



Constitution

Diversity Council Australia Limited
ACN 006 898 406

A public company limited by guarantee

Final, approved by DCA members on 20 June 2018.

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Part A – Preliminary matters

1 Defined terms and interpretation

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this constitution;
- (b) sets out the rules of interpretation which apply to this constitution; and
- (c) clarifies the effect of the Corporations Act on this constitution.

2 Nature of company and liability

- (a) The company is a public company limited by guarantee which is established to be, and to continue as, a charity.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$100 to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

Part B – Purpose

3 Purpose and activities of the company

3.1 Purpose

The purpose of the company is to promote and advance inclusion and diversity through the creation of more diverse and inclusive workplaces for the benefit of individuals, organisations and the broader community, with a focus on individuals that have been historically disadvantaged or underrepresented in the labour market (**Charitable Purpose**).

3.2 Activities

The activities of the company must be conducted in the furtherance of its Charitable Purpose and may include to:

- (a) encourage employers to create more diverse and inclusive workplaces for the benefit of the organisation and the broader community, especially those that are historically disadvantaged or underrepresented in workplaces;
- (b) establish and demonstrate what is leading thinking and practice on diversity and inclusion in an Australian context;
- (c) assist members to implement successful diversity and inclusion strategies and programs;

- (d) promote the implementation of effective diversity compliance management in a changing legislative environment;
- (e) conduct evidence based research and publish reports identifying and analysing issues relevant to business diversity and inclusion theory, management and practice and related matters, including social and economic issues and to provide a business and community forum for the discussion of such issues and to compile information and research material in relation thereto;
- (f) develop, promulgate and disseminate ideas in furtherance of the objects of the company and to promote discussion thereon;
- (g) contribute to the process of public policy making and to encourage the utilization by members of the experiences and expertise of the company;
- (h) publish and disseminate information concerning diversity and inclusion in Australia and/or social and economic conditions or issues, or any aspect thereof, or issues relating thereto, relevant to diversity and inclusion or concerning the ideas objects and policies of the company;
- (i) co-ordinate and make available expert knowledge and products in connection with the development of diversity and inclusion programs in Australia;
- (j) promote communication, discussion and debate between representatives of Australian business, governments, employee and employer representatives, academies, educational institutions and other groups of interested citizens and to foster and promote attitudes and strategies for change conducive to the promotion of diversity and inclusion management and practice;
- (k) engage and partner with other organisations and business that share common goals with the company both in Australia and internationally; and
- (l) any other activities ancillary to or necessary for the fulfilment of the Charitable Purpose.

Part C – Members and members hip

4 Membership

4.1 Members of the company

- (a) The members of the company are:
 - (i) all properly registered members of the company as at the date of the adoption of this constitution; and
 - (ii) any applicant that has been admitted as a member of the company in accordance with rule 4.2,

that have not since ceased to be a member.

- (b) If an applicant is admitted as a member of the company, the secretary must ensure that:
 - (i) the applicant is given notice of admission as a member of the company; and
 - (ii) the name and details of the applicant are entered in the members' register in accordance with rule 4.5.
- (c) The secretary must ensure that each applicant not admitted as a member of the company is informed of this decision. The directors may, but are not required to, provide reasons for the decision not to admit an applicant into membership.

4.2 Becoming a member

To become a member of the company an applicant must:

- (a) have a genuine commitment to and an understanding of the Charitable Purpose;
- (b) not be an individual;
- (c) complete and lodge a membership application in such form as determined by the directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (d) ensure that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;
- (e) pay any annual fee that may be required under rule 4.6;
- (f) be admitted into membership by the directors or their delegate; and
- (g) satisfy such other membership criteria as the directors may determine from time to time, acting reasonably.

4.3 Members' rights

In addition to the voting rights in rule 6.8, each member has the right to:

- (a) receive notices of and to attend and be heard at any general meeting of the company; and
- (b) subject to rule 8.4(a), nominate one representative for election as a director.

