



**CONSTITUTION**  
**of**  
**AIVL - Australian Injecting &**  
**Illicit Drug Users League Limited**

Australian Business Number (ABN) 20 467 392

A company limited by guarantee

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## Table of contents

### Preliminary

- 1 Name of the company
- 2 Type of company
- 3 Limited liability of members
- 4 The guarantee
- 5 Definitions

### Purposes and powers

- 6 Object
- 7 Powers
- 8 Not-for-profit
- 9 Amending the constitution

### Members

- 10 Membership and register of members
- 11 Who can be a member
- 12 Who can become an affiliate member
- 13 How to apply to become a member or affiliate member
- 14 Directors decide whether to approve membership
- 15 When an organisation/body corporate/entity becomes a member
- 16 When an organisation/body corporate/entity stops being a member

### Dispute resolution and disciplinary procedures

- 17 Dispute resolution
- 18 Disciplining members

### General meetings of members

- 19 General meetings called by directors
- 20 General meetings called by members
- 21 Annual general meeting
- 22 Notice of general meetings
- 23 Quorum at general meetings
- 24 Auditor's right to attend meetings
- 25 Representatives of members
- 26 Using technology to hold meetings

- 27 President for general meetings
- 28 Role of the President
- 29 Adjournment of meetings

### Members' resolutions and statements

- 30 Members' resolutions and statements
- 31 Company must give notice of proposed resolution or distribute statement
- 32 Circular resolutions of members

### Voting at general meetings

- 33 How many votes a member has
- 34 How many votes an affiliate member has
- 35 Challenge to member's right to vote
- 36 How voting is carried out
- 37 When and how a vote in writing must be held
- 38 Appointment of proxy
- 39 Voting by proxy

### Directors

- 40 Number of directors
- 41 Election and appointment of directors
- 42 Election of President
- 43 Term of office
- 44 When a director stops being a director

### Powers of directors

- 45 Powers of directors
- 46 Delegation of directors' powers
- 47 Payments to directors
- 48 Execution of Documents

### Duties of directors

- 49 Duties of directors
- 50 Conflicts of interest

### Directors' meetings

- 51 When the directors meet

- 52 Calling directors' meetings
- 53 President for directors' meetings
- 54 Quorum at directors' meetings
- 55 Using technology to hold directors' meetings
- 56 Passing directors' resolutions
- 57 Circular resolutions of directors

## Secretary

- 58 Appointment and role of secretary

## Minutes and records

- 59 Minutes and records
- 60 Financial and related records

## By-laws

- 61 By-laws

## Notice

- 62 What is notice
- 63 Notice to the company
- 64 Notice to members
- 65 When notice is taken to be given

## Financial year

- 66 Company's financial year

## Indemnity, insurance and access

- 67 Indemnity
- 68 Insurance
- 69 Directors' access to documents

## Winding up

- 70 Surplus assets not to be distributed to members
- 71 Distribution of surplus assets

## Definitions and interpretation

- 72 Definitions
- 73 Reading this constitution with the Corporations Act
- 74 Interpretation

## **1. Name of the company**

The name of the company is AIVL - Australian Injecting & Illicit Drug Users League Limited.

## **2. Type of company**

AIVL is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

## **3. Limited liability of members**

The liability of members is limited to the amount of the guarantee in clause 4.

## **4. The guarantee**

Each member must contribute an amount not more than \$10 (the guarantee) to the property of AIVL if AIVL 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:

- (a) debts and liabilities of AIVL incurred before the member stopped being a member, or
- (b) costs of winding up.

## **5. Definitions & Interpretations**

In this constitution, words and phrases have the meaning set out in clauses 72 and 74.

## **Purpose and powers**

### **6. Object**

Preamble:

The Australian Injecting & Illicit Drug Users League (AIVL) is the national peak organisation of State and Territory Drug User Organisations and represents issues of national significance for illicit drug users and people on medication assisted treatment.

