

**Corporations Act 2001**

**A Company Limited by Guarantee**

**AUSTRALIA AFRICA UNIVERSITIES NETWORK**

**CONSTITUTION**

**2020**

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## Corporations Act 2001

### A Company Limited by Guarantee

## CONSTITUTION

of

### Australia Africa Universities Network (AAUN)

DATE: 27 February 2020

#### OPERATIVE CLAUSES

#### 1. PRELIMINARY

##### 1.1 Definitions

In this document:

- (a) **ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth);
- (b) **Applicant** means a person who makes an Application for Membership under clause 3.3;
- (c) **Board** means the board of Directors of the Company, for the time being;
- (d) **Company** means the Company referred to in clause 1.4;
- (e) **Corporations Act** means the Corporations Act 2001 (Cth);
- (f) **Elected Chairperson** means a person elected by the Directors to be the Company's chairperson under clause 10.4;
- (g) **General Meeting** means a meeting of members and includes the annual general meeting, under clause 7;
- (h) **Initial Member** means a person who is **named** in the application for registration of the Company, with their **consent**, as a **proposed** Member of the Company;
- (i) **Member** means Initial Members and persons who are entered into the Register of Members in accordance with clause 3.1.
- (j) **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;

- (k) **Membership Criteria** means the criteria set out in clause 3.2.
- (l) **Person** means an individual (being the representative of a higher education institution or registered training organisation) or an **incorporated** body (higher education institution or registered training organisation).
- (m) **Register of Members** means the register on which the details of the Members are listed in accordance with clause 3.1.
- (n) **Registered Charity** means a charity that is registered under the ACNC Act.
- (o) **Special Resolution** means a resolution:
  - (i) of which notice has been given under clause 7.5(d)(iii); and
  - (ii) **that has been passed by at least 75% of the votes cast** by Members present and entitled to vote on the resolution;
- (p) **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.

## 1.2 **Interpretation**

In this document, unless the context otherwise requires:

- (a) words **importing** the singular include the plural and **vice versa**;
- (b) words importing any gender include all other genders;
- (c) any headings inserted in this Constitution are included for convenience and shall not affect its **construction**;
- (d) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (e) 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).

## 1.3 **Reading this Constitution with the Corporations Act**

- (a) The **replaceable** rules set out in the Corporations Act do not **apply to** the Company.
- (b) While the Company is a registered charity, the ACNC Act and the Corporations Act **override** any clauses in this Constitution which are **inconsistent** with those Acts.
- (c) If the Company 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.
- (d) 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.

#### 1.4 **Name of the Company**

The name of the Company is "Australia Africa Universities Network" (**AAUN**).

#### 1.5 **Nature of the Company**

- (a) The Company is a not-for-profit company limited by guarantee and does not have share capital. The Company is established to be, and to continue as, a charity.
- (b) The income and property of the Company, however derived or obtained, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution and, except as otherwise provided in this Constitution, no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus, or otherwise to any Members.
- (c) Clause 1.5(b) does not stop the Company from doing the following things, provided they are done in good faith:
  - (i) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
  - (ii) making a payment to a member in carrying out the Company's charitable purposes.

#### 1.6 **The Guarantee**

Each Member must contribute an amount of \$10.00 (**the Guarantee**) to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

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

## 2. **OBJECTS AND POWERS**

### 2.1 **Objects of the Company**

The Company's object is to pursue the following charitable purposes:

- (a) enhance target Africa-Australia partnerships through a network of collaborative research and education initiatives;
- (b) improve the capacity and connectivity of academic talent across Africa and Australia; and
- (c) deliver sustainable solutions to challenges jointly faced by Africa and Australia through working with research institutions, businesses and governments.

## 2.2 Powers of the Company

Subject to clause 1.5(b) the Company has the following powers, which may only be used to carry out its purposes set out in clause 2.1:

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

## 2.3 Amending the Constitution

- (a) Subject to clause 2.3(b), the Members may amend this Constitution by a Special Resolution passed in accordance with the Corporations Act.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

## 3. MEMBERS

### 3.1 Membership and Register of Members

- (a) The Members of the Company are:
  - (i) Initial Members; and
  - (ii) any other person that the Directors allow to be a Member, in accordance with this Constitution.
- (b) The Company must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:
  - (i) For each current Member:
    - A. name;
    - B. address;
    - C. any alternative address nominated by the Member for the services of notices and
    - D. date the Member was entered on to the Register.
  - (ii) For each person who stopped being a member in the last 7 years:
    - A. name;
    - B. address;
    - C. any alternative address nominated by the Member for the services of notices and
    - D. dates the membership started and ended.