4.4 Membership not transferable

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

4.5 Register of members

- (a) A register of members must be kept in accordance with the law.

(b) Without limiting the requirement under rule 4.5(a), the following must be entered in the register in respect of each member:

- (i) the name and address of the member;
- (ii) the date of admission to and cessation of membership;
- (iii) the full name and contact details of the member's Representative; and
- (iv) any other information required by the directors or the law from time to time.

4.6 Membership fees

- (a) The directors may require the payment of membership fees in the amounts and at the times as the directors resolve.
- (b) The directors may at their complete discretion:
 - (i) determine that the annual membership fee be a different amount;
 - (ii) determine that the membership fee payable by one or more members be payable at a different time or times, including by instalments; and
 - (iii) determine, or waive all or some of, the fees payable by one or more members at any time.
- (c) The annual membership fee that may be required under this rule 4.6 is exclusive of any GST that may be payable.
- (d) A member that has not paid the required membership fee but has not yet ceased to be a member in accordance with rule 5.3(b), may not exercise any of the rights associated with that member's membership, including the right to exercise any vote the member may have at a meeting of members.
- (e) For the avoidance of doubt, any reference to a membership fee in this constitution includes an instalment of a membership fee, where such membership fee is payable by instalments pursuant to rule 4.6(b)(ii).

4.7 Membership renewal

The directors may, at their discretion, send a notice to one or more members requiring that member to confirm or to renew membership of the company and/or to confirm or update that member's details (**Membership Renewal Notice**).

5 Ceasing to be a member

5.1 General overview

- (a) There are a number of reasons why a member's membership will stop. For instance, if a member:
 - (i) resigns from membership. See rule 5.2;

- (ii) automatically stops being a member. See rule 5.3; or
- (iii) is expelled from membership. See rule 5.4.

- (b) The directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they so determine from time to time so long as they are consistent with the requirements set out in this rule 5.
- (c) Where a person ceases to be a member under rule 5.2, 5.3 or 5.4 their name must be removed from the register of members.
- (d) Upon the removal of a person's name from the register of members:
 - (i) the person will forfeit all rights and privileges attached to membership and all rights which the person may have against the company arising out of the membership; and
 - (ii) the company will have no liability to such person in respect of their removal from the register of members.
- (e) Any person who ceases to be a member remains liable for:
 - (i) any moneys which may be owing to the company; and
 - (ii) in the case of the company being wound up, within one year of the date of cessation of membership, the relevant contribution under rule 2(b).

5.2 Resignation from membership

A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

5.3 Automatic stopping of membership

A member's membership will automatically stop if the member:

- (a) is dissolved or wound up;
- (b) fails to pay any required membership fee in accordance with rule 4.6 within two months after the date on which that membership fee becomes due or such later time as the directors may determine;
- (c) fails to return a Membership Renewal Notice in accordance with rule 4.7 within two months after the return due date specified in that notice or such later time as determined by the directors; or
- (d) no longer complies with the membership eligibility requirements described at rule 4.2 as determined by a special resolution of at least 75% of directors.

5.4 Disciplining, suspension and expulsion of member

(a) This rule 5.4 describes what needs to happen when considering whether or not to discipline a member. In summary, the process involves:

- (i) putting the member in question on notice and giving the opportunity to provide information; and
- (ii) passing a directors' resolution to warn, suspend, expel or otherwise discipline that member.

(b) So long as the steps set out in rule 5.4 are followed, the directors may resolve to warn, suspend, expel or otherwise discipline a member if that member:

- (i) has refused or neglected to comply with the provisions of this constitution;
- (ii) has acted in a way that, in the opinion of the directors, is, or could be, prejudicial to the interests or reputation of the company; or
- (iii) breaches the Member Terms and Conditions,

(Member Disciplinary Resolution).