The organisational philosophy of AIVL is user-centred and supports the right of people who use illicit drugs and people on medication assisted treatment to self-organise and form peer-based structures and processes in order to reduce drug related harm. AIVL operates within health promotion frameworks articulated in the Ottawa Charter for Health Promotion (1986) which defines health promotion as “the process of enabling people to increase control over and to improve their health.” The Charter outlines five strategies for achieving the above process which are:

- Building healthy public policy;
- Creating supportive environments;
- Strengthening community action;
- Developing personal skills; and
- Reorienting health services

With this overall framework in mind, AIVL undertakes a broad range of health promotion and disease prevention activities and programs. One of the primary aims of the organisation is to prevent and reduce the transmission of blood borne viruses amongst people who inject drugs such as hepatitis B and C and HIV and to ameliorate the negative impact of such conditions amongst those already infected.

AIVL's objects are derived from its members. Accordingly, AIVL, will provide leadership, be guided by, promote, coordinate and support the shared goals of its members and the communities/people they represent.

Although AIVL represents and addresses issues affecting all people who use illicit drugs and those on medication assisted treatment, AIVL and its member organisation will maintain a priority focus on people who inject drugs and the issues that affect them due to the higher levels of harm and marginalisation routinely experienced by people who inject drugs.

AIVL take a non-judgemental approach to drug use and recognises the fundamental role that drug use has played historically within society. AIVL believes that people who use illicit drugs and people on medication assisted treatment have the right to be treated with dignity and respect and to be able to live their lives free from discrimination, stigma and health and human rights violations.

As an organisation, AIVL is committed to achieving fundamental reform of the current drug laws and a re-orientation of the health system in relation to issues affecting people who use illicit drugs and people on medication assisted treatment.

AIVL's object is to pursue the following charitable purpose(s):

- (a) provide an avenue through which the interests of people who use illicit drugs and people on medication assisted treatment can be represented at the national level;
- (b) maintain an effective, efficient, well-funded organisation which is primarily accountable to its membership;

- (c) address and represent the health needs of people who use illicit drugs and people on medication assisted treatment at the national level through a health promotion and disease prevention approach;
- (d) prevent the transmission of blood borne viruses such as HIV/AIDS, hepatitis C, hepatitis B, etc, among people who use illicit drugs;
- (e) promote and represent the health and support needs of people with hepatitis C and/or HIV/AIDS who use drugs or are on medication assisted treatment;
- (f) promote the provision of high quality, accessible and relevant services to people who use illicit drugs and people on medication assisted treatment throughout Australia;
- (g) challenge social and legal barriers to the health and well-being of people who use illicit drugs and people on medication assisted treatment in Australia including, ensuring that users have access to the resources and means to reduce drug related harm;
- (h) to promote and protect the health and human rights of people who use illicit drugs and people on medication assisted treatment in Australia;
- (i) offer developmental national activities designed to improve the capacity and effectiveness of the State and Territory Drug User Organisations throughout Australia;
- (j) form strategic alliances and partnerships to address issues affecting people who use illicit drugs and people on medication assisted treatment at the national level;
- (k) maintain an active public voice on issues affecting people who use illicit drugs and people on medication assisted treatment at the national level.
- (l) operate as a genuine partner in research undertaken on issues affecting people who use illicit drugs and people on medication assisted treatment in Australia;
- (m) link and collaborate with like-minded organisations outside Australia to promote the principles and objectives of AIVL on an international level; and
- (n) support like-minded organisations, networks or projects in the Asia Pacific region to ensure users have access to the resources and means to reduce drug related harm and promote health.

## **7. Powers**

Subject to clause 8, AIVL has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

## **8. Not-for-profit**

8.1 AIVL must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 71.

8.2 Clause 8.1 does not stop AIVL from doing the following things, provided they are done in good faith:

- (a) 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 AIVL, or
- (b) making a payment to a member in carrying out AIVL's charitable purpose(s).

## **9. Amending the Constitution**

9.1 Subject to clause 9.3, the members may amend this constitution by passing a special resolution in a general meeting.

9.2 Any modification or repeal of this constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

9.3 The members must not pass a special resolution that amends this constitution if passing it causes AIVL to no longer be a charity.

9.4 AIVL cannot modify the constitution if it will impose a new or greater liability on or otherwise unfairly prejudice any member, except with the consent of the relevant member or members.

9.5 Nothing in clause 9.4 prevents AIVL modifying the constitution to comply with law, provided that the approvals in clause 9.4 are obtained.