- (c) The Company must give current Members access to the Register of Members when requested.
- (d) Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

### 3.2 **Membership Criteria**

A person is eligible to be a Member if they meet the following criteria:

- (a) they are a person who supports the objects of the Company and is eligible to apply to be a Member of the Company under clause 3.3; and
- (b) they are a global higher education organisation, with shared objectives and links to current members in Australia and Africa; or
- (c) they are a higher education institution or registered training organisation in Australia; or
- (d) they are a higher education institution or registered training organisation in Africa, and have expertise in or in connection with the Australia-Africa relationship.

### 3.3 **Application for Membership**

A person may apply to become a member of the Company by writing to the Secretary stating that they:

- (a) want to be a member;
- (b) support the purposes of the Company;
- (c) meet the Membership Criteria set out in clause 3.2;
- (d) agree to the minimum Membership commitment as determined by the Board; and
- (e) agree to comply with the Company's Constitution, including paying the Guarantee under clause 1.6 if required.

### 3.4 **Approval of Application for Membership**

- (a) Directors must consider an Application for Membership within a reasonable time after the Secretary receives the Application.
- (b) If the Directors approve an Application, the Secretary must as soon as possible:
  - (i) enter the new Member on the Register of Members; and
  - (ii) write to the Applicant to tell them that their Application for Membership was approved, and the date that their membership started.

- (c) 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.
- (d) For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clause 3.3. By applying to be a Member, the Applicant agrees to those matters.

### 3.5 **When a Person Becomes a Member**

Other than Initial Members, an Applicant will become a Member when they are entered on the Register of Members.

### 3.6 **Cessation of Membership**

A person immediately stops being a Member if they:

- (a) die or become mentally incapacitated;
- (b) are wound up or otherwise dissolved or deregistered, or has a liquidator, provisional liquidator or administrator appointed (for an incorporated member);
- (c) are expelled under clause 5;
- (d) cease to meet the eligibility requirements for membership set out in clause 3.2;
- (e) have not responded within 3 months to a written request from the Secretary that they confirm in writing that they want to remain a Member,

or by giving 1 years' notice of their resignation in writing to the Secretary, they will stop being a Member at the end of that 1 year notice period.

### 3.7 **Membership Subscriptions**

- (a) All Members must pay such Subscriptions to the Company as may be determined by the Board from time to time, which may be pro-rated for the first year if a Member joins after the commencement of the Financial Year in which they become a Member.
- (b) For clarity, the Board can discriminate between Members and informal categories of Members in setting Subscriptions, in its absolute discretion.
- (c) Each Member must pay their first Subscription within 1 month after the acceptance by the Board of their application.
- (d) After the first Subscription, all Subscriptions are then payable in advance on 1<sup>st</sup> of July in each Year unless otherwise agreed by the Board.
- (e) Unless otherwise agreed in writing by the Board, if the Member has not paid their Subscription within 1 month after the acceptance by the Board of their application or 1 month after the 1<sup>st</sup> of July as the case may be, they will not be entitled to exercise any voting rights at any General Meeting and will not be eligible to nominate a person

to be elected to the Board. The Member may have its membership terminated by ordinary resolution of the Board.

#### **4. DISPUTE RESOLUTION**

4.1 The dispute resolution procedure in this clause 4 applies to disputes under this Constitution between a Member or Directors and:

- (a) one or more Members;
- (b) one or more Directors; or
- (c) the Company.

4.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 5 until the disciplinary procedure is completed.

4.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

4.4 If those involved in the dispute do not resolve it under clause 4.3, they must within 10 days:

- (a) tell the Directors about the dispute in writing;
- (b) appoint a mediator by agreement, or failing agreement:
  - (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 the Company has its registered office; and
- (c) attempt in good faith to settle the dispute by mediation.