(c) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must be in writing and let the member know:

- (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
- (ii) the reasons why the directors are considering taking the determined action;
- (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action;
- (iv) the date, place and time of the meeting at which the resolution is to be considered; and
- (v) of the right for the member to attend the meeting at which the resolution is to be considered but not to be present during any director deliberations or the putting of or voting on the resolution unless the directors resolve otherwise.

(d) A director that is connected with a member subject to a Member Disciplinary Resolution by virtue of being a director, officer, employee or nominee of that member is not entitled to vote on that resolution.

(e) Directors must notify the relevant member in writing about the directors' decision within 10 days after the date a Member Disciplinary Resolution is passed. The directors' decision is final.

6 General meetings

6.1 Introduction

- (a) For so long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, and for so long as the law permits or requires, the directors:
 - (i) may determine whether or not to hold meetings of members including annual general meetings unless the Corporations Act otherwise requires a meeting of members for a particular resolution to be passed;
 - (ii) must ensure that the Australian Charities and Not-for-profits Commission Governance Standards, in particular Governance Standard 2 relating to accountability to members, are complied with; and
 - (iii) must ensure that if the company does hold a meeting of members, it does so in accordance with this constitution and the Corporations Act despite the fact that the provisions of the Corporations Act dealing with members' meetings may not be directly binding upon the company.
- (b) If there is any inconsistency between the Corporations Act and this constitution with respect to the calling and holding of members' meetings then, to the extent permitted by law, the provisions of this constitution will prevail.

6.2 Calling of general meetings

- (a) A general meeting of members may be initiated by:
 - (i) a resolution of the directors;
 - (ii) the members in accordance with the Corporations Act; or
 - (iii) the court in accordance with the Corporations Act.
- (b) A meeting of members may be held in two or more places linked together by any technology so long as it:
 - (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the chair to determine whether the person participating in the meeting is in fact a member or a Representative or attorney of a member;
 - (iii) enables the chair of the meeting to be aware of proceedings in each place; and
 - (iv) enables the members in each place to vote on a Show of Preference and on a poll.

6.3 Notice of general meetings

- (a) Subject to the provisions of the Corporations Act dealing with consent to short notice, at least 21 days' notice of a general meeting of members (including an annual general meeting) must be given to each person who is at the date of the notice:
 - (i) a member of the company eligible to receive notices of meetings or their Representative;
 - (ii) a person who is at the date of the notice a director of the company; or
 - (iii) the auditor of the company.
- (b) A notice of a general meeting must specify:
 - (i) the date, time and place of the meeting which, despite the provisions of the Corporations Act dealing with the timing of annual general meetings, may, for as long as the Company is a registered charity, be held at any reasonable date and time;
 - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the business to be transacted at the meeting;
 - (iv) the text of any resolutions to be proposed at the meeting, the intention to propose any resolutions as special resolutions; and
 - (v) any other matters required under the law.
- (c) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present whether or not the person is a member.

6.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is, if the number of current members is:
 - (i) 50 or more, five members;
 - (ii) between 20 and 49 (inclusive), four members;
 - (iii) between 10 and 19 (inclusive); three members;
 - (iv) between two and nine members (inclusive), two members,present in person or by proxy.

- (c) If a quorum is not present within 20 minutes after the time appointed for a general meeting and that meeting is called or initiated by members, then the meeting is to be dissolved. Otherwise:
 - (i) the meeting stands adjourned to the following week at a time and venue communicated by the chair of the meeting;
 - (ii) at the adjourned meeting the quorum is two members present in person or by proxy and entitled under these rules to vote at a general meeting (provided the company has at least two members); and
 - (iii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.5 Chair of general meetings

- (a) The chairperson must preside as chair at each general meeting.
- (b) If the chairperson is absent or is unwilling to act, then the deputy chairperson, if one has been appointed, must preside as chair at the meeting.
- (c) If both the chairperson and deputy chairperson are absent or are both unwilling to act, then the members present at that meeting may elect a person present to chair the meeting.

6.6 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
 - (i) proper and orderly debate or discussion; and
 - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.
- (d) In addition to the rights provided for in rule 6.3(a)(iii) and 6.3(c), the auditor of the company (if any) is entitled to be heard at any general meeting which the auditor attends.