## **Members**

### **10. Membership and register of members**

- 10.1 The members of AIVL are:
- (a) initial members, and
  - (b) any other organisation/body corporate/entity that the directors allow to be a member, in accordance with this constitution.
- 10.2 AIVL must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
    - i. name
    - ii. address
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. date the member was entered on to the register.
  - (b) for each organisation/body corporate/entity that stopped being a member in the last 7 years:
    - i. name
    - ii. address
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. dates the membership started and ended.
- 10.3 AIVL must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

### **11. Who can be a member**

- 11.1 A primarily peer-based drug user organisation/body corporate/entity that supports the purposes of AIVL is eligible to apply to be a member of AIVL under clause 13.
- 11.2 To ensure national representation is achieved, each state and territory is to be represented.

### **12. Who can become an affiliate member**

- 12.1 An organisation/body corporate/entity who supports the purposes – and shares the values and objectives - of AIVL is eligible to apply to be an affiliate member of AIVL under clause 13.
- 12.2 This organisation/body corporate/entity may or may not be a peer-based drug user organisation.
- 12.3 This organisation/body corporate/entity may or may not be an Australian-based organisation.



### **13. How to apply to become a member or affiliate member**

An organisation/body corporate/entity (as defined in clauses 11.1 and 12.1) may apply to become a member of AIVL by writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purpose(s) of AIVL, and
- (c) agree to comply with the AIVL's constitution, including paying the guarantee under clause 4 if required.

### **14. Directors decide whether to approve membership**

- 14.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 14.2 If the directors approve an application, the secretary must as soon as possible:
  - (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 15).
- 14.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.
- 14.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 13(a), 13(b) or 13(c). In that case, by applying to be a member, the applicant agrees to those three matters.

### **15. When an organisation/body corporate/entity becomes a member**

Other than initial members, an applicant will become a member when they are entered on the register of members.

### **16. When an organisation/body corporate/entity stops being a member**

An organisation/body corporate/entity immediately stops being a member if they:

- (a) are wound up or otherwise dissolved or deregistered (for an incorporated member)
- (b) resign, by writing to the secretary
- (c) are expelled under clause 18, or
- (d) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## **Dispute resolution and disciplinary procedures**

### **17. Dispute resolution**

- 17.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
  - (b) one or more directors, or
  - (c) AIVL
- 17.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 18 until the disciplinary procedure is completed.
- 17.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 17.4 If those involved in the dispute do not resolve it under clause 17.3, they must within 10 days:
- (a) tell the directors about the dispute in writing
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 17.5 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - i. for disputes between members, a person chosen by the directors, or
    - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the President of the law institute or society in the state or territory in which AIVL has its registered office.
- 17.6 A mediator chosen by the directors under clause 17.5(b)(i):
- (a) may be a member or former member of AIVL
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 17.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
  - (b) allow those involved a reasonable chance to review any written statements
  - (c) ensure that those involved are given natural justice, and
  - (d) not make a decision on the dispute.

### **18. Disciplining members**

- 18.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from AIVL if the directors consider that:
- (a) the member has breached this constitution, or

- (b) the member's behaviour is causing, has caused, or is likely to cause harm to AIVL.
- 18.2 At least 14 days before the directors' meeting at which a resolution under clause 18.1 will be considered, the secretary must notify the member in writing:
  - (a) that the directors are considering a resolution to warn, suspend or expel the member
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
  - (c) what the member is said to have done or not done
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 18.3 Before the directors pass any resolution under clause 18.1, the member must be given a chance to explain or defend themselves by:
  - (a) sending the directors', a written explanation before that directors' meeting, and/or
  - (b) speaking at the meeting.
- 18.4 After considering any explanation under clause 18.3, the directors may:
  - (a) take no further action
  - (b) warn the member
  - (c) suspend the member's rights as a member for a period of no more than 12 months
  - (d) expel the member
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a general meeting.
- 18.5 The directors cannot fine a member.
- 18.6 The secretary must give written notice to the member of the decision under clause 18.4 as soon as possible.
- 18.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 18.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **General meetings of members**

### **19. General meetings called by directors**

- 19.1 The directors may call a general meeting.
- 19.2 If members with at least 10% of the votes that may be cast at a general meeting make a written request to AIVL for a general meeting to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a general meeting, and
  - (b) hold the general meeting within 2 months of the members' request.
- 19.3 The percentage of votes that members have (in clause 19.2) is to be worked out as at midnight before the members request the meeting.
- 19.4 The members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to AIVL.
- 19.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### **20. General meetings called by members**