4.5 A mediator chosen by the Directors under clause 4.4(b)(i):

- (a) may be a Member or former Member of the Company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

4.6 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.

## 5. DISCIPLINING MEMBERS

- 5.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a member from the Company 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 the Company.
- 5.2 At least 14 days before the Directors' meeting at which a resolution under clause 5.1 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.
- 5.3 Before the Directors pass any resolution under clause 5.1, 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.
- 5.4 After considering any explanation under clause 5.3, 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.
- 5.5 The Directors cannot fine a Member.
- 5.6 The Secretary must give written notice to the Member of the decision under clause 5.4 as soon as possible.

- 5.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 5.8 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.

## **6. ANNUAL GENERAL MEETINGS**

### **6.1 Holding of Annual General Meeting**

An Annual General Meeting must be held:

- (a) within 18 months after registration of the Company; and
- (b) after the first Annual General Meeting, at least once in every calendar year.

### **6.2 Procedures at Annual General Meeting**

The procedures at General Meetings set out in clauses 7, 8, 9 and 10.9 of this Constitution apply equally to Annual General Meetings.

### **6.3 Notice**

- (a) The Secretary must cause a notice to be given to all Members setting out the date, time and place of the Annual General Meeting and such notice must be given not less than 21 days prior to the date scheduled for the Annual General Meeting.
- (b) The accidental omission to give notice to any Member in accordance with clause 6.3(a) does not invalidate the proceeding at the Annual General Meeting.

### **6.4 Business of Annual General Meeting**

In addition to any business included in an agenda published by the Company, the business at an Annual General Meeting may include:

- (a) confirming the minutes of the preceding Annual General Meeting and of any General Meeting held since that preceding Annual General Meeting;
- (b) a review of the Company's activities;
- (c) a review of the Company's finances, including considering the annual financial report and Board's report;
- (d) any auditor's report or audited financial statements of the Company;
- (e) the election of Directors;
- (f) the appointment and payment of auditors, if any;
- (g) the consideration and discussion of the Company's strategic plan; and
- (h) the consideration of such other business as may be required by law to be transacted at the Annual General Meeting.

## **7. GENERAL MEETINGS**

### **7.1 Written Resolutions of Members**

The Company may pass a resolution without a meeting of the Members in accordance with Section 249A of the Corporations Act as if the Company were a proprietary company.

### **7.2 Calling of General Meetings**

- (a) The Board may, whenever it thinks fit, convene a General Meeting of the Company.
- (b) The Board must, upon the requisition of Members holding at least 5% of the votes that may be cast at a General Meeting, call a General Meeting of the Company within 21 days of the request being received. Such General Meeting must be held within 2 months of the requisition.

### **7.3 Requisition for General Meeting**

Any requisition for a General Meeting made by the Members in accordance with clause 7.2(b) must:

- (a) be in writing;
- (b) state any business or resolutions to be proposed at that General Meeting'
- (c) be signed by the Members making the requests (**the Requisitionists**); and
- (d) otherwise comply with the requirements of Section 249D of the Corporations Act.

### **7.4 Actions where Board does not call a General Meeting**

If the Board does not call a General Meeting within 21 days after the requisition is given to the Company in accordance with clause 7.2(b), the Requisitionists may themselves:

- (a) issue a notice of a General Meeting in accordance with clause 7.5; and
- (b) after 21 days of that notice being given, convene a meeting in the same manner or as near as possible to the manner in which General Meetings are convened by the Board.

### **7.5 Notice of Meetings**

- (a) The Company must give not less than 21 days' notice of a meeting of the Members.
- (b) Notice of a General Meeting must be given to:
  - (i) each Member entitled to vote at the meeting;
  - (ii) each Director or Alternate Director; and
  - (iii) the auditor (if any).
- (c) A notice of a meeting of the Members is taken to be given:

- (i) If sent by pre-paid post, 3 days after it is posted;
- (ii) If sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within 8 business hours after the transmission, the recipient informs the sender that it has not received the entire notice; or
- (iii) If sent by electronic mail, when the sender's system electronic mail system generates a message confirming successful transmission of the entire notice unless, within 8 business hours after the transmission, the recipient informs the sender that it has not received the entire notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00pm on a Business Day, the notice is taken to be received at 9:00am on the next Business Day.