6.7 Decisions at general meetings

- (a) Except in the case of any resolution which under this constitution or as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting

(including being present by technological means) and that decision is for all purposes a decision of the members.

- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members the chair may exercise a second or casting vote in addition to any vote the chair may have as a member of the company.
- (c) Unless a poll is demanded, a resolution put to the vote of a general meeting must be decided on a show of preference of members, with each member present indicating a preference by a means appropriate to that member and that is readily interpreted and understood by the chair (**Show of Preference**).
- (d) A member may only exercise one vote on a Show of Preference regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote being decided by a Show of Preference is taken or before or immediately after the declaration of the result of the Show of Preference:
 - (i) by the chair of the meeting;
 - (ii) by at least 5 members present and entitled to vote on the relevant resolution; or
 - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) Unless a poll is demanded, a declaration by the chair on the result of a vote on a Show of Preference is decisive of the outcome of that resolution. Such declaration does not need to refer to the number or proportion of votes for or against the resolution.
- (g) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

6.8 Voting rights

Each member has the right to exercise one vote:

- (a) on a Show of Preference at a meeting of members; and
- (b) on a poll at a meeting of members.

6.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:

- (i) through its Representative;
- (ii) by proxy in a form as the directors may prescribe or accept; or
- (iii) by attorney in a form as the directors may prescribe or accept.

(b) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or a Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.

(c) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:

- (i) the person specified by the company in the proxy form; or
- (ii) if no person is specified by the company in the proxy form, the chair of the meeting to which that proxy applies.

(d) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:

- (i) at the registered office of the company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
- (ii) at least two business days before the time scheduled for the commencement of the meeting.

(e) Unless otherwise permitted by the chair, the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that relevant member is present at the meeting.

6.10 Meetings conducted using electronic means

(a) A member who participates in a general meeting by telephone or other electronic means which allows mutual communication and for that member to indicate a Show of Preference is taken to be present in person at the meeting.

(b) A general meeting conducted using telephone or other electronic means is taken as held at the place as determined by the chair of the meeting, so long as one of the members involved was at the place for the duration of the meeting.

Part D – Not-for-profit

7 No profits for members

(a) Subject to rule 7(b), the assets and income of the company must be applied solely in furtherance of the Charitable Purpose and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.

(b) The company may, with the approval of the directors, make payment in good faith to a member of the company:

- (i) by way of reasonable and proper payment for any goods supplied or services rendered to the company (including payment as a consultant);
- (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
- (iii) by way of reasonable and proper rent for premises let by that member to the company;
- (iv) as a result of the members participation in a social bond, or similar, program of the company; and
- (v) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.

(c) For the avoidance of doubt, nothing in this rule 7:

- (i) prevents a member from receiving such services as may ordinarily be provided by the company in the course of undertaking its activities; or
- (ii) prohibits a member from receiving a benefit that is directly related to membership of the company.

Part E – Directors and secretary

8 Directors

8.1 Number of directors

(a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is 12.

(b) The directors may change the maximum number of permitted director positions in accordance with the Corporations Act.

(c) If at any time the number of directors falls below three, the remaining director or directors may act but only:

- (i) in an emergency;
- (ii) for the purpose of convening a general meeting of the company; or
- (iii) for the purpose of increasing the number of directors to three.

8.2 Becoming a director

Subject to rule 8.3, a person may become a director in three ways:

- (a) election by members, such election to be for the period to the third annual general meeting after the annual general meeting at which that person was elected or, if the company does not hold an annual general meeting, for a term of three years (**Member Elected Directors**);
- (b) appointment by the directors, such appointment to be for a term of up to three years with the precise period determined by the directors at the time of appointment (**Board Appointed Directors**); and
- (c) appointment by the directors to fill any vacancy in the number of Member Elected Directors however arising (**Casual Vacancy**). Such Casual Vacancy is to be filled until the end of the next annual general meeting or, if the company does not hold an annual general meeting, until the next time an election of directors is held or 12 months (whichever is the shortest period of time).