- 20.1 If the directors do not call the meeting within 21 days of being requested under clause 19.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 20.2 To call and hold a meeting under clause 20.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution
  - (b) call the meeting using the list of members on AIVL's member register, which AIVL must provide to the members making the request at no cost, and
  - (c) hold the general meeting within three months after the request was given to AIVL.
- 20.3 AIVL must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

## **21. Annual general meeting**

- 21.1 A general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of AIVL, and
  - (b) after the first annual general meeting, at least once in every calendar year.
- 21.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of AIVL's activities
  - (b) a review of AIVL's finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment and payment of auditors, if any.
- 21.3 Before or at the annual general meeting, the directors must give information to the members on AIVL's activities and finances during the period since the last annual general meeting.
- 21.4 The President of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of AIVL.

## **22. Notice of general meetings**

- 22.1 Notice of a general meeting must be given to:
- (a) each member entitled to vote at the meeting
  - (b) each director, and
  - (c) the auditor (if any).
- 22.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 22.3 Subject to clause 22.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
  - (b) for any other general meeting, members with at least 80% of the votes that may be cast at the meeting agree beforehand.
- 22.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.
- 22.5 Notice of a general meeting must include:

- (a) the place, 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)
- (b) the general nature of the meeting's business
- (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - i. the proxy does not need to be a member of AIVL
  - ii. the proxy form must be delivered to AIVL at its registered address, or the address (including an electronic address) specified in the notice of the meeting, and
  - iii. the proxy form must be delivered to AIVL at least 48 hours before the meeting.

22.6 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

### **23. Quorum at general meetings**

- 23.1 For a general meeting to be held, at least 50% of members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 23.2 No business may be conducted at a general meeting if a quorum is not present.
- 23.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the President specifies. If the President does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 23.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

### **24. Auditor's right to attend meetings**

- 24.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 24.2 AIVL must give the auditor (if any) any communications relating to the general meeting that a member of AIVL is entitled to receive.

## **25. Representatives of members**

- 25.1 A member may appoint as a representative:
- (a) two individuals to represent the member at meetings and to sign circular resolutions under clause 32, and
  - (b) the same individuals or other individuals for the purpose of being appointed or elected as a director.
- 25.2 The appointment of representatives by a member must:
- (a) be in writing
  - (b) include the name of the representatives
  - (c) be signed on behalf of the member, and
  - (d) be given to AIVL or, for representation at a meeting, be given to the President before the meeting starts.
- 25.3 Representatives have all the rights of a member relevant to the purposes of the appointment as a representative.
- 25.4 The appointment is conducted on an annual basis.

## **26. Using technology to hold meetings**

- 26.1 AIVL 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, including to hear and be heard.
- 26.2 Anyone using this technology is taken to be present in person at the meeting.

## **27. President for general meetings**

- 27.1 The elected president is entitled to chair general meetings.
- 27.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chair for that meeting if:
- (a) there is no elected president, or
  - (b) the elected president is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the elected president is present but says they do not wish to act as chair of the meeting.

## **28. Role of the president**

- 28.1 The president is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 28.2 The president does not have a casting vote.

## **29. Adjournment of meetings**

- 29.1 If a quorum is present, a general meeting must be adjourned if a majority of members present in person or by proxy direct the president to adjourn it.
- 29.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

### **30. Members' resolutions and statements**

- 30.1 Members with at least 10% of the votes that may be cast on a resolution may give:
- (a) written notice to AIVL of a resolution they propose to move at a general meeting (members' resolution), and/or
  - (b) a written request to AIVL that AIVL give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 30.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 30.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 30.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 30.5 The percentage of votes that members have (as described in clause 30.1) is to be worked out as at midnight before the request or notice is given to AIVL.
- 30.6 If AIVL has been given notice of a members' resolution under clause 30.1 (a) the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 30.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

### **31. Company must give notice of proposed resolution or distribute statement**

- 31.1 If AIVL has been given a notice or request under clause 30:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at AIVL's cost, or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members



who proposed the resolution or made the request must pay the expenses reasonably incurred by AIVL in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that AIVL will pay these expenses.