- (d) Notice of a General Meeting must include:
  - (i) 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);
  - (ii) the general nature of the meeting's business;
  - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
  - (iv) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
    - A. the proxy does not need to be a Member of the Company;
    - B. the proxy form must be delivered to the Company at its registered office or the address (including an electronic address) specified in the notice of the meeting; and
    - C. the proxy form must be delivered to the Company at least 48 hours before the meeting.

## **8. PROCEEDINGS AT GENERAL MEETINGS**

### **8.1 Quorum**

- (a) No business may be conducted at any General Meeting (including an Annual General Meeting) unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) A quorum for a General Meeting is 5 Members (whether 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 (except where that person is a representative or proxy of more than one Member).

- (c) If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is dissolved and adjourned to the date, time and place that the Chairperson specifies. If the Chairperson does not specify one or more of those things, the meeting is adjourned to:
  - (i) if the date is not specified – the same day in the next week;
  - (ii) if the time is not specified – the same time; and
  - (iii) if the place is not specified – the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 8.2 **Adjournment of Meetings**

- (a) If a quorum is present, a General Meeting must be adjourned if a majority of Members present direct the Chairperson to adjourn it.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.
- (c) Where a meeting is adjourned, a new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

## 8.3 **Using Technology to Hold Meetings**

- (a) The Company 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.
- (b) Anyone using this technology is taken to be present in person at the meeting.

# 9. **VOTING**

## 9.1 **Voting Rights**

Each Member present, in person, by proxy or by representative, at a General Meeting is entitled to vote on any resolution put at any General Meeting and have 1 vote (except where that Member is a representative or proxy of more than one Member).

## 9.2 **Resolutions of Members**

- (a) Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on that resolution than against the resolution.
- (b) A challenge to a right to vote at a meeting of Members may only be made at the meeting and must be determined by the Chairperson, whose decision is final.



- (c) Unless a poll is demanded in accordance with clause 9.3, a resolution put to the vote at a meeting of Members must be decided on a show of hands. Before a vote is taken the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast.
- (d) On a show of hands, a declaration by the Chairperson of a meeting of Members is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of proxies received. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

### 9.3 **Polls**

- (a) A poll may be demanded by any resolution at a meeting of Members by any Member or by the Chairperson;
  - (i) before a vote on that resolution is taken; or
  - (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.
- (b) A demand for a poll may be withdrawn.
- (c) A poll demanded on a resolution at a meeting of Members must be taken in the manner and at the time and place the Chairperson of the meeting directs.
- (d) The result of the poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (e) A demand for a poll of a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

### 9.4 **Circular Resolutions of Members –**

- (a) Subject to clause 9.4(c), the Directors may put a resolution to the Members to pass a resolution without a general meeting being held (a circular resolution).
- (b) 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.
- (c) Circular resolutions cannot be used:
  - (i) for a resolution to remove an auditor, appoint a Director or remove a Director;
  - (ii) for passing a special resolution; or
  - (iii) where the Corporations Act or this constitution requires a meeting to be held.

- (d) 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 9.4(e) or clause 9.4(f).
- (e) Members may sign:
  - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (f) The Company 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.

#### 9.5 **Representatives of Members**

- (a) An incorporated Member may appoint as a representative:
  - (i) one individual to represent the Member at meetings and to sign circular resolutions; and
  - (ii) the same individual or another individual for the purpose of being appointed or elected as a Director.
- (b) The appointment of a representative by a Member must:
  - (i) be in writing;
  - (ii) include the name of the representative;
  - (iii) be signed on behalf of the Member; and
  - (iv) be given to the Company or, for representation at a meeting, be given to the Chairperson before the meeting starts.
- (c) A representative has all the rights of a Member relevant to the purposes of the appointment as a representative.
- (d) The appointment may be standing (ongoing).

#### 9.6 **Proxies**

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) Such appointment must be in writing (in a form approved by the Board from time to time) and include the name and address of the Member, the name of the proxy, the

meeting(s) at which the appointment may be used, and must be signed by the Member. Scanned copies of originals are acceptable.