8.3 Rules about the composition of directors

Subject to rule 8.2(c):

- (a) two thirds of the number of director positions is reserved for, and may only be filled by, Member Elected Directors. If two thirds of director positions is not a whole number then the number is to be rounded up; and
- (b) the remaining director positions are reserved for, and may only be filled by Board Appointed Directors.

8.4 Qualifications and requirements of directors

- (a) To be eligible for election as a Member Elected Director under rule 8.2(a) a person must:
 - (i) be 18 years of age or older;
 - (ii) be nominated in writing for election by a member in the way determined by the directors from time to time;
 - (iii) be an employee of a member;
 - (iv) not be ineligible to be a director under the Corporations Act or the ACNC Act;
 - (v) have knowledge about and a demonstrated commitment to the Charitable Purpose; and
 - (vi) meet any other criteria relating to the composition of the board and skills and qualifications of directors as may be determined by the directors from time to time.
- (b) To be eligible to fill a Board Appointed Director position under rule 8.2(b) or to be appointed by the directors to fill a Casual Vacancy under rule 8.2(c), the person must comply with all the requirements of rule 8.4(a) other than the requirement to:
 - (i) be nominated by a member; and

- (ii) be an employee of a member.

8.5 Director's time in office

- (a) Each director is to remain as a director until that director's term of office expires or until that person resigns or is otherwise removed as a director of the company in accordance with the law and this constitution. However, subject to the Corporations Act and rules 8.5(b) and 8.5(c), a person is eligible for reappointment or re-election.
- (b) No person is permitted to hold the office of a director for any more than six continuous years following the adoption of this constitution unless a special resolution of at least 75% of directors is passed permitting that person to serve an additional term of up to three years (as either a Member Elected Director or Board Appointed Director) as specified in that resolution.
- (c) A person having held office as a director for six or more continuous years following adoption of this constitution is eligible for re-election or re-appointment once a period of three years has expired since that person last held office as a director.

8.6 Ceasing to be a director

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any director becomes vacant if the director dies or, unless the directors otherwise resolve to confirm the director's position, if the director:
 - (i) is, due to physical or mental impairment, unable to properly perform the duties of a director, as determined by a suitably qualified professional acting reasonably;
 - (ii) becomes bankrupt;
 - (iii) is convicted of an indictable offence;
 - (iv) fails to attend three or more consecutive directors' meetings in any 12 month period without leave of absence approved by the directors; or
 - (v) in the case of a Member Elected Director, ceases to be employed by a member for a period of three months or more.
- (b) Nothing in rule 8.6(a) prevents a director from vacating that director's office if the director resigns by notice in writing to the company.

8.7 Payments to directors

- (a) Directors must not receive any payment for acting as a director but, subject to rule 8.7(b), are entitled to:
 - (i) be reimbursed for all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees; and

- (ii) receive payment for any goods supplied or services rendered to the company (other than as a director), as long as the amount is proper and reasonable in the circumstances.
- (b) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by:
 - (i) the directors; or
 - (ii) such other person or persons to whom the directors may have delegated such authority in a way consistent with rule 8.17 or rule 8.18.

8.8 Interested directors

- (a) No contract or other arrangement made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Each director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the directors.
- (c) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (d) Subject to rule 8.8(e), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest, be counted in determining whether a quorum is present at any meeting of directors considering that arrangement.
- (e) Rule 8.8(d) does not apply to the extent that it would be contrary to law.

8.9 Powers and duties of directors

- (a) The directors are responsible for the governance, business and affairs of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the members.
- (b) The directors must comply with their duties as directors under legislation and common law and with the duties described in Governance Standard 5 of the regulations made under the ACNC Act which are:
 - (i) 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 the company;
 - (ii) to act in good faith in the best interests of the company and to further the Charitable Purpose;
 - (iii) not to misuse their position as a director;

- (iv) not to misuse information that they gain in their role as a director;
- (v) to disclose any perceived or material conflicts of interest;
- (vi) to ensure that the financial affairs of the company are managed responsibly; and
- (vii) not to allow the company to operate while insolvent.