- 31.2 AIVL does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1 000 words long
  - (b) the directors consider it may be defamatory
  - (c) clause 31.1(b) applies, and the members who proposed the resolution or made the request have not paid AIVL enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
  - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

## **32. Circular resolutions of members**

- 32.1 Subject to clause 32.3 the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 32.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 32.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
  - (b) for passing a special resolution, or
  - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 32.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 32.5 or clause 32.6.
- 32.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 32.6 AIVL may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **Voting at general meetings**

### **33. How many votes a member has**

Each member has two votes.

### **34. How many votes an affiliate member has**

Affiliate members do not hold voting rights.

### **35. Challenge to member's right to vote**

- 35.1 A member or the president may only challenge a person's right to vote at a general meeting at that meeting.
- 35.2 If a challenge is made under clause 35.1, the president must decide whether or not the person may vote. The president's decision is final.

### **36. How voting is carried out**

- 36.1 Voting must be conducted and decided by:
- (a) a show of hands
  - (b) a vote in writing, or
  - (c) another method chosen by the president that is fair and reasonable in the circumstances.
- 36.2 Before a vote is taken, the president must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 36.3 On a show of hands, the president's decision is conclusive evidence of the result of the vote.
- 36.4 The president and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **37. When and how a vote in writing must be held**

- 37.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five members present
  - (b) members present with at least 10% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
  - (c) the president.
- 37.2 A vote in writing must be taken when and how the president directs, unless clause 37.3 applies.

- 37.3 A vote in writing must be held immediately if it is demanded under clause 37.1:
- (a) for the election of a president under clause 27.2, or
  - (b) to decide whether to adjourn the meeting.

A demand for a vote in writing may be withdrawn.

### **38. Appointment of proxy**

- 38.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 38.2 A proxy, may be, but does not need to be a member.
- 38.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under clause 37.1.
- 38.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
  - (b) AIVL's name
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 38.5 A proxy appointment is not ongoing, and must be done at least annually.
- 38.6 Proxy forms must be received by AIVL at the address stated in the notice under clause 22.5(d) or at AIVL's registered address at least 48 hours before a meeting.
- 38.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 38.8 Unless AIVL receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
  - (b) is mentally incapacitated
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 38.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **39. Voting by proxy**

- 39.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 39.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
  - (b) if the way they must vote is specified on the proxy form, must vote that way, and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

### **40. Number of directors**

AIVL must have at least 5 (five) and no more than 7 (seven) directors.

- (a) 5 (five) of the directors must be elected by members and from these appointments office bearers will be elected
- (b) 2 (two) of the directors must be appointed by the directors elected by members, they are to be members of the general community who hold values and interests that are consistent with the aims and objectives of AIVL

### **41. Election and appointment of directors**

- 41.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of AIVL.
- 41.2 Apart from the initial directors and directors appointed under clause 41.5, the members may elect a director by a resolution passed in a general meeting.
- 41.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
  - (b) no votes were cast against that resolution.
- 41.4 A person is eligible for election as a director of AIVL if they:
- (a) are a member of AIVL, or a representative of a member of an AIVL member organisation/body corporate/entity (appointed under clause 25)
  - (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting),
  - (c) gives AIVL their signed consent to act as a director of AIVL, and
  - (d) are not ineligible to be a director under the Corporations Act or the ACNC Act.

- 41.5 The directors may appoint a person as a director to fill a casual vacancy if that person:
- (a) meets the criteria of appointment in clause 40 (b), and
  - (b) gives AIVL their signed consent to act as a director of AIVL, and
  - (c) is not ineligible to be a director under the Corporations Act or the ACNC Act.
- 41.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

## **42. Election of office bearers**

The directors must elect elected directors (i.e. not appointed directors) as AIVL's office bearers as defined in clause 72.

## **43. Term of office**

- 43.1 At each annual general meeting any director appointed by the directors to fill a casual vacancy or as an additional director must retire.
- 43.2 Other than a director appointed under clause 41.5, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 43.3 Each director is appointed for 2 (two) years, with office bearers eligible for re-election for a maximum of 2 (two) consecutive 2 (two) year terms in the same position.
- 43.4 A director who retires under clause 43.1 may nominate for election or re-election, subject to clause 43.3.