- (c) The instrument appointing a proxy must be deposited with the Secretary not less than 48 hours before the time for holding the meeting, or the adjourned meeting at which the person named in the instrument proposes to vote.
- (d) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Member dies; or
  - (ii) the appointing Member is mentally incapacitated; or
  - (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed by a third party.
- (e) A proxy's authority to vote is suspended while the Member is present at the meeting.
- (f) A proxy appointment may specify the way the proxy must vote on a particular resolution.
- (g) The appointment may be standing (ongoing).
- (h) When a vote in writing is held, a proxy:
  - (i) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (ii) if the way they must vote is specified on the proxy form, must vote that way; and
  - (iii) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **10. THE COMPANY BOARD**

### **10.1 The Board**

- (a) The affairs of the Company shall be controlled and managed by or under the direction of the Board.
- (b) The Board will consist of:
  - (i) between 5 and 15 Directors; and
  - (ii) the Chairperson.

## 10.2 Powers of the Board

- (a) The Board shall control and manage the affairs of the Company and may:
  - (i) subject to these clauses and the Corporations Act, exercise all such powers of the Company other than those powers and functions that are required by these clauses to be exercised by General Meetings of Members;
  - (ii) subject to these clauses and the Corporations Act, has power to perform all such acts and things as appear to the Board to be desirable or essential for the proper management of the business affairs of the Board including the arrangement of all compulsory insurances;
  - (iii) decide on the responsible financial management of the Company including how **money** will be managed, such as how electronic transfer, negotiable instruments or cheques must be authorised and signed or otherwise approved;
  - (iv) appoint such other working groups as it deems necessary. Such working groups may include persons who are not Members;
  - (v) appoint from time to time the Chief Executive Officer to fulfil the duties of that office; and
  - (vi) do all things appropriate to fulfil the objects of the Company.

## 10.3 Delegation of Board Powers

- (a) The Board may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.
- (b) The delegation must be recorded in the Company's minutes.

## 10.4 Election of Chairperson

The Directors must elect a Director as the Company's elected Chairperson.

## 10.5 Election and Appointment of Directors

- (a) 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 the Company.
- (b) Apart from the initial Directors and Directors appointed under clause 10.5(f), the Members may elect a Director by a resolution passed in a General Meeting.
- (c) Each of the Directors must be appointed by a separate resolution, unless:
  - (i) the Members present have first passed a resolution that the appointments may be voted on together; and

- (ii) no votes were cast against that resolution.
- (d) A person is eligible for election as a Director of the Company if they:
  - (i) are a Member of the Company, or a representative of a Member of the Company; and
  - (ii) 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);
  - (iii) give the Company their signed consent to act as a Director of the Company; and
  - (iv) are not ineligible to be a Director under the Corporations Act or the ACNC Act.
- (e) The Directors may appoint a person as a Director to fill a casual vacancy or as an additional director if that person:
  - (i) is a Member of the Company, or a representative of a Member of the Company;
  - (ii) gives the Company their signed consent to act as a Director of the Company; and
  - (iii) is not ineligible to be a Director under the Corporations Act or the ACNC Act.
- (f) Any person appointed as a Director to fill a casual vacancy or additional director under clause 10.5(e) will hold office until the next Annual General Meeting during which the Company must:
  - (i) confirm the appointment of that person as a Director for the remainder of the term held by the previous Director; or
  - (ii) appoint a new person to the Board for the remainder of the term held by the previous Director.
- (g) If the number of Directors is reduced to fewer than 5 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 5 or calling a General Meeting, but for no other purpose.

#### 10.6 **Term of Office**

- (a) A Director holds office from the conclusion of the Annual General Meeting at which they were elected until the conclusion of the third Annual General Meeting following their election, unless the Director resigns sooner, vacates the office or is disqualified from holding the office.
- (b) Newly elected Directors take office with effect from the conclusion of the Annual General Meeting at which they are elected.

- (c) A Director whose term ends under clause 10.6(a) may nominate for re-election subject to clause 10.6(d).
- (d) A Director who has held office for a continuous period of 9 years or more may only be re-appointed or re-elected by a Special Resolution

#### 10.7 **Removal of Directors**

- (a) The Company may remove, before the expiration of their period of office, any Director by ordinary resolution and may, by ordinary resolution, appoint another person in their stead.
- (b) The person so appointed shall only be appointed for the remainder of the term held by the previous Director.

