with the Act.

The Board of Directors must publish for the last financial year ended before the Annual General Meeting copies of every:

(a) Annual financial report for the last financial year ended before the Annual General Meeting;

(b) Report of the Board of Directors for the year; and

Report of the auditor or auditors on the financial report as required by the Act.

#### **49. ACCESS TO RECORDS**

Subject to sections 253N and 251B of the Act, the Board of Directors will determine from time to time whether and to what extent, and at what time and place and under what conditions, the accounting and other records of NHAA or any of them will be open to the inspection of Members other than Directors. No Member other than a Director has the right to inspect any accounting or other records of NHAA except as provided by law or authorised by the Board of Directors or by a resolution passed at a General Meeting.

## **50. AUDITOR**

A properly qualified auditor or auditors must be appointed and his, her or their duties regulated in accordance with section 327A through to section 327I of the Act.

The accounts of NHAA including the profit and loss accounts and balance sheet shall be examined by the auditor at least once every year.

## **51. GIVING OF NOTICES**

**51.1.** A notice may be given by NHAA to any Director or Member by serving it on the Director or Member:

- (i) personally; or
- (ii) by sending it by post to the Director or Member at his, her or its registered address or the address if any supplied by the Director or Member to NHAA for the giving of notices to the Director or Member; or
- (iii) by sending it to the facsimile number or electronic address (if any) nominated by the Director or Member.

**51.2.** Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the second day after the date of its posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

**51.3.** A notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) or other electronic means is taken to be served immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9:00 am next occurring during business hours at such place.

**51.4.** For the purposes of this Clause 50.4, "business hours" means from 9:00 am to 5:00 pm on a day on which the major trading banks are open for business at the place or in the postal district where the addressee's facsimile machine is located.

## **52. ENTITLEMENT TO NOTICES**

Notice of every General Meeting must be given in the manner authorised by Clause 50 to:

- (a) every Member except those Members for whom NHAA has no registered address or other address for the giving of notices to the Member;
- (b) the Directors; and
- (c) the auditor or auditors for the time being of NHAA.

No other person is entitled to receive notices of General Meetings.

### **53. INDEMNITY**

Except to the extent that it is prohibited from doing so by the Act, NHAA:

- (a) Indemnifies every person who is or has been a Director or employee of NHAA or of any related body corporate of NHAA out of the assets of NHAA against any liability:
  - (i) Arising out of the conduct of the business of NHAA or incurred in that capacity; and
  - (ii) For legal costs incurred in connection with proceedings relating to, or in defending an action for a liability incurred in, that capacity; and

unless the liability arises out of conduct on the part of the Director or employee of NHAA or of any related body corporate of NHAA which involves a lack of good faith, or a liability for a pecuniary penalty or compensation order under s1317G or s1317H of the Act.

NHAA may pay or agree to pay a premium in respect of a contract of insurance for any such person against any such liability.

### **54. GRIEVANCE PROCEDURE**

The grievance procedure set out in this Clause applies to disputes under these Clauses between a Member and another Member.

If there is a dispute that is not resolved through good faith negotiations in accordance with this section within fourteen (14) days after notice of the dispute is given by one party to the other, then the parties must, within ten (10) days, refer the dispute for resolution to an independent tribunal established by the NHAA to hear and adjudicate on the dispute in accordance with the procedures determined by the NHAA from time to time.

The Board of Directors may prescribe additional grievance procedures in the Regulations consistent with this Clause 53.

### **55. INTERLOCUTORY RELIEF**

Nothing in this clause shall prevent either party seeking urgent interlocutory relief.