## **44. When a director stops being a director**

A director stops being a director if they:

- (a) give written notice of resignation as a director to AIVL
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of AIVL
- (e) are a representative of a member, and that member stops being a member
- (f) are a representative of a member, and the member notifies AIVL that the representative is no longer a representative
- (g) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (h) become ineligible to be a director of AIVL under the Corporations Act or the ACNC Act.

## **Powers of directors**

### **45. Powers of directors**

- 45.1 The directors are responsible for managing and directing the activities of AIVL to achieve the purposes set out in clause 6.
- 45.2 The directors may use all the powers of AIVL except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 45.3 The directors must decide on the responsible financial management of AIVL including:
- (a) any suitable written delegations of power under clause 466, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 45.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

### **46. Delegation of directors' powers**

- 46.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of AIVL (such as a chief executive officer) or any other person, as they consider appropriate.
- 46.2 The delegation must be recorded in AIVL's minute book.

### **47. Payments to directors**

- 47.1 AIVL must not pay fees to a director for acting as a director.
- 47.2 AIVL may:
- (a) pay a director for work they do for AIVL, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of AIVL.
- 47.3 Any payment made under clause 47.2 must be approved by the directors.
- 47.4 AIVL may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

### **48. Execution of documents**

AIVL may execute a document without using a common seal if the document is signed by:

- (a) two directors of AIVL, or
- (b) a director and the Chief Executive Officer.

## Duties of directors

### 49. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of AIVL
- (b) to act in good faith in the best interests of AIVL and to further the charitable purpose(s) of AIVL set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 50
- (f) to ensure that the financial affairs of AIVL are managed responsibly, and
- (g) not to allow AIVL to operate while it is insolvent.

### 50. Conflicts of interest

- 50.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors, or
  - (b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- 50.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 50.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 50.4:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 50.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of AIVL, and the other members have the same interest
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of AIVL (see clause 68)
  - (c) their interest relates to a payment by AIVL under clause 67 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act

- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of AIVL, and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## **Directors' meetings**

### **51. When the directors meet**

The directors must meet at least 6 (six) times in each period of 12 (twelve) months at such a place and time as they may determine.

### **52. Calling directors' meetings**

- 52.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 52.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### **53. President for directors' meetings**

- 53.1 The president is entitled to chair directors' meetings.
- 53.2 The directors at a directors' meeting may choose a director to be the president for that meeting if the president is:
  - (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as chair of the meeting.

### **54. Quorum at directors' meetings**

- 54.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 54.2 A quorum must be present for the whole directors' meeting.

### **55. Using technology to hold directors' meetings**

- 55.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 55.2 The directors' agreement may be a standing (ongoing) one.



- 55.3 A director may only withdraw their consent within a reasonable period before the meeting.

## **56. Passing directors' resolutions**

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

## **57. Circular resolutions of directors**

- 57.1 The directors may pass a circular resolution without a directors' meeting being held.
- 57.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 57.3 or clause 57.4.
- 57.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 57.4 AIVL may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 57.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 57.3 or clause 57.4.

## **Secretary**

### **58. Appointment and role of secretary**

- 58.1 AIVL must have at least one secretary, who may also be a director.
- 58.2 A secretary must be appointed by the directors (after giving AIVL their signed consent to act as secretary of AIVL) and may be removed by the directors.
- 58.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 58.4 The role of the secretary includes:
- (a) maintaining a register of the AIVL's members, and
  - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

## **Minutes and records**

### **59. Minutes and records**

- 59.1 AIVL must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings
  - (b) minutes of circular resolutions of members

- (c) a copy of a notice of each general meeting, and
  - (d) a copy of a members' statement distributed to members under clause 31
- 59.2 AIVL must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 59.3 To allow members to inspect AIVL's records:
  - (a) AIVL must give a member access to the records set out in clause 59.1, and
  - (b) the directors may authorise a member to inspect other records of AIVL, including records referred to in clause 59.2 and clause 60.1.
- 59.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
  - (a) the chair of the meeting, or
  - (b) the chair of the next meeting.
- 59.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## **60. Financial and related records**

- 60.1 AIVL must make and keep written financial records that:
  - (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 60.2 AIVL must also keep written records that correctly record its operations.
- 60.3 AIVL must retain its records for at least 7 years.
- 60.4 The directors must take reasonable steps to ensure that AIVL's records are kept safe.