#### 10.8 **Vacation of Office**

A Director vacates office if they:

- (a) resign their office by giving 21 days' written notice of resignation as a Director to the Company;
- (b) die;
- (c) become mentally incapacitated;
- (d) are removed as a Director by a resolution of the Members;
- (e) stop being a Member of the Company;
- (f) are a representative of a Member, and that Member stops being a Member;
- (g) are a representative of a Member, and the Member notifies the Company that the representative is no longer a representative;
- (h) are absent for 3 consecutive Directors' meetings without approval from the Directors;  
or
- (i) become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.

#### 10.9 **Election Process**

- (a) If there are no more nominations for an office than the number of vacancies to be filled, the Secretary will declare the nominee or nominees elected to the office for which they were nominated.
- (b) Where candidates exceed the number of vacancies for an individual position an election will be held by secret ballot amongst the Members present and entitled to vote. The Board may determine the manner in which the election is conducted from time to time.

- (c) The Secretary will prepare the ballot papers and determine the manner in which votes are marked **thereon**.
- (d) Each Member present at the Annual General Meeting must vote for candidates using a voting paper provided by the Company for that purpose. A preference ranking must be given to each candidate and any voting paper which does not include a preference ranking is **invalid**.
- (e) The Secretary and 1 **scrutineer** appointed by the Board must total the votes allocated to each candidate on the voting papers.
- (f) The candidate(s) with the higher number of first preference votes is elected to the office which they were nominated for.
- (g) In the **even** of the process in clause 10.9(f) producing a tied result the successful candidates will be elected on the basis of second preferences and so on until a result has been determined.
- (h) The Secretary will announce the result of the election at the Annual General Meeting.

#### 10.10 **Payments to Directors**

- (a) The Company must not pay fees to a Director for acting as a Director.
- (b) The Company may:
  - (i) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
  - (ii) **reimburse** a Director for expenses properly **incurred** by the Director in connection with the affairs of the Company.
- (c) Any payment made under clause 10.10(b) must be approved by the Directors.
- (d) The Company may pay **premiums** for insurance **indemnifying** Directors, as allowed for by law (including the Corporations Act) and this Constitution.

#### 10.11 **Execution of documents**

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

- (a) two Directors of the Company; or
- (b) a Director and the Secretary.

## 11. **INTERESTS OF DIRECTORS**

### 11.1 **Directors Duties**

All 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 the Company;
- (b) to act honestly **in the best interests of the Company** and to **further** the **charitable** purpose(s) of the Company set out in clause 2.1;
- (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 11.2;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is **insolvent**.

### 11.2 **Conflicts of Interests**

- (a) 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):
  - (i) to the other Directors; or
  - (ii) 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.
- (b) The disclosure of a conflict of interest by a Director must be **recorded** in the **minutes** of the meeting.
- (c) 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 11.2(d):
  - (i) be present at the meeting while the matter is being discussed; or
  - (ii) vote on the matter.
- (d) A Director may still be present and vote if:



- (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;
- (ii) their interest relates to an insurance contract that insures, or would insure, the Director against **liabilities** that the Director **incurs** as a Director of the Company.
- (iii) their interest relates to a payment by the Company under the **indemnity** clause, or any contract relating to an indemnity that is allowed under the **Corporations** Act;
- (iv) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the Director to vote on the matter; or
- (v) the Directors who do not have a **material personal interest** in the matter pass a resolution that:
  - A. identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
  - B. says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## 12. PROCEEDINGS OF THE BOARD

### 12.1 **Frequency**

The Directors may decide how often, where and when they meet.

### 12.2 **Calling Board Meetings**

- (a) A Director may call a Board meeting by giving reasonable notice to all of the other Directors.
- (b) 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.

### 12.3 **Quorum**

- (a) 50% of Directors (personally present or participating by telephonic or electronic media) constitute a quorum for the business of a meeting of the Board. For certainty, Directors include Alternate Directors where Directors are not available.
- (b) No business shall be **transacted** at a Board meeting unless a quorum is present and if, within 30 minutes of the time **appointed** for the meeting a quorum is not present, the meeting shall be **dissolved**.