8.10 Directors' meetings

- (a) The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.
- (b) The directors should meet as often as required for the proper discharge of their directors' duties and in any event no less than four times per year.

8.11 Convening of meetings of directors

A meeting of directors may be convened by the chair or any three of the directors.

8.12 Notice of directors' meetings

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
 - (i) be given in a way permitted by rule 14;
 - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting;
 - (iii) state the nature of the business to be transacted at the meeting; and
 - (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a directors' meeting is not invalid just because a director did not receive notice of the meeting provided that:
 - (i) the notice was not received because of accident or error;
 - (ii) before or after the meeting, the director notifies the company of that director's agreement to the resolution; or
 - (iii) the director attended the meeting.

8.13 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.

- (b) A quorum consists of a majority of current directors.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

8.14 Chairperson and deputy chairperson

- (a) The directors must appoint a director to the office of chairperson and may appoint a different director to the office of deputy chairperson.
- (b) The directors may remove a director from the office of chairperson and deputy chairperson at any time but doing so does not remove that person as a director.
- (c) A person may only fill the office of chairperson or deputy chairperson for so long as that person is a director of the company.
- (d) The chairperson must preside as chair at each directors' meeting unless that person is unable to attend or unwilling to act.
- (e) If the chairperson is unable to attend a directors' meeting or unwilling to act, then the deputy chairperson, if one has been appointed, must preside as chair of that meeting.
- (f) If both the chairperson and deputy chairperson are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from those directors present to preside as the chair for that meeting.

8.15 Decisions of directors

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting and any other matter to be determined by the directors under this constitution are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair does not have a second or casting vote in addition to any vote the chair may have as a director of the company.

8.16 Decisions without meetings

Directors may pass resolutions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and

(b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

8.17 Committees

(a) The directors may resolve to:

- (i) establish one or more committees consisting of such persons as they determine;
- (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
- (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
- (iv) change the makeup of a committee at any time or dissolve it all together.

(b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, terms of reference, guidelines or protocols.

(c) The directors may continue to exercise all of their powers despite any delegation made under this rule.

8.18 Delegation to individuals

(a) The directors may resolve to delegate any of their powers to such individual or individuals as may be lawfully permitted, including:

- (i) to one or more directors; or
- (ii) to one or more company employees.

(b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.

(c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.

(d) The directors may continue to exercise all of their powers despite any delegation.

(e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

8.19 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalid just because:

(a) of a defect in the appointment of the director;

- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

9 **Secretaries**

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in their capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to:
 - (i) ensuring that the necessary registers required by the law are established and properly maintained;
 - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) ensuring the organisation of, and attendance at, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a secretary is not invalid just because:
 - (i) of a defect in the person's appointment as a secretary; or
 - (ii) the person is disqualified from being a secretary,

if that circumstance was not known by the person when the act was done.

Part F – Winding up and loss of endorsement

10 **Winding up**

- (a) Before the company is wound up, it must first wind up each of the deductible gift recipient endorsed funds it operates (if any), in accordance with each fund's winding up requirements.

- (b) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be given or distributed to members and must instead be given or distributed to one or more Eligible Recipients, each of which must, if the company is endorsed as a deductible gift recipient, be similarly endorsed at the time the distribution is made.
- (c) The decision as to which Eligible Recipient is (or which Eligible Recipients are) to be given the Surplus Assets under rule 10(b) is to be determined:
 - (i) by a resolution of the directors at or before the winding up or dissolution of the company; or
 - (ii) if no such resolution is passed, by the Supreme Court.
- (d) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