## **By-laws**

### **61. By-laws**

- 61.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 61.2 Members and directors must comply with by-laws as if they were part of this constitution.

## **Notice**

### **62. What is notice**

- 62.1 Anything written to or from AIVL under any clause in this constitution is written notice and is subject to clauses 63 to 65, unless specified otherwise.
- 62.2 Clauses 63 to 65 do not apply to a notice of proxy under clause 38.6.

### **63. Notice to the company**

Written notice or any communication under this constitution may be given to AIVL, the directors or the secretary by:

- (a) delivering it to AIVL's registered office
- (b) posting it to AIVL's registered office or to another address chosen by AIVL for notice to be provided
- (c) sending it to an email address or other electronic address notified by AIVL to the members as AIVL's email address or other electronic address

### **64. Notice to members**

64.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any), or
- (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

64.2 If AIVL does not have an address for the member, AIVL is not required to give notice in person.

### **65. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given one full week after it is posted with the correct payment of postage costs
- (c) sent by email, or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 62.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

## **Financial year**

### **66. Company's financial year**

AIVL's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## **Indemnity, insurance and access**

### **67. Indemnity**

- 67.1 AIVL indemnifies each officer of AIVL out of the assets of AIVL, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of AIVL.
- 67.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 67.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that AIVL is not precluded by law (including the Corporations Act) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 67.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of AIVL.

### **68. Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, AIVL may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of AIVL against any liability incurred by the person as an officer of AIVL.

### **69. Directors' access to documents**

- 69.1 A director has a right of access to the financial records of AIVL at all reasonable times.
- 69.2 If the directors agree, AIVL must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors, and
  - (b) any other documents referred to in those documents.

## **Winding up**

### **70. Surplus assets not to be distributed to members**

If AIVL is wound up, any surplus assets must not be distributed to a member or a former member of AIVL, unless that member or former member is a charity described in clause 71.1.

### **71. Distribution of surplus assets**

- 71.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after AIVL is wound up must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as AIVL.

71.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, AIVL may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 72. Definitions

In this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

**company** means the company referred to in clause 1

**Corporations Act** means the *Corporations Act 2001* (Cth)

**elected president** means a person elected by the directors to be the company's president under clause 42

**general meeting** means a meeting of members and includes the annual general meeting, under clause 21.1

**initial member** means an organisation/body corporate/entity that is named in the application for registration of the company, with their consent, as a proposed member of the company. These are:

- Canberra Alliance for Harm Minimisation & Advocacy (CAHMA)
- NSW Users & AIDS Association (NUAA)
- Northern Territory AIDS & Hepatitis Council (NTAHC)
- Queensland Injectors Health Network (QuIHN)
- Queensland Injectors Voice for Advocacy and Action (QuIVAA)
- Hepatitis SA Clean Needle Program Peer Projects (CNP)
- Tasmanian Users Health & Support League (TUHSL)
- Harm Reduction Victoria (HRVic)
- Peer Based Harm Reduction WA

**member present** means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting

**office bearers** means, the president, Vice-President, Secretary, Treasurer and Member Liaison Officer

**Peer-based** means being committed to, and demonstrating through actions, processes, strategies and structures that empower and support the participation of self-identified current illicit drug users within the organisation, network or project. Given AIVL's primary focus on injecting drug use and blood borne virus prevention, and given the level of harm and marginalisation experienced by injecting drug users, current injecting drug using peers will be given priority in relation to peer opportunities that have relevance for injecting drug users.

**registered charity** means a charity that is registered under the ACNC Act

**special resolution** means a resolution:

- i. of which notice has been given under clause 22.5(c), and
- ii. that has been passed by at least 80% of the votes cast by members present and entitled to vote on the resolution, and

**surplus assets** means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

### **73. Reading this constitution with the Corporations Act**

- 73.1 The replaceable rules set out in the Corporations Act do not apply to AIVL.
- 73.2 While AIVL is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 73.3 If AIVL is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- 73.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

### **74. Interpretation**

In this constitution:

- (a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).