#### 12.4 **Chairperson**

- (a) The Chairperson must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.
- (b) The Directors present must elect one of themselves to chair all or part of the meeting of Directors if:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting of Directors; or
  - (iii) the Chairperson is present within that time but is not willing to chair all or part of that meeting.

#### 12.5 **Use of Technology**

- (a) The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- (b) The Directors' agreement may be a **standing** (ongoing) one.
- (c) A Director may only withdraw their **consent** within a reasonable period before the meeting.

#### 12.6 **Voting at Board Meetings**

- (a) Questions arising at a meeting of the Board or of any working group appointed by the Board shall be determined **on a show of hands** or, if demanded by a Director, by a **poll** taken in such a manner as the person **presiding** at the meeting may determine.
- (b) Each Director present at a meeting of the Board (including the person presiding at the meeting) is entitled to 1 vote and, **in the event of** an equality of votes on any question, the Chairperson shall have a second or **casting vote**.

#### 12.7 **Circular Resolutions of Directors**

- (a) The Directors may pass a circular resolution without a Directors' meeting being held.
- (b) 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 12.7(c) or clause 12.7(d).
- (c) Each Director may sign:
  - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.

- (d) The Company 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.
- (e) A circular resolution is passed when the last Director signed otherwise agrees to the resolution **in the manner set out in clause 12.7(c) or clause 12.7(d)**.

## 12.8 **Validity of Acts of Directors**

If it is afterwards discovered that there was some **defect** in the election or appointment of a person to be an officer or a Director by the Board, or to act in that **capacity**, or that a person so elected or appointed was **disqualified**, all acts done by that person are **valid** as if the person had been **duly** elected or appointed and was qualified to act in that capacity.

## 13. **SECRETARY**

### 13.1 **Appointment**

- (a) The Company must have at least one Secretary, who may also be a Director.
- (b) The Secretary will be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed by the Directors.
- (c) The Directors must decide the terms and conditions under which the Secretary is appointed, including any **remuneration**.

### 13.2 **Role of the Secretary**

The role of the Secretary includes:

- (a) **maintaining a register** of the Company's Members;
- (b) maintaining the **minutes** and **other records of General Meetings** (including **notices** of meetings), **Directors' meetings** and **circular resolutions** in accordance with the Corporations Act;
- (c) **collecting and receiving all monies** due to the Board and **make all payments** on behalf of the Board;
- (d) **maintaining correct accounts and books** showing the financial affairs of the Board with full details of **all receipts and expenditure** connected with the activities of the Board; and
- (e) **prepare and file** on behalf of the Board all Company **returns** required by the Corporations Act.

## 14. **ADMINISTRATION**

### 14.1 **Minutes and Records**

- (a) The Company must, **within one month**, make and keep the following records:

- (i) minutes of **proceedings** and **resolutions** of General Meetings;
  - (ii) minutes of **circular resolutions** of Members; and
  - (iii) **a copy of a notice of each General Meeting.**
- (b) The Company must, within one month, make and keep the following records:
- (i) **minutes** of proceedings and resolutions of Directors' meetings (including meetings of any committees); and
  - (ii) **minutes** of circular resolutions of Directors.
- (c) **To allow Members to inspect** the Company's records:
- (i) the Company **must give a Member access** to the records set out in clause 14.1(a); and
  - (ii) the Directors may authorise a Member to inspect other records of the Company, including records referred to in clause 14.1(b) and clause 14.2.
- (d) The Directors must ensure that minutes of a General Meeting or a Directors' meeting **are signed** within a reasonable time after the meeting by:
- (i) the Chairperson of the meeting; or
  - (ii) the Chairperson of the next meeting.
- (e) 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.
- (f) **The minutes book must be held at the registered office of the Company.**

#### 14.2 **Financial and Related Records**

- (a) The Company must **make and keep written financial records** that:
- (i) correctly record and explain its **transactions** and financial position and **performance**; and
  - (ii) enable true and fair **financial statements** to be prepared and to be **audited**.
- (b) The Company must also keep **written records** that correctly record its **operations**.
- (c) The Company must **retain** its records for at least 7 years.
- (d) The financial and related **records must be held at the registered office** of the Company and any other place the Board requires and the Directors must take reasonable steps to ensure that the Company's records are kept safe.