11 Loss of deductible gift recipient endorsement

11.1 Loss of DGR endorsement - Endorsed Funds

If the company is endorsed as a deductible gift recipient for the purpose of operating one or more funds, authorities or institutions and the endorsement for one or more such fund, authority or institution is revoked (**DGR Revoked Entity**), then the company must:

- (a) satisfy all liabilities of each DGR Revoked Entity from that particular DGR Revoked Entity's assets; and
- (b) ensure that the following assets remaining after the payment of all liabilities in accordance with rule 11.1(a) are distributed to another fund, authority or institution having the same deductible gift recipient endorsement as the particular DGR Revoked Entity (as determined by a resolution of the directors):
 - (i) deductible gifts of money or property received for the purpose of the DGR Revoked Entity;
 - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the purpose of the DGR Revoked Entity; and
 - (iii) money received by the company because of such deductible gifts and contributions.

11.2 Loss of DGR endorsement - Entity

If the company is endorsed as a deductible gift recipient as a whole and this endorsement is revoked, then the company must ensure that the following assets remaining after the payment of all liabilities are distributed to one or more charitable organisations having the same deductible gift recipient endorsement as the company (as determined by a resolution of the directors):

- (a) deductible gifts of money or property received for the Charitable Purpose;

- (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Charitable Purpose; and
- (c) money received by the company because of such deductible gifts and contributions.

Part G – Administrative matters

12 Minutes and records

12.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of directors; and
- (c) meetings and resolutions of committees.

12.2 Inspection of records

- (a) Subject to the law and rule 12.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to inspection.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep all financial and other records required by law.

13 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the

company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

- (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule);
 - (ii) does not cover any loss or liability of an officer seeking to be indemnified under this rule if that loss or liability arises from that person's wilful misconduct or fraud; and
 - (iii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs).
- (d) To the extent permitted by law, the company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the company on any terms and conditions that the directors think fit to give effect to the rights of that person under this rule 13. Any such agreement may also give the person rights to inspect and obtain copies of the books of the company for the purposes, and on such other terms and conditions, as the directors decide.

14 Notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the directors from time to time.

15 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Schedule 1 Dictionary

1 Dictionary

In this constitution:

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

Board Appointed Director has the meaning at rule 8.2(b).

Casual Vacancy has the meaning given at rule 8.2(c).

Charitable Purpose has the meaning given at rule 3.1.

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

DGR Revoked Entity has the meaning given at rule 11.1.

Eligible Recipient means an organisation that:

- (a) has charitable objects or purposes similar to the Charitable Purpose;
- (b) has a governing document which requires its income and property to be applied in promoting its objects and agrees to use any distribution provided to it by the company to further such objects or purposes;
- (c) is registered as a charity with the Australian Charities and Not-for-profits Commission;
- (d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the company; and
- (e) if the company is endorsed as a deductible gift recipient for the purpose of any Australian federal tax law, is similarly endorsed as a deductible gift recipient.

Member Disciplinary Resolution has the meaning at rule 5.4(b).

Member Elected Director has the meaning given at rule 8.2(a).

Membership Renewal Notice has the meaning given at rule 4.7.

Member Terms and Conditions means the 'member area terms and conditions' found on the company's website.

Representative means a representative of a member appointed in the way permitted by section 250D of the Corporations Act regardless of whether that member is in fact bound by the Corporations Act.

Show of Preference has the meaning given in rule 6.7(c).

Surplus Assets has the meaning given at rule 10(b).

2 Interpretation

2.1 General

- (a) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (b) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) except in the context of membership of the company where reference to the individual is to an individual only, words used to denote persons generally include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
 - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) A requirement in this constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the directors.
- (d) In this constitution, where communication from a member to the company must be 'signed' by a member, in addition to any other methods permitted by law, the member may sign in any manner that allows the directors to be satisfied, acting reasonably, that the communication is from the relevant member, including by using an electronic signature.
- (e) 'Writing' or 'written' includes modes of representing or reproducing words, figures, drawings or symbols in a visible or tactile form which renders the message retrievable by people who know the language in question.

2.2 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.