- (e) The financial and related records must be open to the inspection of the Board at any time.

#### 14.3 Accounts

- (a) A separate bank account shall be established in which all of the Company's income and expenditure is recorded.
- (b) The Board will provide financial reports, which comprise a balance sheet and an income statement in respected of the last completed Financial Year of the Company as required by the Corporations Act.

#### 14.4 Income

The income and property of the Company will only be applied towards the promotion of the objects of the Company as set out in clause 2.1

#### 14.5 Payments

All cheques, drafts, bill of exchange, promissory notes and other negotiable instruments for payment shall be signed by at least 2 accredited officers authorised to do so by the Board or if electronic via 2 electronic signoffs by separate accredited officers.

#### 14.6 Audit

- (a) The books of account and financial reports and records shall be audited each year by an Auditor appointed by the Members at the Annual General Meeting in accordance with the Corporations Act.
- (b) The remuneration of the Auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act.
- (c) If any casual vacancy occurs in the office of the Auditor the Board shall appoint the Auditor and fix the Auditor's fee within 1 month of the vacancy. The Auditor so chosen will hold office as Auditor of the Company until the next Annual General Meeting following their appointment.
- (d) The Auditor or the Auditor's agent so authorised in writing is entitled:
- (i) 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;
  - (ii) for that purpose to receive all notice of and other communications in relation to any General Meeting which the Members are entitled to receive; and
  - (iii) to be heard at any General Meeting which he or she attends on any part of the business of the meeting which concerns the Auditor as Auditor, and is entitled to be heard.

## 14.7 Financial Year

The Company's Financial Year is from 1 July to 30 June, unless the Directors pass a resolution to change the Financial Year.

## 15. INDEMNITY, INSURANCE AND ACCESS

### 15.1 Indemnity

- (a) The Company may indemnify each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- (b) In this clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- (c) In this clause, 'to the relevant extent' means:
  - (i) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
  - (ii) 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).

### 15.2 Insurance

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

- (a) incurred by the person as an officer of the Company or in the course of acting in connection with the affairs of the Company or otherwise arising out of the Officer holding such office provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 and 183 of the Corporations Act; or
- (b) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.
- (c) In this clause 15.2:
  - (i) the term "proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in their capacity as officer, or in the course of acting in connection with the affairs of the Company, or otherwise out of the officer holding such office, including proceedings alleging that they were guilty of negligence, default, breach of trust or breach of duty in relation to the Company, and

- (ii) the term “officer” has the meaning given to that term in section 9 of the Corporations Act.

### 15.3 **Directors’ Access to Documents**

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

## 16. **BY-LAWS**

16.1 The Board may make By-Laws as it may deem appropriate for the proper conduct, control and management of the Company and, in particular:

- (a) the management and good governance of the affairs of the Company;
- (b) the conduct of the Company’s employees;
- (c) the setting apart of any part of parts of the Company’s premises or properties for particular purposes;
- (d) the procedure at meetings of the Company and its committees;
- (e) the formation of any committee including the composition, terms of reference and other relevant matters of such committees; and
- (f) generally, all such matters as are commonly the subject matter of regulations for the proper conduct of companies similar to the Company and are not expressly dealt with in this Constitution.

## 17. **SEVERING INVALID PROVISIONS**

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

## 18. **WINDING UP**

### 18.1 **Dissolution**

The Company may be dissolved by a Special Resolution of the Members at a General Meeting.

## 18.2 Contribution of the Member on Winding Up

The Contribution of the Member on Winding Up will be pursuant to the Guarantee set out in clause 1.6.

## 18.3 Surplus Assets Not to be Distributed to Members

Where on the winding up of the Company or dissolution of the Company there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will not be paid or distributed to any Member or past Member of the Company, unless that Member or past Member is a charity described in clause 2.1.

## 18.4 Distribution of Surplus Assets

- (a) Subject to the Corporations Act and any other application act, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more charities:
  - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 2.1; and
  - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.
- (b) 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, the Company may apply to the Supreme Court to make this decision.